
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

9-19-1980

Volume 05 (Part 1)

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

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Recommended Citation

District Court of the United States for the Northern District of Ohio, Eastern Division, "Volume 05 (Part 1)" (1980). *City of Cleveland v. The Cleveland Illuminating Company, 1980*. 138.
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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

Friday, September 26, 1980

Rudolph court
Salko room



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Cleveland (Ohio),

City of Cleveland, plaintiff
vs. The Cleveland Electric

1 FRIDAY, SEPTEMBER 26, 1980; 8:45 A.M.

2
3 THE CLERK: City of Cleveland
4 versus the Cleveland Electric Illuminating
5 Company; C75-516.

6 THE COURT: Yes.

7 MR. LANSDALE: May I take up a brief
8 matter?

9 THE COURT: Yes.

10 MR. LANSDALE: Yesterday, by the
11 device of reading exhibits presented to the
12 witness, counsel for the plaintiff was able to
13 suggest to the jury that it might have been a
14 violation of the law for us to suggest that
15 there could have been equalization of rates
16 between CEI and the City.

17 We have filed a brief on this, if your Honor
18 please, in connection with a motion in limine to
19 request an order that the plaintiff not be
20 permitted to make this claim in opening statement.

21 Consequent upon that motion, your Honor
22 issued an order which in effect stated that the
23 function of opening statement was not to make
24 conclusory statements of this kind, not along
25 this, but other things.

1 Now, we have the suggestion by the device of
2 a selective reading of an informal opinion by me
3 that this possibility exists, and of course Judge
4 Contie in the Glenwillow case in Akron decided to
5 the contrary, and the Court of Appeals, Tenth
6 Circuit, I believe, decided in the City of
7 Boulder case to the contrary with respect to a
8 constitutional charter city, and I request an
9 instruction to the jury that such a decision, if
10 adopted by legislative action, pursuant to
11 Article 18 of the Ohio Constitution, would not be
12 illegal, and to somehow counter the suggestion of
13 an illegal attempt that the plaintiff has been
14 able to convey to the jury by reading informal
15 opinions.

16 I submit that counsel, prior to any specific
17 decisions on the subject, giving cautionary
18 language to a client is not evidence of
19 illegality or illegal intent or anything else
20 and when, in fact, it is not an illegal act, I
21 think that an erroneous impression that the jury
22 might have gotten from the suggestion of
23 plaintiff's counsel should be eradicated.

24 THE COURT: Mr. Weiner?

25 MR. WEINER: Your Honor, do I

1 understand counsel would like that given now, that
2 instruction?

3 MR. LANSDALE: I certainly would.

4 MR. WEINER: We would like an
5 opportunity to brief that, your Honor.

6 THE COURT: Well, we are not going
7 to brief, Mr. Weiner, every issue of law that comes
8 up before this Court. Make your response and the
9 Court is going to make a decision now.

10 MR. WEINER: I don't think an
11 inference was given to the jury.

12 What was put in evidence was the documents
13 between Mr. Besse and Mr. Locher, as Mayor, and
14 the documents that were in possession of Mr. Besse
15 at the time those letters went to the Mayor, and
16 one other thing, the evidence of Mayor Locher in
17 the afternoon as to what the law was with regard to
18 setting the rates of Muny Light.

19 I don't know of any other evidence that was
20 put in.

21 MR. LANSDALE: The fact of the
22 matter was that there was put in evidence, over
23 my objection, a letter from me to Mr. Besse
24 responding to questions whether there had been
25 any change in our views of the legality of

1 offering an interconnection on the basis of
2 equalization of rates since an original opinion
3 in 1962.

4 In that letter I stated that we saw no reason
5 to change our opinions except for two things:
6 Number one, there had been a lot of things happen
7 in the antitrust field since then raising
8 questions in our mind about such a thing and,
9 secondly, the power of the Federal Power
10 Commission, now having jurisdiction over CEI to
11 regulate the wholesale rate cast considerable
12 doubt upon our ability to enforce any such thing.

13 And this was very carefully read to the jury
14 in the process of asking a question of Mr. Besse
15 and the obvious purpose of it was to suggest to
16 the jury that we had told the company that it was
17 illegal and the company went ahead anyway and made
18 the offer, and I object to the suggestion to the
19 jury.

20 THE COURT: Mr. Weiner?

21 MR. WEINER: I don't believe that
22 that -- If it was read, the letter did not say
23 you had indicated to the company it was illegal.

24 The purpose of the letter was what the --

25 THE COURT: Let's get the letter

1 out, gentlemen.

2 MR. WEINER: Okay.

3 MR. LANSDALE: If your Honor please,
4 the letter --

5 THE COURT: I recall the letter.
6 It's a three- or four-page letter.

7 MR. LANSDALE: It's Plaintiff's
8 Exhibit 1467.

9 THE COURT: You are talking about
10 the letter of February 18, 1965?

11 MR. LANSDALE: Yes, sir. And
12 beginning at Record 2072, the question to Mr.
13 Besse is:

14 "Do you recall receiving the advice that
15 recent developments cast doubt upon the validity
16 of the company, on the company's conditioning and
17 interconnection agreement between Muny Light and
18 CEI on the maintenance of rate equalization," to
19 which I objected.

20 And then the witness is required to answer
21 and the witness says:

22 "As I recall, I think that was legal to
23 attach the condition to the interconnection
24 contract but the City of Cleveland cannot
25 permanently bind itself to it."

1 Then there is further questioning about it
2 and at Record 2078 the witness is required to read
3 the answer which says -- which is that paragraph
4 where it says: "I see no reason to change any of
5 the views expressed in any of these documents with
6 the possible exception of that relating to the
7 maintenance of rates. A good deal has happened
8 since this opinion --" and so on.

9 MR. WEINER: First of all, your
10 Honor, he was not required to read that. That
11 was the witness on a voluntary act to read that
12 portion of the letter. I did not ask him to read
13 that.

14 Secondly, I think the fact that Mr. Besse had
15 this information in his possession at the time he
16 then took further action is a characterization of
17 Mr. Besse's intent when he took that action. It
18 goes to what the intent behind what action he
19 took was.

20 THE COURT: What is the City's
21 position as to what that reflects?

22 MR. WEINER: What his act
23 reflected?

24 THE COURT: Yes; the purpose of
25 the question that elicited the answer.

1 What were you trying to elicit?

2 MR. WEINER: What knowledge he had
3 at the time he made his offer to condition
4 interconnection on the basis of rate equalization.

5 THE COURT: I understand that,
6 Mr. Weiner, but are you inferring that because of
7 this letter his action was invalid?

8 Is that the conclusion that you seek to
9 derive from the colloquy?

10 MR. WEINER: The action may well
11 have been invalid, yes.

12 THE COURT: And not, "may well
13 have been."

14 Is that your position? Is that what you are
15 trying to elicit?

16 MR. WEINER: Excuse me.

17 MR. NORRIS: I would like to
18 comment.

19 THE COURT: Just a moment, Mr.
20 Norris. Please sit down. Mr. Weiner is handling
21 this. I told you at the outset if one person
22 starts something he must finish it.

23 MR. WEINER: May I confer with
24 Mr. Norris?

25 THE COURT: Yes, you may.

1 {Conference ensued off the record between
2 Mr. Weiner and Mr. Norris.}

3 MR. WEINER: I am sorry, your
4 Honor, what was your pending question?

5 THE COURT: Well, what is the
6 City's position as to the inference that is to be
7 drawn from the colloquy or the questions and
8 answers directed to Mr. Besse?

9 MR. WEINER: The inference is
10 that in that period of time, with the given
11 knowledge that the action may not have been
12 lawful, CEI was still willing to run the risk
13 after taking that action, which is precedent for
14 the fact if in the later on period the action
15 that he took again may have been unlawful, but
16 they were willing to run that risk in order to
17 prevent the interconnection which they were
18 trying to avoid all along.

19 THE COURT: Well, that isn't a
20 reasonable inference to be drawn from the
21 language at all.

22 The language is, "In addition the company
23 now proposes an interconnection at the
24 Pennsylvania border which will unquestionably
25 subject it to the jurisdiction of the Federal

1 Power Commission."

2 That is not an act reflecting illegality.

3 All that is is a statement to the effect
4 that in the event that this question of
5 interconnection comes to issue, the Federal Power
6 Commission may have jurisdiction.

7 And the second sentence says:

8 "The Federal Power Commission's jurisdiction
9 over sales at wholesale might cast doubt upon our
10 ability to make such condition in an interconnection
11 agreement effective."

12 And that is the rate equalization.

13 Now, there is no indication there that it could
14 be or would be illegal.

15 The only inference that can be drawn from that
16 is; number one, the Federal Power Commission may
17 have jurisdiction in the event that we proceed,
18 and in the event that they do have jurisdiction,
19 that they may decide or can decide that rate
20 equalization is not proper under whatever facts
21 or circumstances may arise, or on the other hand,
22 they may say that it is.

23 Now, you are certainly not going to be
24 permitted to argue that conclusion from the facts
25 that are in the record to date.

1 MR. WEINER: The fact of the matter
2 was the FPC, that the FPC had control over this
3 interconnection was a new element, and that,
4 coupled with the fact that the FPC may not have
5 allowed rate equalization, does bear on whether or
6 not the next -- a renewed offer, based on that
7 takes on a different light.

8 THE COURT: Not at all, from the
9 facts to this point.

10 Do you have any response, Mr. Lansdale?

11 MR. LANSDALE: No, your Honor.

12 I continue to be troubled by the ability of
13 counsel to suggest illegality to the jury by
14 these recitations.

15 -THE COURT: That is not a reasonable
16 conclusion to be drawn from the facts as they appear
17 on the record to date, and that will not be
18 permitted to be argued in closing argument on these
19 facts.

20 MR. LANSDALE: Yes.

21 THE COURT: Now, getting back to
22 an instruction.

23 I do not see where the present state of the
24 record would require an instruction.

25 MR. LANSDALE: Yes, sir.

1 THE COURT: Do you have anything
2 further, gentlemen?

3 MR. LANSDALE: No, your Honor.

4 THE COURT: Call in the jury,
5 please.

6 We do not have a witness at this juncture.

7 MR. LANSDALE: Not already on the
8 stand, your Honor.

9 - - - - -

10 {The jury was seated in the jury box and the
11 trial proceeded as follows:}

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

14 We have resolved all of the matters that we
15 must resolve this morning outside of the presence
16 of the jury, and we are now prepared to proceed.

17 Call your next witness.

18 MR. WEINER: We call Mr. Rudolph,
19 your Honor.

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1 K A R L H. R U D O L P H,

2 having been called as if on cross-examination
3 by the plaintiff, after having been duly sworn,
4 was examined and testified as follows:

5
6 CROSS-EXAMINATION OF KARL H. RUDOLPH

7
8 BY MR. WEINER:

9 Q Good morning.

10 A Good morning.

11 Q Would you state your name and your full address.

12 A Karl H. Rudolph. My address is 3033 Lander Road,
13 Pepper Pike.

14 Q What colleges have you attended?

15 A Ohio Wesleyan, and I have attended an advanced
16 management course at Harvard University, and I have
17 taken a few other courses at local colleges.

18 Q Are you presently employed?

19 A I am working as a part-time consultant to the
20 Illuminating Company.

21 Q How long have you been a part-time consultant for the
22 Illuminating Company?

23 A A year or a year and a half.

24 Q Prior to that you were employed by the Illuminating
25 Company?

Rudolph - cross

1

2 A Yes, I was.

3 Q For how long?

4 A 38 years.

5 Q When did you start?

6 A 1952.

7 Q You were with the company through that period?

8 A Yes.

9 Q 1952 to 1979?

10 A Yes, sir.

11 Q And 1952 -- is it a fair summary that to 1952 that you
12 did a lot of different things in the company?

13 A Yes. Basically I worked in a variety of financial
14 and accounting and statistical and rates activities.

15 I served part of that period as what was then
16 called Administrative Assistant to the President.

17 Q Who was the President?

18 A Mr. Lindseth.

19 Q In 1952 did your job switch?

20 A Well, yes.

21 About 1952 I left that assignment and took on a
22 different assignment that embodied various accounting
23 and financial aspects of the company's operations, and
24 I was in that activity until 1959, I believe, when I
25 was designated as Controller of the company.

Rudolph - cross

1
2 And later in that same year I became Vice
3 President of Marketing.

4 Q How long did you remain as Vice President of Marketing?

5 A Until 1963, when I became Executive Vice President, and
6 I served as Executive Vice President until 1967, at
7 which point I was designated as President; and I
8 served as President until about 1976 or 1977, at which
9 time I became Chairman.

10 Q Let me make sure I have the chronology.

11 When did you become President?

12 THE COURT: He was President from
13 1967 to 1977, and he became Chairman between 1976
14 and 1977.

15 Q When you were Chairman, is that also Chief Executive
16 Officer?

17 A Yes, it was at that time.

18 Maybe I can make a clarification to that by
19 saying I was Chief Executive Officer from 1970 until
20 1979 when I retired.

21 Q Did that make you the number one person of the company?

22 A Yes, I think so, during that period.

23 Q And during the period of time 1967 to 1970 you were
24 the number two person to Mr. Besse?

25 A Yes.

Rudolph - cross

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Q What were your duties as Vice President of Marketing?

A My duties were overall direction and supervision of Marketing and Sales activities of the company, including five or six different elements that we then designated as departments; such things as residential, commercial, industrial, and market research, I believe.

Q Were you in charge of the competitive aspects of the company at that time? Was that under the Marketing aegis?

A Certainly we were involved in it. Whether or not we were in charge of it I think is maybe not entirely clear, but certainly we were heavily involved.

Q What other entities of the company would be involved?

A Well, the legal aspect is always a consideration in competitive matters.

Q Any other parts of the company?

A Well, yes. I suppose there are a variety of elements that would be involved; such things, for example, as the operating and lines people; the feasibility of what we in Marketing might have felt was desirable and might not always have been substantiated by the operating people.

Q And was it the role of the Marketing Department to formulate overall policy for competitive measures,

Rudolph - cross

1

2 plans, competition?

3 A Yes, I suppose it was.

4 Q So you would have been in charge of those policies
5 between 1959 and 1964 when you were Vice President of
6 Marketing?

7 A Yes, I think so.

8 Q After you left that position and became Executive Vice
9 President, who took over as President or Vice President
10 of Marketing?

11 A Mr. R. W. Wyman.

12 Q Did Mr. Wyman report to you when you were Executive
13 Vice President?

14 A Yes, he did.

15 Q Through his reports were you able to know what was
16 going on in the Marketing Department?

17 A Generally, yes.

18 Q Was it one of your duties to monitor what was going on
19 in the Marketing Department?

20 A Yes.

21 Q And was it one of your duties as Executive Vice
22 President to approve the budget of the Marketing
23 Department?

24 A Well, not exclusively. The budgets were approved in
25 concert.

1 Rudolph - cross

2 This was not exclusively my responsibility.

3 Q Who else would have been involved in that process?

4 A Mr. Besse, and prior to that Mr. Lindseth and Mr. Besse.

5 Q When you were Executive Vice President between 1964
6 and 1967, besides the Marketing Department, did other
7 departments report to you?

8 A Yes, they did, but I can't recall just exactly what
9 the organizational lineup was. That certainly can be
10 obtained. But there were -- well, the financial
11 aspects, Financial operations reported to me in
12 addition to Marketing, and maybe others.

13 Q In terms of your own time, on purchases, when you were
14 Executive Vice President, did you spend more time on
15 Marketing matters than anything else?

16 A No, not at all.

17 Q How did you spent your time as Executive Vice President
18 in the ear of 1964 to 1967?

19 A Well, my assignment as Executive Vice President was to
20 participate in the overall direction and supervision
21 of the company's operations, and it was to a
22 substantial extent a training-learning process. It
23 was an effort, I am sure, on the part of my
24 predecessors to expose me to parts of the operation
25 that I had not previously seen.

Rudolph - cross

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So the extent to which I would have involved myself in Marketing, rather than being a major part of my time, probably would have been a relatively small part because I had already had that experience.

Q When you became President in 1967, did your functions change materially from the time you were Executive Vice President?

A Well, yes, it did. At that time there was a realignment of the reporting responsibilities and more of the various elements of the company, more of the organizational elements reported to me.

Q And that was at the time when Mr. Lindseth ceased active participation in the company?

A Yes.

Q And that meant you and Mr. Besse were two and one, respectively?

A Yes.

Q So you had more of an overall management responsibility than you did when you were Executive Vice President?

A Yes, I think so.

Q Did the information from all the groups then -- I think we identified either five or six groups of the company -- then did that all come to you at that point when you were President?

Rudolph - cross

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A Mr. Weiner, I am not sure. Most of them did. I can't recall whether some of the elements -- and I am thinking particularly of the legal and the public relations aspect -- continued to report to Mr. Besse.

Q The legal and public information was one operation of the company, was it not?

A Yes.

Q With respect to a group in the company, did Marketing remain as a group in the company?

A Yes, it did.

Q Mr. Wyman remained as the head of that?

A Yes.

Q Was there an intermediary between Mr. Wyman and you when you were President?

A Well, at some time during that period between 1967 and 1970 Mr. Ginn was designated as Executive Vice President, and at that time -- and I am not sure just when that was -- some of the elements that reported to me then reported to him, and I think Marketing was one of those elements, organizational elements.

Q When we talk about reporting, what did that mean in terms of CEI? Did that mean you got weekly summaries, daily summaries of what was going on? How did it work at CEI?

Rudolph - cross

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A Well, that's a little difficult to answer.

We had a rather extensive system of management that was designed around the company's philosophy of delegation of authority and managerial responsibility. So part of the reporting relationship would consist of face-to-face conversations, part of it would consist of reporting, and that would vary from day to day or week to week.

Q Did you happen to be in the courtroom yesterday when Mr. Besse testified as to the system at CEI where the company would try to get decisions made at the lowest level of competence possible?

A No, I was not here then.

Q Is that the type of management decision you were describing in your previous answer?

A Yes.

Q That was with respect to planning, also, and future activities, the decisions would be made at the lowest level possible?

A Are you talking about planning decisions?

Q Yes.

A Yes.

Q Is it fair to say that operational planning decisions would then be made known to the people at the higher

Rudolph - cross

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2 levels and that would be, what, through reports or
3 through verbal conversation?

4 A Yes.

5 Q Is it a fair summary to say that things of consequence
6 at the company didn't generally happen without your
7 knowledge?

8 A Well, yes, I think so. It was planned that way.

9 Q And those things happened with either your formal
10 approval before or your acquiescence afterwards?

11 A Yes, that's right. But as part of this philosophy
12 of delegating responsibility and authority, decisions
13 were made down the line. So in the great majority of
14 instances this was after-the-fact consideration and
15 review.

16 Q And if something happened you weren't happy with, it
17 would be changed, I presume?

18 A Yes, it would be changed, or certainly there would be
19 an effort made to see that it didn't happen again.

20 Q When you became Chief Executive Officer in 1970, did
21 your role change with respect to what knowledge you
22 received as to what the various groups of the company
23 were doing?

24 A Oh, I don't think so, not significantly. Certainly,
25 to some extent, because there was one fewer

Rudolph - cross

1 individual in the reporting chain.

2
3 Q Was that -- Excuse me.

4 A I think it is just inherent in the chains. When one
5 man retires and someone else moves up, there is bound
6 to be some change, but this was not a major matter.

7 Q And the change that took place when Mr. Besse left and
8 Mr. Ginn moved up --

9 A Well, I don't want to quibble about moving up, but just
10 so you understand, when Mr. Besse retired, he retired
11 as Chairman and I had been President as we have already
12 discussed. Mr. Ginn was at that time Executive Vice
13 President.

14 We just at that time dropped the title of
15 Chairman and I continued as President and Mr. Ginn
16 continued as Executive Vice President.

17 Q What about the title of Chief Executive Officer?

18 A I became Chief Executive Officer.

19 Q And who was Chairman of the Board?

20 A I served as Chairman of the Board but I was not so
21 designated.

22 Q Are you familiar, Mr. Rudolph, with the term
23 "President's Council"?

24 A Yes.

25 Q What was that?

Rudolph - cross

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2 A President's Council was the name that we gave to a
3 more or less weekly meeting of the ten top people in
4 the organization, and the purpose of that President's
5 Council was to discuss problems and exchange information
6 so that we could further foster our managerial concept.

7 Q Do you recall when this council process started?

8 A Well, it started -- I suppose it would have started in,
9 oh, somewhere in the early 1960's, probably.

10 Q Did it continue throughout the time you were
11 President and Chief Executive Officer?

12 A Yes. Yes, it did.

13 Q Were there written agendas for such meetings?

14 A Not often, no.

15 Q Not as a normal course but sometimes there would be,
16 I presume?

17 A Well, occasionally, when we had some special matter to
18 discuss we might have some kind of a simple agenda.
19 But the purpose of the meeting was to sit around a
20 table and communicate one to the other by reporting on
21 the previous week's activities.

22 Q Was a topic of interest and concern and discussion
23 at those meetings often the subject of competition?

24 A Well, again, without trying to quibble about words,
25 this matter of concern I don't think characterizes our

Rudolph - cross

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2 attitudes.

3 But brushing that aside for the moment, I think it
4 is important to keep in mind that there were eight or
5 ten people, sometimes more than that, sitting around a
6 table and one by one they would report on their
7 various activities.

8 Now, certainly, if and when one of these
9 individuals had experienced some sort of a competitive
10 relationship, he probably would mention it. Now,
11 whether that constitutes concern or whether it
12 constitutes a major part of the dealings, I think, is
13 a matter of interpretation. It certainly didn't
14 constitute a major part of the time.

15 Q Was M. Wyman in general attendance at those meetings?

16 A Yes.

17 Q He was head of the Marketing Department?

18 A Yes.

19 Q Do you recall the subject of competition with Muny
20 Light being discussed in those council meetings?

21 A Oh, I'm sure it was. Over a period of 15 years or
22 more it's a little hard to remember specifics but,
23 sure, it would have been mentioned.

24 Q With respect to the budget process that went on at
25 CEI, did your role change materially from the time

Rudolph - cross

1
2 when you switched from President to Chief Executive
3 Officer?

4 A No, I don't think so, because, as I said earlier, the
5 process of budget consideration and review was not a
6 one-man operation. It changed to the extent that I
7 suppose, as Chief Executive, I had the final say, but
8 other than that, no.

9 Q When you were President, first, and then as Chief
10 Executive Officer, as I understood it from Mr. Besse,
11 each year a budget was prepared; is that correct?

12 A Yes, that's right.

13 Q And that budget would have to be reviewed up the line,
14 managerial line; is that correct?

15 A Yes.

16 Q And each year you would have to give your approval to
17 each of the -- is it groups? Is that the largest
18 entity?

19 A Yes.

20 Q -- each of the groups' budgets?

21 A Yes, that's right. That is generally the concept.

22 Q I would assume, and am I correct, Mr. Rudolph, that if
23 something in the budget didn't meet with your approval,
24 you wouldn't approve that budget then?

25 A Well, I suppose that's true. But it is important, I

Rudolph - cross

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2 believe, to keep in mind that we are talking here
3 about a very complex series of reports and a
4 successive reduction from the very bottom of the
5 organization up, and a refinement.

6 Now, sure, we would have reviewed things and, if
7 we saw things in there that were inconsistent or that
8 we didn't want, we would have mentioned it. But it
9 just isn't possible to review the expenditure of every
10 dollar.

11 Q I understand. I assume you looked for the large dollar
12 amounts that were going to be budgeted for the next
13 year?

14 A Well, yes, we would look at the breakdown between what
15 we characterized as labor, that is, payroll expense, and
16 other than labor expense. Those would be the major
17 categories of the operating bueget.

18 Q Let me go back then.

19 When you were in charge of the Marketing
20 Department you had a more fundamental role than in the
21 budget process. You had to account for each one of
22 the items in the budget process and had to know what
23 that money was going to be spent for and why it was
24 going to be spent?

25 A Well, certainly you work in that direction, yes.

1 Rudolph - cross

2 Q And you made up your budget and sent it upstairs for
3 the approval of the person ahead of you?

4 A Yes, that's right.

5 Q And, likewise, when Mr. Wyman was in charge of
6 Marketing, he did that and sent it upstairs for your
7 approval?

8 A Yes.

9 Q Is it fair to say that if an objective or program of
10 the company was not budgeted, it could not be done if
11 it needed money to do it?

12 A I'm not sure that that can be said on an
13 all-inclusive basis. Certainly it applies to major
14 items, but --

15 Q Things that were in the \$100,000 range or over, is that
16 a major item?

17 A Well, we had an approval process, Mr. Weiner, that set
18 down very specifically the levels of expenditure that
19 could be incurred without other approval by everybody
20 in supervisory positions.

21 Now, I don't recall where those levels of
22 authority would have been divided and those divisions
23 would have depended on the particular item.

24 Q Excuse me. Are you talking about items that are not
25 in the budget that come up during the course of the

Rudolph - cross

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2 year, new items?

3 A In or out.

4 Q In or out.

5 Could you have substantial programs without
6 having money budgeted?

7 A Probably not substantial, no.

8 Q Were you familiar with the program of the company that
9 was called at various times such things as the
10 "Muny Competition Program"?

11 A Yes.

12 Q And it was called "Muny Allowances Program"?

13 A Well, I think I know what you mean, yes.

14 Q And the "Muny Conversion Program" was another name
15 given to it?

16 A Yes, I think I understand.

17 Q Does the phrase "Muny Displacement Program" also --

18 A Well, I don't recognize that as a phrase we used, but
19 it was all part of this same effort.

20 Q Would another phrase be the "Wiring Monitorization
21 Program"? Do you recognize that?

22 A Well, Wiring Monitorization and Displacement didn't
23 quite go together, but we had a Wiring Monitorization
24 Program, yes.

25 Q Was the Wiring Monitorization and Muny Competition and

Rudolph - cross

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2 Muny Allowances Program all different names for the
3 same program at different times?

4 A Wiring Monitorization was not because that referred to
5 other things. But the others probably referred to the
6 same general effort, yes.

7 Q And that program was in existence, was it not, from the
8 early 1960's until at least 1973?

9 A I think so but I don't remember those dates.

10 Q Well, do you recall whether that program was budgeted
11 in that period of time?

12 A No, I don't.

13 Q You are not sure if the parameters of early 1960's to
14 at least 1973 is accurate?

15 A Well, --

16 Q Excuse me.

17 THE COURT: Mr. Weiner.

18 MR. WEINER: I'm sorry. I didn't
19 mean to interrupt.

20 THE COURT: Sustain the objection.

21 I don't know how many times I have to admonish
22 all counsel.

23 Mr. Weiner --

24 MR. WEINER: I'm sorry. I was just
25 going to try to make it easier for the witness --

Rudolph - cross

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2 THE COURT: Place a question.

3 Or is there a question?

4 MR. WEINER: I think there was.

5 THE COURT: Read the question back.

6 {The reporter read as follows:}

7 "Q You are not sure if the parameters of
8 early 1960's to at least 1973 is accurate?"

9 A Well, here again, I don't recall those dates.

10 Let me tell you what my recollection of this
11 situation was.

12 Somewhere in the early or mid-1960's we became
13 more active in our relationship with Muny, the
14 competitive situation as you have characterized it,
15 and that activity continued until about 1972 or 1973.

16 Now, whether or not we budgeted specific amounts
17 to take care of that aspect of our operation and
18 whether or not we did every year, I just don't know.

19 Q Then the only way we would be able to know that is
20 to look at the actual budgets, I guess?

21 A Well, unless someone else can speak to it, to what I
22 can't.

23 Q If items for that program appear in each of the
24 budgets for those years, would they have found their
25 way to you for ultimate approval?

Rudolph - cross

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2 A Well, there might have been something in the overall
3 budget that was characterized as money for this Muny
4 relationship and we would approve the whole budget.

5 Q Did this program contribute to the company's
6 success?

7 A Well, yes, I hope so.

8 Q It did, in fact, contribute to the company obtaining
9 customers from Muny Light, did it not?

10 A Again, contribute to obtaining Muny customers, this
11 whole question -- If we had people working on any
12 aspect of a Muny situation, it would have been part of
13 the budget, I suppose, and certainly we were trying to
14 do things that contributed to the overall welfare and
15 growth and well being of the company.

16 Q With respect to this particular program, what you know
17 as the Muny Competition Program, which you recognize,
18 did that program contribute to having customers
19 switch from Muny Light to CEI, did it not?

20 A Yes.

21 Q And that's why you kept in effect from early 1960's
22 to 1972 or 1973?

23 A Yes.

24 Q And is it not correct, Mr. Rudolph, that the program
25 helped the company eliminate the competition with

Rudolph - cross

1
2 Munny Light during that period?

3 A I am not sure that we can go that far.

4 It was our effort to reduce or eliminate
5 competition. How successful it was, in retrospect, is
6 another matter.

7 Q Well, in fact, you say it was successful in getting
8 customers to switch from Munny Light to CEI, correct?

9 MR. LANSDALE: I object.

10 THE COURT: Approach the bench.

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

14 MR. LANSDALE: I object, if your
15 Honor please, to the argumentative questions to
16 attempt to get the witness to characterize it in
17 the manner in which the interrogator wants him to
18 characterize it and arguing with the witness in the
19 process. I think it is objectionable.

20 MR. WEINER: It's cross-examination.
21 I should have some leeway.

22 THE COURT: Sustain the objection.
23 I keep telling you, don't characterize your
24 questions. If you can't understand that, I don't
25 know what more I can say.

Rudolph - cross

{End of bench conference.}

- - - - -

THE COURT: Sustained as to form.

You may proceed with the substance.

BY MR. WEINER:

Q So the program did cause Muny customers to switch to CEI, did it not?

A Yes, it did. But Muny at the same time was engaged in an effort to have our customers switch to their lines, and the relationship between the two ebbed and flowed. This was not a one-way street at all.

In fact, this started about 1958 or 1959 as a result of Director Klementowicz' announced intention to do that very thing.

Q Mr. Rudolph, do you recall how successful the competition program was in terms of how many customers were able to be switched to CEI as opposed to how many customers were switched from CEI to Muny Light?

A No, I do not have those figures.

As I say, it ebbed and flowed. I am sure that in this period more customers switched to CEI than switched to Muny.

Q Do you recall the percentage of that "more customers"?

A Well, it wasn't very substantial. I suppose three or

Rudolph - cross

1 four percent at the very most.

2 Q Three or four percent?

3 A At the most, I would suppose.

4 Q Not four or five or six times as many customers?

5 A I think we are talking about two different things.

6 Are you talking about the relationship between the
7 number that went one way and the number that went the
8 other way?

9 Q How many more customers switched from Muny Light to CEI
10 than switched from CEI to Muny Light?

11 A I this whole period?

12 Q Um-hmm.

13 A I don't know.

14 Q You kept the program in existence until 1973?

15 A Yes.

16 Q Would it be fair to say then that each year until then
17 there was a decision made that the program was
18 beneficial to the company?

19 A Oh, I suppose so.

20 Q And by being beneficial to the company, that meant it
21 was achieving some success?

22 A Well, I guess so. But here again, this was in pursuit
23 of what we have already characterized as our
24 competitive position.
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Rudolph - cross

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And the success --

And even if in one year it happened to be unsuccessful, we probably would have continued.

Do you recall any one year it was not successful?

I don't recall the year but I think there were years.

And the success you were trying to achieve was the switch of customers from Muny Light to CEI?

That was the method by which we were achieving what we were achieving.

Our effort was to eliminate competition.

And one of the means was to have the customers switch to CEI; is that correct?

This was part of our effort.

If you got all the customers to switch to CEI, you would have then eliminated competition; is that correct?

Well, in theory that's correct, but as a practical matter, there was never any possibility of even approaching this.

The program continued for all that period of time, did it not?

Yes.

Is it fair to say that when customers switched from CEI to Muny Light, that weakens the Muny Light system?

Rudolph - cross

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A No.

MR. LANSDALE: I object.

{Bench conference ensued on the record as follows:}

MR. LANSDALE: I submit, if your Honor please, this whole line of questioning is simply argumentative, not interrogation.

THE COURT: Yes. I will sustain the objection, Mr. Weiner.

Kindly proceed in the proper fashion. Let's proceed.

{End of bench conference.}

THE COURT: You may proceed, Mr. Weiner.

BY MR. WEINER:

Q Mr. Rudolph, the program ceased in 1972 and 1973?

A Yes.

Q And yet this was competition between CEI and Muny Light, there was, in that year, wasn't there?

A In that year?

Q Yes.

A The year when we ceased it, yes.

Rudolph - cross

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2 Q And there continued to be a competition between Muny
3 Light and CEI in the years subsequent to that?

4 A Yes.

5 Q And yet the program had never gone back into use by
6 the company; is that correct?

7 A That is right.

8 Q Is it a fact, Mr. Rudolph, CEI had a policy to eliminate
9 the remaining competition within CEI's entire service
10 area, is that fair to say?

11 A Yes.

12 Q And that included Muny Light, did it not?

13 A To eliminate competition, yes.

14 Q And that was a policy to which you personally
15 subscribed?

16 THE COURT: Approach the bench.

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

20 MR. LANSDALE: If your Honor please,
21 I submit that counsel continues to argue and argue
22 and argue and repeat and repeat and repeat, and I
23 object. It is most objectionable.

24 I don't know what to do. I have to get up and
25 down.

Rudolph - cross

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2 MR. WEINER: I don't think it is
3 argumentative.

4 THE COURT: I will sustain the
5 objection. I don't know what I can say to you, Mr.
6 Weiner. I don't know how many times we have been
7 through this. We are going on in such a repetitious
8 manner with the same questions and the same
9 answers, and in light of the admissions which have
10 been made, and I don't know what the purpose of it
11 is.

12 I am coming to the point where I am just
13 going to eliminate further reference to any of
14 the pre-limitation period.

15 Now, if you want to go to the post-limitation
16 period, you are free to do so.

17 MR. WEINER: Your Honor, that
18 program was in existence during the statute of
19 limitations period.

20 THE COURT: I don't know that from
21 your questioning.

22 MR. WEINER: He said it was
23 discontinued in 1972.

24 THE COURT: Mr. Weiner, it is
25 generally proper practice and procedure to lay

1 Rudolph - cross

2 foundations for questions which you either don't
3 seem to have any knowledge of or in the alternative
4 you just completely ignore.

5 It would certainly expedite the process if
6 you would fix time frames within which you are
7 speaking.

8 I don't know -- I lose track. You are
9 talking about between 1960 in one instance and
10 1970, and in another instance you are talking
11 about 1971-1972, and you are talking about in
12 another instance 1967, and I really don't know,
13 and then you get into the area of argumentative
14 questions.

15 You are insisting that the witness answer a
16 question in the framework of your characterization
17 and conclusory statements, and I appreciate that
18 this is cross-examination, but cross-examination
19 does not go that far.

20 You are still required to put the questions.
21 Go ahead.

22 MR. WEINER: I am sorry. I thought
23 the record was clear that he said the practice
24 stayed into effect until 1972 and 1973.

25 THE COURT: He said that.

Rudolph - cross

1 MR. WEINER: Then can I talk about --
2 that is the damage period.

3 THE COURT: Certainly.

4 MR. WEINER: These are not intent
5 questions.

6 THE COURT: I said you are free to
7 do it within the period if you fix the time frame.

8 MR. WEINER: I will limit myself to
9 that time frame.

10 THE COURT: Let's proceed, gentlemen.

11 {End of bench conference.}

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14 THE COURT: You may proceed, Mr.
15 Weiner, if you fix the time frame.

16 BY MR. WEINER:

17 Q Mr. Rudolph, with respect to the Muny Allowance
18 Program, that was in existence in 1971 and 1972?

19 A Yes, I think so. I think, as I said earlier, it was
20 discontinued in 1972.

21 Q Your memory is not clear whether it was 1972 or 1973?

22 A Yes; that is right.

23 Q With respect to 1971 and 1972, whatever part it was
24 still in existence, was the program designed to have
25 Muny Light customers switch over to CEI?

1 Rudolph - cross

2 MR. LANSDALE: Objection.

3 THE COURT: Overruled. He testified
4 to this so many times, but ask it again.

5 A Yes, this was the objective of the program, yes.

6 Q And the result of the program, if successful, would be
7 a weakened Muny Light?

8 A Not necessarily, no.

9 MR. LANSDALE: Objection.

10 THE COURT: Overruled.

11 A I don't think that follows at all.

12 Q If Muny Light had less customers than before, would
13 that not weaken Muny Light?

14 THE COURT: Approach the bench.

15 - - - - -

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

18 THE COURT: We are getting into the
19 same posture. I keep sustaining the objections.

20 Please, do not be argumentative in your
21 questions.

22 He says "No," and you come back with the
23 same question. Now, if you want to discredit what
24 he says, I would think that you would bring other
25 witnesses on that would discredit what he says.

Rudolph - cross

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2 A I don't know, but I think what I just said indicates
3 that the loss of customers as such does not weaken the
4 system.

5 Q Would the type -- were they the type of customer that
6 did not pay the bill -- were they the type Muny Light
7 was trying to obtain through the Allowance Program?

8 A We were not trying, but I think we succeeded, even
9 though we didn't try.

10 Q Do you know that from a personal fact?

11 A No.

12 Q Mr. Rudolph, do you believe today it is good business
13 policy for CEI to attempt to eliminate Muny Light as
14 a competitor; is that not correct?

15 A It is a good business policy to eliminate competition,
16 and if we had been successful of doing that, the
17 question of whether Muny existed or didn't would not
18 be relevant.

19 MR. WEINER:

May I have that

20 answer played back.

21 {The last answer was read by the court
22 reporter.}

23 Q Not relevant to what, Mr. Rudolph?

24 A To the relationship between the two entities.

25 Q There wouldn't be any relationship, would there?

Rudolph - cross

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2 A Probably not. That is why it wouldn't be relevant.

3 Q When did CEI first formulate this policy?

4 A By "this policy" you mean? --

5 Q -- of eliminating Muny Light.

6 MR. LANSDALE: Objection.

7 THE COURT: Approach the bench.

8
9 {Bench conference ensued on the record as
10 follows:}

11 MR. LANSDALE: I don't know what he is
12 trying to do, if your Honor please.

13 We are dealing with the damage period, and he
14 has already elicited that this was the intent and
15 policy of CEI from the beginning of the damage
16 period to date, and what difference does it make
17 when it was formed and when it was initiated, and
18 I suggest that this is a part of plaintiff's
19 continuing policy to argue and to continue arguing,
20 and I object like hell to it.

21 MR. WEINER: I think it is important
22 to find out when the policy began.

23 If there was a time that it began, I think that
24 is important, and how long it has been in existence,
25 to show the character of it.

Rudolph - cross

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2 THE COURT: I can go back through
3 my notes and come up with Mr. Besse and Mr.
4 Lindseth, with their testimony, and certainly the
5 testimony of some of the witnesses that you have
6 produced on direct examination, as to the
7 evolution of the program, and --

8 MR. WEINER: I do not intend to go
9 through that.

10 THE COURT: All right. I will
11 sustain the objection. I told you this is
12 repetitious testimony, that the City insists upon
13 constantly going over and over it, and we will
14 confine ourselves with the activity during the
15 post-termination period from here on in, and I will
16 sustain the objection.

17 {End of bench conference.}

18 - - - - -
19 THE COURT: Mr. Weiner, I will
20 sustain the objection. This is repetitious, and we
21 have gone over this same material with every
22 witness.

23 Please proceed accordingly, and let's not be
24 repetitious.

25 MR. WEINER: May I confer with

Rudolph - cross

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co-counsel?

THE COURT: Yes.

{After an interval.}

BY MR. WEINER:

Q Mr. Rudolph, it is true, is it not, that from the middle of 1971 until the time that you left the company, it has been in the interests of CEI to eliminate Muny Light, competition with Muny Light?

A Yes.

Q That was the policy that you adhered to throughout that period?

A Yes.

Q Mr. Rudolph, do you have an understanding of the term "wheeling"? Do you have an understanding of that term?

A Yes.

Q Do you recall ever chronologizing wheeling to a railroad delivery of coal?

A I recall doing that, and I have done it several times, but I don't recall a specific instance to which you may have reference.

Q Do you recall what the analogy was that you made?

A Yes.

Q Would you tell us, please.

A I think my analogy went something like this:

Rudolph - cross

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2 That wheeling is very much like the function --
3 wheeling between two electrical systems with an
4 intervening system, is very much like a railroad
5 taking coal from a coal mine and delivering it to a
6 consumer. The railroad's only interest is in being
7 reimbursed for the transportation of that coal.
8 Similarly, the only interest of the party in the
9 wheeling operation is in being reimbursed for taking
10 and delivering the power, and that was the essence of
11 my analogy.

12 Q Am I correct that utility companies wheel power
13 across their transmission lines for each other?

14 A Yes.

15 Q And that is a routine operation in the utility business?

16 A Yes.

17 Q Am I correct that without wheeling it would be often
18 impossible to get the power from one place to another?

19 A It would always be impossible without wheeling under
20 some circumstances.

21 It would be impossible, for example, to get power
22 from the West Coast to Cleveland without wheeling, but
23 I don't think that I can say that that applies to your
24 question.

25 I think your question was that it would often be

Rudolph - cross

1 impossible to get power from point to point, and
2 that "often" I don't think is a good characterization.
3

4 Power flows every day and without wheeling, too.

5 Q Power flows from one utility to another and to a third
6 utility without wheeling?

7 A No. Maybe if we can start over -- if you would repeat
8 your question, or if I can have the question read back.

9 THE COURT: Read the question.

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

12 "Q Am I correct that without wheeling it
13 would be often impossible to get the power from
14 one place to another?"}

15 A As I said, I thought that "often" is not a good
16 characterization; for example, power flows from the
17 Ohio Edison system to ours every day without wheeling.

18 Q That is a different type of transaction, because that
19 is only two entities involved?

20 A Yes, but it gets power from one place to another,
21 which was your question.

22 Q I understand. Thank you.

23 If you had power in one place and you were trying
24 to get it to another and there was an intervening
25 system, is there a way to get it from that one source

Rudolph - cross

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- 2 to the other without wheeling?
- 3 A No, sir, not that I know of.
- 4 Q You were Chief Executive -- while you were Chief
- 5 Executive, is it correct that CEI wheeled power to
- 6 other utilities across its lines; is that correct?
- 7 A Yes.
- 8 Q And that was a fairly normal occurrence for CEI at the
- 9 time you were Chief Executive Officer?
- 10 A Yes.
- 11 Q And that is a normal occurrence for other utilities?
- 12 A Yes.
- 13 Q Do you recall, Mr. Rudolph, receiving a letter in May
- 14 of 1973 from a Wallace Duncan?
- 15 A I received two or three letters from him, yes.
- 16 Q In that period of time?
- 17 A Yes.
- 18 Q And he was an attorney representing the American
- 19 Municipal Power Association of Ohio?
- 20 A Yes.
- 21 Q Were you familiar with AMP-0?
- 22 A In a general way, yes.
- 23 Q What did you know about it?
- 24 A Well, I know it was an organization consisting of
- 25 municipal and perhaps REA utilities in the state that

Rudolph - cross

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were in the organization, and it was called AMP-0 or
AMP-Ohio.

Q Do you recall what the reason Mr. Duncan wrote to you
was?

A I think his letter was a request that we wheel power
for AMP-0.

Q Do you know what kind of power -- do you now remember
what kind of power?

A Well, I think he was talking about power from PASNY,
the Power Authority of New York State.

Q Do you know where the power was to be wheeled by CEI?

A I don't recall. It probably -- obviously the objective
was to have gotten it to Muny.

Q Do you know where it was coming from?

A I think, as I said, it was coming from New York State.

MR. LANSDALE: Objection. May we
approach the bench?

THE COURT: Yes.

{Bench conference ensued on the record as
follows:}

MR. LANSDALE: We are back again to
this whole proposition of attempting to test the
memory of the witness.

1 Rudolph - cross

2 I think it is fair for me to be able to ask
3 the question, "Is the issue whether this witness
4 remembers now the details of this, or is it a
5 question of what was done?"

6 THE COURT: Well, the entire
7 approach to the question, not only in this
8 instance but throughout, has been that it would
9 appear as an exercise in memory rather than getting
10 to the substantive issues, and again, Mr. Weiner,
11 let me ask you:

12 What do you want to elicit from this witness?

13 MR. WEINER: That the company
14 received a request and what the request was for.

15 THE COURT: Why not ask him
16 instead of taking a half an hour to get to it?

17 We have been with this witness now an hour
18 and ten minutes, and I really don't know what
19 probative evidence that has not already been in
20 the record has been elicited, and you understand,
21 of course, Mr. Weiner, that it comes within the
22 discretion of the Court after testimony becomes,
23 either through one witness or another witness,
24 becomes so repetitious that the Court can
25 terminate that line of questioning.

1 Rudolph - cross

2 Now, why don't you just ask him the material
3 questions that you want to ask him.

4 Probative questions, ask probative questions,
5 and then if you run into a problem, you can always
6 backtrack to discredit the witness.

7 MR. WEINER: One of the problems
8 when I do is that I get into problems without
9 laying a foundation, and I was trying to lay a
10 foundation for his acts.

11 THE COURT: Mr. Weiner, I can't
12 tell you how to ask questions. I never had any
13 problems laying a foundation during my years as a
14 trial lawyer.

15 There is really nothing to it. All you have
16 to do is very basically ask who was present,
17 what happened, and what was done.

18 Let's proceed. Let's get to substantive
19 questions.

20 {End of bench conference.}

21 - - - - -
22 THE COURT: You may proceed, Mr.
23 Weiner.

24 MR. WEINER: Thank you.

25 Mr. Leo, would you hand the witness Plaintiff's

Rudolph - cross

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Exhibit 836.

BY MR. WEINER:

Q Can you identify that letter, Mr. Rudolph?

A Yes. It is a letter from Mr. Duncan to me, dated May 1st, 1973.

Q And that was a letter in which AMP-0, through Duncan, requested CEI to wheel PASNY power to the Cleveland Municipal Light?

A Well, more specifically it is a request to have a conference to discuss that sort of objective.

Q Was such a conference held?

A No, I don't think so.

Q Did the company ever make a decision with respect to that request?

A There were three or four exchanges of information on this general matter, and I think in more than one response our position was that we would not wheel power to which we did not have access.

Q Do you recall participating in any meetings at the company in which this subject was discussed?

A You mean internal meetings?

Q Yes.

A I am sure we had several meetings on it, yes.

I don't recall specific meetings.

Rudolph -cross

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2 Q Do you recall the subject of wheeling any kind of power
3 to the Cleveland Municipal System discussed?

4 A Well, I am not sure I recall that, because this was the
5 particular issue that we were addressing.

6 The request -- we were addressing the request to
7 wheel or deliver power from the Power Authority in New
8 York.

9 Q Did the company -- or do you see a distinction between
10 that power and other power?

11 A Yes.

12 Q What is that?

13 A That it was not available to the Illuminating Company.

14 Q What wasn't available?

15 A The power from the Power Authority of the State of New
16 York, the power that Muny or that Mr. Wallace Duncan
17 was requesting us to wheel.

18 Q And that was the reason the wheeling was denied?

19 A Yes, and we so stated.

20 Q Was the company in a position to wheel other power for
21 the City of Cleveland?

22 A Yes.

23 Q At all times?

24 A Generally.

25 Q Do you recall any request for such wheeling?

Rudolph - cross

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A No.

MR. WEINER:

Mr. Leo, would you hand

Mr. Rudolph Plaintiff's Exhibit 581.

{After an interval.}

Q Mr. Rudolph, this has been stipulated to as the minutes of various meetings.

Would you turn to page 3 of that document.

A Yes.

Q Do you see the date August 8, 1973?

A Yes.

Q Would you read it to yourself first, the first sentence of that document.

{After an interval.}

A Yes; I have read it.

THE COURT:

Just a moment. That

is 581? -- Okay.

MR. WEINER:

August 8th, your Honor,

the first sentence.

Q You have read that?

A Yes.

Q Does that refresh your recollection with respect to any meeting held in August of 1973?

A Obviously there was a meeting of some of the CAPCO people, yes -- well, no, it was not CAPCO. I am wrong.

Rudolph - cross

This was an internal meeting.

Q Who attended that meeting?

A According to this document, Messrs. Rudolph, Ginn, Williams, Hauser, Lansdale, Charno, Davidson, and Lester, and that would have been internal people plus lawyers.

Q What was decided?

A It was decided that we should refuse to wheel PASNY power and any other third-party power, it says.

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

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

MR. LANSDALE: This is not a plaintiff's document, and the plaintiff was not present at the meeting. He is only reading the document.

THE COURT: I can't find the document 581. Is this the Perry Antitrust Review?

MR. LANSDALE: I don't think so. I think this is a diary of one of the officials of the company. I think it is Mr. Hauser, and he is recording certain facts.

Rudolph - cross

1
2 THE COURT: I would like to see
3 the document.

4 Well, this is the same document that I have.
5 Okay.

6 MR. LANSDALE: Page 3.

7 THE COURT: All right.

8 Well, what is the objection?

9 MR. LANSDALE: The objection is that
10 the witness already said, "We refuse to wheel."

11 This is a meeting between other people, and
12 the witness was not there, and it is not his
13 document. He is just repeating again the question
14 of whether we refused to do it. He didn't deny
15 that. He said he did.

16 MR. WEINER: First of all, Mr.
17 Rudolph was in attendance, and second of all, he
18 said his testimony was that he would be willing to
19 do so on third-party power, and that says exactly
20 the opposite.

21 MR. LANSDALE: You have a letter from
22 us to Muny saying that we will wheel anything else.

23 MR. WEINER: Subsequent -- a year
24 later.

25 MR. LANSDALE: That is the first time

Rudolph - cross

1
2 the question came up.

3 MR. WEINER: I am not sure.

4 MR. LANSDALE: I was there.

5 MR. WEINER: The decision was made
6 August 3 not to wheel PASNY power or any other
7 power.

8 THE COURT: I will overrule the
9 objection. You may answer the question.

10 Again, as to the first part of the question,
11 whether or not he was present or not, it indicates
12 that, but I don't know if he was present or not.

13 Certainly it would eliminate the problem if
14 you could ask him if he were present.

15 MR. WEINER: Also, we have a
16 stipulation that these are accurate.

17 MR. LANSDALE: I misread it. I am
18 sorry. I apologize.

19 THE COURT: You can eliminate that
20 by asking a simple question, "Were you there?"

21 That is how you lay a foundation. Let's
22 proceed.

23 MR. WEINER: We have a stipulation
24 that these were accurate.

25 THE COURT: Shall we proceed.

Rudolph - cross

{End of bench conference.}

- - - - -

THE COURT: I will overrule the objection.

Read the question back to the witness.

{The reporter read the last two questions and the last two answers.}

THE COURT: Now, is there another question?

MR. WEINER: No.

THE COURT: All right. Proceed.

BY MR. WEINER:

Q Mr. Rudolph, that refusal to wheel PASNY power was one of the means CEI used to eliminate competition with Muny Light, was it not?

A No.

Q Well, isn't it a fact that the wheeling of PASNY power would have been beneficial to Muny Light?

A It might have been.

Q And it would have been beneficial -- it "might have been," to use your words, because it would have reduced the cost to Muny Light; is that correct?

A Yes, that is correct.

Q And if the cost of Muny Light, if Muny Light's costs

Rudolph - cross

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were reduced, would that not be helpful to Muny Light,
to reduce the cost?

A Yes.

Q And if it would be helpful to Muny Light, wouldn't
that have made Muny stronger?

A Yes.

Q And it would have made it harder for CEI to eliminate
it as competition?

A That can depend on what they did with the power and
how much there was.

Q How much was there?

A I don't know.

Q If the record indicates there were 30 megawatts, would
you disbelieve that?

A Not the quantity, but I don't know what they intended to
do with it.

Q If Muny Light were to obtain that power, what were the
choices for Muny Light to do with that power?

A To substitute that for other power they were then using.

Q And that power would have been more expensive power?

A Probably.

Q So it would have been a benefit to Muny Light?

A Absolutely.

Q And it would have made Muny Light stronger?

Rudolph - cross

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A Yes.

Q And it would have made it harder for CEI to take over
Muny Light?

A We were not trying to take over Muny Light. We were
trying to eliminate the competition.

Q It would have made it harder for CEI to eliminate that
competition?

THE COURT:

Approach the bench,

gentlemen, we are getting --

A All right, I will agree.

THE COURT:

All right, we will let

the answer stand.

Q Mr. Rudolph, do you have personal knowledge of some of
the private corporations which have previously generated
their own electricity in the CEI service area?

A I know who they were, yes.

Q American Steel and Wire, was that one?

A Probably.

Q And Diamond Alkali?

A Yes.

Q And Industrial Rayon?

A Yes.

Q And Jones & Laughlin?

A Yes.

Rudolph - cross

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2 Q And Republic?

3 A Yes.

4 Q That is Republic Steel?

5 A Yes.

6 Q And Union Carbide?

7 A Yes.

8 Q And International Salt?

9 A I don't know that.

10 Q How about Independent Towel?

11 A I don't remember.

12 Q In addition to the companies that you were already
13 generating, that were already generating their own
14 electricity in the area, in your service area, were
15 there occasions from time to time when other
16 companies considered private generation?

17 MR. LANSDALE: Object. May I approach
18 the bench?

19

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

22 MR. LANSDALE: The witness cannot
23 know what somebody else considered unless he was
24 told.

25 I object to the question. I almost can't

Rudolph - cross

stand it. We are being argumentative and conjecturing.

MR. WEINER: If he knew, he would say it, and if he didn't, he would say it.

MR. LANSDALE: How can he know what somebody else considered?

THE COURT: He is objecting to the form of the question.

I will sustain it as to the form.

If you lay a foundation, you might be able to get it in.

Did he ever attend any meetings?

MR. WEINER: I don't know.

THE COURT: Well, I can't help it if you don't know, but you are certainly free to pursue it in the proper fashion.

MR. LANSDALE: May I submit also that there is no time frame laid.

THE COURT: There never is a time frame laid, or as to who was present.

Well, let's proceed.

{End of bench conference.}

THE COURT: You are free to pursue

Rudolph - cross

it if you can lay a foundation. I will sustain the objection as to the form of the question.

BY MR. WEINER:

Q Do you have personal knowledge of any companies in the service area of CEI who were considering the establishment of private generation?

A No.

Q While you were Chief Executive Officer did CEI consider the generation of electricity by private companies as a competitive threat?

A It was a competitive environment. I don't know about threat.

Q Was there something the company was trying to eliminate?

A Yes.

MR. WEINER: Can Mr. Leo hand Mr.

Rudolph Plaintiff's Exhibit 105?

{A document was handed to the witness by the law clerk.}

Q Do you recognize that document, Mr. Rudolph?

A Yes.

Q Could you identify it?

A It's a document dated April 13, 1967, and it's a planning project of the Marketing Group of the

1 Rudolph -- cross

2 Illuminating Company.

3 Q Did you approve that project?

4 A Yes, I did.

5 Q What was the purpose of the project?

6 MR. LANSDALE: I object, if your

7 Honor please.

8 THE COURT: Approach the bench.

9 -----

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

12 MR. LANSDALE: This is a
13 pre-statute of limitations period and I object to
14 any further testimony going back in this year. We
15 have been into it with two or three other witnesses
16 and it's the same stuff and it's all pre-statute of
17 limitations and I submit it is repetitious and I
18 object to any further attempt to go into the
19 pre-statute of limitations period.

20 MR. WEINER: This is related to
21 private generation. It does not relate to Munny
22 Light or their intention to take Munny Light, but
23 it relates to the jury the scope of CEI's intention
24 to take over all generation in the service area.

25 THE COURT: Sustain the objection.

Rudolph - cross

1 I told you before we are not going beyond the
2 limitation period.
3

4 MR. WEINER: Your Honor, --

5 THE COURT: Sustain the objection.

6 Let's proceed, please.

7 MR. WEINER: May I ask for the Court
8 to explain that? Does that mean no reference to
9 anything before 1971?

10 THE COURT: That's what I said.

11 In view of the line of questioning that's been
12 pursued, we get repetition. We keep going over the
13 same things all the time.

14 Now, Mr. Weiner, I do not wish to have dialogue
15 with you. I have sustained the objection. You
16 take your exception and you proceed. Shall we?

17 MR. WEINER: May I just make one
18 statement on that?

19 Their defense, one of their defenses in this
20 case is what happened as a result of just good
21 business, high technological advances and things.
22 What we are showing with this private generation
23 testimony and the Painesville testimony and some
24 other things before us was their intention did not
25 have anything to do with the high technology or

Rudolph - cross

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2 business acumen. It was an intention to drive all
3 competition out of the market.

4 THE COURT: Sustain the objection.

5 MR. WEINER: I think --

6 THE COURT: Mr. Weiner, I have
7 sustained the objection. Now go back to the
8 lectern and proceed with your examination.

9 MR. WEINER: I do not think I have
10 any subject that relates in point of time to
11 1971.

12 THE COURT: I can't help that.

13 MR. WEINER: I'm going to have to
14 make a substantial proffer of testimony on this
15 gentleman.

16 THE COURT: On cross-examination?

17 MR. WEINER: Yes.

18 THE COURT: You can state what the
19 thrust of your inquiry would be, but are you going
20 to proffer his answers?

21 MR. WEINER: Yes, sir.

22 THE COURT: What is your legal
23 authority for that? Certainly, if he were your
24 witness --

25 MR. WEINER: He is my witness. He's

Rudolph - cross

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2 my witness on cross-examination.

3 THE COURT: What is the theory that
4 you can proffer a witness's answers on cross
5 examination when you don't know what they are going
6 to be?

7 MR. WEINER: The thing is, though --

8 THE COURT: Will you answer my
9 question? Do you know what his answers are going
10 to be?

11 MR. WEINER: I think I know what
12 they are going to be.

13 THE COURT: Do you know?

14 MR. WEINER: No, I don't.

15 I could proffer the line of inquiry.

16 THE COURT: Proffer the line of
17 inquiry.

18 MR. WEINER: But I want to go into --

19 THE COURT: Proffer the line of
20 inquiry but you are not going to proffer answers
21 because you don't know what they are.

22 MR. WEINER: I have a substantial
23 line with respect to private generation and with
24 respect to Painesville activities. Is it my
25 understanding I cannot go into Painesville

Rudolph - cross

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2 activities. Is it my understanding I cannot go
3 into Painesville activities because they happened
4 before 1971?

5 THE COURT: That's what I said.
6 I told you people earlier to be selective in your
7 procedure and selective in your approach to the
8 pre-limitation period.

9 Now, we have been over the matter with
10 Painesville, not with one witness but with a number
11 of witnesses. We have been over the same material
12 as relates to the 1960, 1958 period to limitation --

13 You are shaking your head.

14 MR. WEINER: I don't think 1958.
15 I take exception to that.

16 THE COURT: Or 1960, whatever.
17 Haven't we?

18 MR. WEINER: Well, --

19 THE COURT: I keep telling you.

20 MR. WEINER: They each have a
21 different role in that.

22 THE COURT: Sustain the objection.
23 There's an admission here.

24 MR. WEINER: But the admission
25 doesn't --

Rudolph - cross

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2 THE COURT: Sustain the objection,
3 Mr. Weiner.

4 MR. WEINER: Can I just take a break
5 to get all this together? It's a long proffer.

6 THE COURT: Take your proffer now
7 and let's proceed with this case. We are not going
8 to take a recess every time you don't know where you
9 are going.

10 MR. WEINER: Plaintiff is desirous
11 of inquiring of this witness as to -- excuse me.
12 I just have to get my notes.

13 THE COURT: Get your notes.

14 MR. WEINER: May I confer with Mr:
15 Norris, also? Is that all right?

16 THE COURT: Mr. Weiner, please place
17 it on the record. Let's stop wasting this time.
18 Let's place it on the record.

19 {Short pause.}

20 {End of bench conference.}

21
22 THE COURT: Mr. Weiner, would you
23 come up here and place this on the record, please?

24
25 {Bench conference ensued on the record as

Rudolph - cross

follows:}

MR. WEINER: Plaintiff was going to have the witness identify Plaintiff's Exhibit 105, which I think plaintiff has already done, a planning project which was one of the plans CEI put into effect to eliminate the competition it was incurring with generation by private companies.

A similar report was Plaintiff's Exhibit 252 which was a 1969 planning report for the Industrial Sales Department, which is a portion of the Marketing Department, and have the witness identify that document and elicit testimony that he approved that document.

THE COURT: I thought I just told you you don't know what the answer was going to be.

MR. WEINER: Didn't I say I was going to ask the witness?

THE COURT: You also said he approved the document.

MR. WEINER: I'm sorry.

THE COURT: Go ahead.

MR. WEINER: I thought you had asked her to read it back.

THE COURT: No.

Rudolph - cross

1 MR. WEINER: Inquire of the witness
2 as to the generating facilities owned by Diamond
3 Alkali and IRC Fibers and ask the witness whether
4 or not those generating facilities were basically
5 economical and efficient for those customers;
6 ask the witness if one of the reasons Diamond
7 Alkali and IRC Fibers found the running of their
8 own generation economic was that they made use of
9 the steam and the electricity produced in their
10 manufacturing process.

11 THE COURT: Are you going to read
12 every question on the record?

13 You are not going to read every question on
14 the record, Mr. Weiner. Give us the thrust of what
15 you are going to ask and let's proceed.

16 MR. WEINER: With regard to those
17 entities, even though those entities were efficient,
18 well-operated systems, CEI sought to acquire those
19 systems.

20 THE COURT: How do you know that?

21 MR. WEINER: I was going to ask
22 if evidence, the document that shows that --

23 THE COURT: There is nothing in
24 the record thus far about any evidence to this.
25

Rudolph - cross

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2 MR. WEINER: That's why I was
3 going to put it.

4 THE COURT: Let's proceed.

5 MR. WEINER: CEI, in order to make
6 the generation of those two companies less
7 economical, decided to limit the use of electric
8 equipment which would reduce those companies' need
9 for steam in their processes.

10 MR. LANSDALE: He's stating what the
11 witness would say.

12 THE COURT: Yes. Now, Mr. Weiner,
13 place on the record the thrust of your inquiry and
14 stop -- Oh, will you just do that.

15 MR. WEINER: The thrust of the
16 inquiry was CEI was attempting to take over the
17 generation done by Diamond Alkali and IRC Fibers
18 even though that generation was economical and
19 profitable for those companies.

20 THE COURT: How do you know that?

21 MR. WEINER: From the documents,
22 your Honor.

23 I will also proffer the documents, Plaintiff's
24 Exhibit 80.

25 MR. LANSDALE: All right.

Rudolph - cross

- 1 MR. WEINER: I take that back.
- 2 MR. LANSDALE: Give us the documents.
- 3 MR. WEINER: 105 -- I think I
- 4 already gave that -- and 252.
- 5 THE COURT: This is all
- 6 pre-limitation period.
- 7 MR. WEINER: It's pre-limitation,
- 8 both of them, but it was not put in for that
- 9 purpose.
- 10 MR. LANSDALE: And the documents do
- 11 not so show, but go ahead.
- 12 MR. WEINER: The documents what?
- 13 MR. LANSDALE: The documents do not
- 14 show what you say they do.
- 15 THE COURT: Let's not go into that.
- 16 MR. LANSDALE: They speak for _____
- 17 themselves.
- 18 THE COURT: Let's proceed.
- 19 MR. WEINER: I further proffer with
- 20 respect to CEI's efforts to shut down an isolated
- 21 operation of Independent Towel, to show CEI made
- 22 those efforts. Munny Light was discussing with
- 23 Independent Towel and CEI provided financial
- 24 assistance to Independent Towel --
- 25

Rudolph - cross

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2 MR. LANSDALE: The witness has
3 already testified he never heard of that.

4 MR. WEINER: I was going to try to
5 refresh his recollection with a document. It may
6 not have. If it didn't, I was --

7 MR. LANSDALE: What's the document?

8 MR. WEINER: Plaintiff's Exhibit 80.
9 Ask about efforts of CEI to purchase Union
10 Carbide's generating facilities and Diamond
11 Shamrock's generating facilities.

12 I think that's all.

13 THE COURT: Let me ask you a
14 question. How, really, is any of this material in
15 view of the admission that has been made?

16 MR. WEINER: It's material because
17 one of their defenses is Muny Light, because of
18 technology and superior business practices of CEI,
19 was going to fall on its own face and go out of
20 business on its own.

21 THE COURT: Well, you are still free
22 to pursue that within the limitation period.

23 MR. WEINER: But the evidence we had
24 with respect to these elements are pre-limitation
25 period.

Rudolph - cross

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2 THE COURT: What does that have
3 to do with this case?

4 MR. WEINER: They show that even
5 these systems which were well-run, economical and
6 were doing well, CEI tried to eliminate them, too.

7 THE COURT: They have admitted
8 that.

9 MR. WEINER: That they tried to
10 eliminate these systems?

11 THE COURT: Yes. They have
12 admitted they wanted to eliminate all competition.

13 MR. WEINER: But they did not admit
14 there was a difference between the systems.

15 THE COURT: Let's proceed.

16 MR. WEINER: We have the proffer on
17 Painesville, I want to make a proffer on the
18 Painesville testimony.

19 THE COURT: Well, make a proffer
20 on it, although we have been into the testimony
21 with two or three other witnesses. Proceed and
22 make the proffer, please, gentlemen.

23 MR. NORRIS: The plaintiff would
24 offer during Mr. Rudolph's testimony --

25 THE COURT: This is

1 Rudolph - cross

2 pre-emption period?

3 MR. NORRIS: That's right, your
4 Honor.

5 THE COURT: All right.
6 Post-emption we haven't ruled upon.

7 MR. NORRIS: Pre-emption --
8 evidence as going to the issue of wrongful intent
9 on CEI's part during the limitation period, and
10 we would have put to Mr. Rudolph questions
11 concerning the following exhibits: PTX 617,
12 601, 619, 618, 1154, 650.

13 You have some of the other documents?

14 613, 638, and there are three or four others
15 Mr. Weiner is bringing.

16 Now, the thrust of our proffer is that these
17 documents show that in the early 1960's CEI was
18 undertaking to acquire the Painesville Municipal
19 System and that its methods of acquiring same
20 were the same methods being utilized during the
21 damage period to eliminate the Cleveland Municipal
22 System through what the City asserts are illegal
23 means.

24 With respect to the Painesville activity in
25 the early 1960's, the documents which the City

Rudolph - cross

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2 would have offered made clear that CEI --

3 THE COURT: Let's not characterize.

4 MR. NORRIS: All right. States --

5 THE COURT: Don't the documents
6 speak for themselves?

7 MR. NORRIS: I was trying to
8 describe --

9 THE COURT: Why don't you just tell
10 us what they are going to prove.

11 MR. NORRIS: The documents would
12 prove that CEI viewed the Painesville acquisition
13 exercise as a precedent for the acquisition of the
14 Cleveland Municipal System. They termed it a
15 pilot project. And we think that evidence of
16 that Painesville activity should be permitted to
17 go to the jury so that the jury could then infer
18 from that evidence that the attempts by CEI to
19 eliminate the Muny System during the damage period
20 by what the City alleges are wrongful means, that
21 they could infer --

22 THE COURT: What wrongful means?

23 MR. NORRIS: The taking of positive
24 steps to refuse an interconnection in order to keep
25 the system that the City was operating totally

Rudolph - cross

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2 isolated, the breaking of agreements between the
3 City and CEI that had the same effect --

4 THE COURT: What city are you
5 talking about?

6 MR. NORRIS: City of Cleveland,
7 your Honor.

8 -- and that the conduct of the defendant
9 company had a uniform pattern that is disclosed --

10 THE COURT: Conduct is a
11 generalization of act. Now, I asked you to
12 define the acts you claim are unlawful.

13 MR. NORRIS: Forcing on the
14 municipal system --

15 THE COURT: Forcing is a
16 conclusory statement. Now, Mr. Norris, don't you
17 understand?

18 MR. NORRIS: Refusing --

19 THE COURT: All right. Refusing
20 what?

21 MR. NORRIS: -- to enter into
22 interconnection agreements with municipal systems
23 in their service area --

24 THE COURT: Yes.

25 MR. NORRIS: -- with the purpose

1 Rudolph - cross

2 of --

3 THE COURT: Not with the purpose
4 of. Just tell what the acts that you characterized
5 as unlawful are.

6 MR. NORRIS: The refusals to
7 interconnect with these municipal systems and the
8 circumstances surrounding those refusals, whether
9 they were before the damage period or during the
10 damage period, we think, are relevant.

11 THE COURT: Again, what
12 circumstances?

13 MR. NORRIS: The circumstances that
14 were spelled out in the plaintiff's exhibits that
15 are CEI documents that we wanted to put into
16 evidence.

17 THE COURT: But what are the
18 circumstances? This is the point of the proffer.

19 MR. NORRIS: The circumstances?

20 THE COURT: Yes, that you are
21 claiming.

22 MR. NORRIS: That CEI was planning
23 to eliminate the Painesville competition by illegal
24 means.

25 THE COURT: Will you define the

Rudolph - cross

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2 illegal acts on which you are relying and that
3 you claim are material? Not your characterization
4 "by illegal acts."

5 Now, you have said one of them is refusal to
6 permit an interconnection. All right. Now,
7 whether that is a legal or illegal act, I don't know.

8 Now, tell me the rest of the acts on which you
9 feel that the testimony is important and it will
10 elicit in view now, Mr. Norris, of the admission
11 that we have here that it was the intention of CEI
12 to eliminate all competition in this area. That's
13 what I am asking you.

14 MR. NORRIS: PTX 650 describes the
15 meeting which took place on December 7th, 1962,
16 between Mr. Lindseth, Mr. Besse, Mr. Howley, Mr.
17 Rudolph, and the summary of that meeting as
18 disclosed in PTX 650 recognizes that --

19 THE COURT: Now, you see, you are
20 getting in there "recognize."

21 MR. NORRIS: That's the word that
22 is used in the memorandum, your Honor.

23 THE COURT: Mr. Norris, why don't
24 you just summarize for me the acts? I don't want
25 to go through each of these documents. What acts?

Rudolph - cross

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2 Number one was refusing to wheel.

3 MR. NORRIS: With wrongful intent,
4 that that's an illegal act in the circumstances,
5 your Honor. That's our position.

6 THE COURT: You are free to bring
7 that out during the post-limitation period.

8 Now, let's go on to the other acts.

9 MR. NORRIS: The refusals to
10 interconnect under the circumstances were illegal
11 and we believe --

12 THE COURT: Under what circumstances?

13 MR. NORRIS: The circumstances, your
14 Honor, that existed in 1960, 1961, 1962 with regard
15 to Painesville.

16 THE COURT: Those aren't relevant
17 here.

18 MR. NORRIS: I am only making an
19 offer of proof.

20 THE COURT: I'm saying you can go
21 into that in the limitation period.

22 MR. NORRIS: I understand, your
23 Honor, and I'm trying to respond to your question.

24 The reason we think these facts are relevant
25 is that it explains the legal intent the City

Rudolph - cross

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2 asserts CEI maintained, both during the damage
3 period and prior to the damage period, and it is
4 for the jury to infer whether or not it was an
5 illegal intent.

6 We think evidence of what CEI did in the _____
7 1961-62 period with regard to Painesville will
8 assist the jury in reaching a determination whether
9 or not what CEI did with regard to the Cleveland
10 system during the damage period was with illegal
11 intent.

12 THE COURT: In other words, what
13 you are saying is it goes to the character of the
14 intent.

15 MR. NORRIS: It goes to the purpose
16 and character of the transactions we are studying
17 with respect to the damage periods.

18 THE COURT: To intent, the
19 character of the intent.

20 MR. NORRIS: The illegal intent,
21 that's right.

22 THE COURT: Whether it be legal or
23 illegal, that's conclusory. It goes to the
24 character.

25 MR. NORRIS: It goes to the

Rudolph - cross

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2 character which the jury must determine --

3 THE COURT: And what did I tell
4 you early on when I permitted evidence of this type
5 in? I said I would permit it. I also told you I
6 wanted you to be selective and I told you that I
7 didn't want it to be repetitious.

8 MR. NORRIS: Right.

9 THE COURT: And I have permitted
10 this testimony in for, now, two weeks, and it has
11 all been to a great degree repetitious and,
12 obviously, my admonition has been ignored.

13 And I told Mr. Weiner this morning that in
14 view of the repetitious nature of the evidence
15 that has been introduced and the continuing effort
16 to introduce the same evidence, that I was going
17 to limit further testimony to post-limitation
18 period, and that's where we are going from here.

19 So your exceptions are noted, gentlemen.

20 MR. NORRIS: May I make another
21 comment, your Honor?

22 THE COURT: Certainly.

23 MR. NORRIS: I would just like to
24 remind the Court that during my cross-examination
25 of Mr. Lindseth I put before him several documents

1 Rudolph - cross

2 of these that I have just now offered and I would
3 have offered through Mr. Rudolph that had Mr.
4 Lindseth's date-received stamp on them, and he
5 stated in response to a couple questions that it
6 was Mr. Rudolph who was in charge of that activity
7 of the company with respect to Painesville.

8 THE COURT: Yes.

9 MR. NORRIS: And I think there
10 were three or four documents that he said, "Well,
11 I don't have a recollection of this but Mr.
12 Rudolph would probably recollect it, or words to
13 that effect. So I did not go forward with Mr.
14 Lindseth on a large majority of these documents
15 that we would here go forward with Mr. Rudolph on,
16 purposely, I thought, reserving my opportunity to
17 do that with Mr. Rudolph.

18 So I submit, your Honor, that we are not being
19 repetitious.

20 THE COURT: Well, the fact that you
21 are being or are not being repetitious does not
22 follow from what you said.

23 If I have created the inference to you that
24 you were reserving your right to cross-examine
25 as to these documents, I'm sorry, and, if I did,

1 Rudolph - cross
2 it is my error and I will permit you to examine as
3 to those documents.

4 MR. NORRIS: As to the Painesville
5 documents?

6 THE COURT: Yes.

7 MR. NORRIS: We have them all
8 corrected.

9 THE COURT: I will permit you to
10 examine so long as it is material and not
11 repetitious.

12 MR. LANSDALE: Y ur Honor --

13 THE COURT: Just a minute.

14 MR. NORRIS: The other Plaintiff's
15 exhibits that have now been brought to the bench
16 that I was unable to list earlier --

17 {End of bench conference.}

18 - - - - -
19 THE COURT: Ladies and gentlemen,
20 why don't you retire to the jury room and relax for
21 a few moments. Please during the recess do not
22 discuss the case and keep in mind my admonitions.
23 We will call you.

24 - - - - -
25 {The following proceedings were had in the

Rudolph - cross

1
2 absence of the jury.]

3 MR. NORRIS: The other documents
4 are Plaintiff's Exhibits 608, 610, 613 and 628.

5 THE COURT: Those are the documents
6 you are desirous of using and you will be permitted
7 to make examination of Mr. Rudolph to the extent
8 that the testimony is relevant and material.

9 MR. NORRIS: Not just these four
10 documents. These are the four additional
11 documents, your Honor, in addition to the list I
12 had earlier, that we didn't have at the bench when
13 I asked Mr. Weiner to go and get them. So the
14 documents I have referred to, I was going to go
15 into all of these, with the Court's permission,
16 to permit us to go into the documents I was going
17 to ask Mr. Lindseth about.

18 THE COURT: I will permit you to
19 go into the documents that you attempted to
20 elicit examination from Mr. Lindseth and objection
21 was sustained because he was not the proper
22 person.

23 MR. NORRIS: Yes, sir. And because
24 of that I did not burden the record with putting
25 questions with respect to the other documents.

Rudolph - cross

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THE COURT: All right. Go ahead.

MR. LANSDALE: May I be heard on this?

THE COURT: Yes.

MR. LANSDALE: Now, your Honor advised us long ago that the plaintiff had to be selective about this thing. Yet, he persisted in taking this question up with every witness, and this includes the private generation on which we had much interrogation. And he insists on asking Lindseth about marketing matters when Mr. Lindseth was not the marketing manager. He knew Mr. Rudolph was the marketing manager.

I submit this is simply an attempt to persist and persist and-persist in this period by going into it with every single witness.

THE COURT: Thank you for your statement.

I have ruled. I don't wish to mislead counsel for either side. If I did not articulate properly and created the inference that counsel would be permitted to go into this matter with another witness, I will stand on my statement and I will permit them to go into with Mr. Rudolph the documents that they had attempted to go into with

1 Rudolph - cross

2 Mr. Lindseth, however, he was the improper
3 witness. I will permit that.

4 Your exception is noted.

5 MR. LANSDALE: I will review the
6 record to see what the exhibits were.

7 THE COURT: So long as the
8 examination, needless to say, is material and
9 relevant.

10 MR. NORRIS: I will also make the
11 representation for the record that the only
12 documents we would attempt to use with Mr.
13 Rudolph are the documents I was prepared to use
14 with Mr. Lindseth.

15 - MR. LANSDALE: - Prepared to use?

16 THE COURT: I take your
17 professional word for that, Mr. Norris. I have no
18 problem with that.

19 {The foregoing proceedings were had in the
20 absence of the jury.}

21 - - - - -
22 {Recess was taken.}

23 - - - - -
24 {The following proceedings were had out of the
25 hearing of the jury.}

1 Rudolph - cross

2 MR. LANSDALE: I want to point out
3 we were furnished a list of the exhibits you
4 proposed to use with Mr. Rudolph and I do not find
5 concurrence between the list Mr. Weiner read off
6 that he was being debarred from going into and
7 this list.

8 For example, I don't find 1154 on this list,
9 I don't find 618, I don't find 619, I don't find
10 601, I don't find 617.

11 MR. NORRIS: The reason for that is --

12 MR. LANSDALE: My point is that
13 these almost have to be the exhibits you were at a
14 loss to cover with Mr. Lindseth and now you are
15 running a whole bunch more in on me.

16 MR. NORRIS: The reason is I had
17 given Mr. Weiner the Q and A I had prepared for
18 Mr. Lindseth, including the documents. If we
19 failed to get those numbers on the list I gave
20 you, that is our error.

21 MR. LANSDALE: I'm just raising a
22 question about it.

23 THE COURT: Well, gentlemen, we
24 will take them one at a time and you are permitted
25 to go into this now in the limited manner in which

Rudolph - cross

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2 I have indicated to you as to those documents that
3 you represent to the Court you are desirous of
4 using with the witness, Mr. Rudolph, in the same
5 situation which you couldn't use with Mr. Lindseth.

6 Again, I don't want you to get into repetitious
7 matter.

8 MR. WEINER: Perhaps I should add
9 when I gave that to Kathy this morning I told her
10 it was not complete.

11 MR. LANSDALE: I just don't believe
12 you, Dave, to be frank about it.

13 THE COURT: Well, I don't want to
14 get into this, gentlemen. Go back to your tables
15 and proceed.

16 {The foregoing proceedings were had out of the
17 hearing of the jury.}

18
19 BY MR. WEINER:

20 Q Mr. Rudolph, were you in the courtroom the other day
21 when Mr. Lindseth testified --

22 THE COURT: Mr. Weiner, please
23 examine this witness.

24 Q Is it correct, Mr. Rudolph, that you were the CEI
25 executive in charge of the company's early efforts to

Rudolph - cross

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2 acquire the Painesville Municipal Light Plant?

3 A Well, I was part of those early efforts, yes.

4 Q Were you the person in charge?

5 A No, I don't think so.

6 Q What other executives were involved in that activity?

7 A Basically, Mr. Howley.

8 Q Anyone else?

9 A Well, prior to my time in the marketing effort, Mr.
10 Heinton.

11 Q How about when you were in charge of Marketing?

12 Anyone other than Mr. Howley and you?

13 THE COURT: Approach the bench,
14 gentlemen, please.

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

18 THE COURT: Now here we go again.
19 I just told you you could go into the material
20 aspects of this. Why don't you ask the question
21 you want to ask instead of taking this circuitous
22 route and wasting 10 or 15 minutes before you get
23 to the question you want to ask?

24 Proceed accordingly, M. Weiner, and I don't
25 know why I should be required to tell you this.

Rudolph - cross

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2 MR. WEINER: The problem we have
3 is Mr. Lindseth testified Mr. Rudolph was in charge.
4 Now he says he wasn't in charge. So I have got to
5 find out who was in charge.

6 MR. LANSDALE: Well, so what?

7 MR. WEINER: It's important if he
8 was in charge.

9 THE COURT: Why?

10 MR. WEINER: Because it lays the
11 foundation for all the rest of the questions.

12 THE COURT: Why don't you ask him
13 what was in his knowledge and what he did as far
14 as the acquisition of the program is concerned,
15 acquisition of Painesville? That's what you
16 represented that you wanted to develop. Now, go
17 and develop it.

18 {End of bench conference.}

19
20 THE COURT: Now, you are free to
21 proceed, Mr. Weiner, but get to the point.

22 BY MR. WEINER:

23 Q Were there other CEI employees who were involved in
24 the effort?

25 A Well, there would be others who would have been

Rudolph - cross

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2 providing service, staff service, input of one sort or
3 another, but the community aspects, the contact with
4 Painesville was largely Mr. Howley and myself.

5 Q And those others who had been working on it, would
6 they have been advising you from time to time as to
7 what they were doing?

8 A Oh, I suppose so, yes.

9 MR. WEINER: Mr. Leo, hand the
10 witness Plaintiff's Exhibit 608.

11 {A document was handed to the witness by the
12 law clerk.}

13 Q Can you identify that, Mr. Rudolph?

14 A Yes. This is an internal memorandum from Mr.

15 Heinton to me on the subject of Painesville Muny
16 System.

17 Q Who was Mr. Heinton and what was his role?

18 A Mr. Heinton had been the Marketing Vice President.

19 At this time he was serving as a Senior Specialist
20 in our marketing activity.

21 Q Did he have any particular duties with respect to the
22 Painesville System?

23 A Well, he had been working on the Painesville matter
24 when he was marketing vice president and he continued
25 to have an interest and an input into it.

Rudolph - cross

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2 Q Do you recall the condition of the Painesville System
3 in April of 1960?

4 A The condition of it?

5 Q Yes.

6 A No.

7 Q Financial condition?

8 A No.

9 Q Could I refer you to the first paragraph of
10 Plaintiff's Exhibit 608?

11 A Yes.

12 Q What does it indicate with respect to the financial
13 condition of the Painesville system at that time?

14 A It says it was apparently healthy.

15 Q Do you recall persons by the name of DeChant and Thomas
16 in CEI?

17 A Yes.

18 Q What were their responsibilities?

19 A Well, they worked in our area development activity as
20 part of our marketing vunctions.

21 Q Did they have specific responsibilities with respect
22 to the Painesville system?

23 A Well, I assume probably that they were familiar with
24 the Painesville situation and, hence, it was logical
25 that they would be the ones to address the subject.

Rudolph - cross

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2 Q Do you recall now what Mr. DeChant and Mr. Thomas and
3 Mr. Heinton were recommending?

4 A That this seems to say is that they were recommending a
5 series of things, that we approach Painesville with
6 a purchase proposal that would cover, oh, a variety of
7 things, the retirement of their debt, enough money to
8 make it attractive to them for a variety of reasons,
9 and so forth.

10 Q Does that memo indicate that they indicate that they
11 recommended that the purchase offer should be more than
12 fair value?

13 A No.

14 Q Turning your attention to the first numbered paragraph.

15 A Yes.

16 Q Does that not indicate that the company would be
17 willing to pay more than a fair value for the plant?

18 A No.

19 Q What does it indicate?

20 A It raises the question of whether or not we would be
21 willing to pay more than fair value.

22 Q They are recommending that, is that not correct?

23 THE COURT:

Approach the bench.

24 A I don't believe so.
25 - - - - -

1 Rudolph - cross

2 {Bench conference ensued on the record as
3 follows:}

4 MR. LANSDALE: I submit that he is
5 not trying to bring out the facts about this. He
6 is arguing with the witness. And this exhibit was
7 admitted in evidence yesterday.

8 THE COURT: Mr. Weiner, if you
9 don't proceed in a proper manner, I am going to cut
10 off your cross-examination of this witness.

11 Do I make myself clear?

12 MR. WEINER: Um-hmm.

13 THE COURT: You know, this is not
14 what this says.

15 Mr. Weiner, I am talking to you now.

16 MR. WEINER: I understand.

17 THE COURT: I have brought these
18 tactics to your attention on numerous occasions,
19 and the whole thrust of this examination is to
20 create prejudice and not to elicit probative facts.

21 Unless you proceed in a proper manner, I am
22 going to terminate further cross-examination by
23 you of this witness on this subject.

24 {End of bench conference.}

1 Rudolph - cross

2 THE COURT: The jury will
3 disregard the last question.

4 MR. WEINER: Would you hand the
5 witness Plaintiff's Exhibit 610.

6 {After an interval.}

7 Q Can you identify that, Mr. Ruedolph?

8 A This is another internal memorandum from Mr. Hinton
9 to me on the same subject, the Painesville Muny Light
10 Plant.

11 Q And this memorandum, in this memorandum was Mr. Hinton
12 recommending a procedure to carry on the negotiations
13 for the purchase of that system?

14 A Yes.

15 Q Did he recommend that preliminary negotiations should
16 be a two-part program?

17 A Yes.

18 Q And the first part should be the "conditioning of
19 the Painesville residence"?

20 A Yes.

21 Q And the second part would be, "The concentration of
22 individual Painesville councilmen??

23 A Yes.

24 Q What were the purposes of conditioning the Painesville
25 residence, Mr. Ruedolph?

Rudolph - cross

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2 A Why, to put them in a position to consider whatever
3 proposition might ultimately be presented.

4 Q And what was the purpose of concentrating on the
5 individual Painesville Councilmen?

6 A To convey to them what we thought would be the
7 advantages of our proposition.

8 Q Do you recall Mr. Hinton indicating that he proposed
9 a radio program?

10 A No, I don't recall that specifically.

11 Q Would you turn your attention to the bottom of that
12 document.

13 MR. LANSDALE: May I interpose an
14 objection, if your Honor please?

15 THE COURT: Approach the bench.

16 - - - - -
17 {Bench conference ensued on the record as
18 follows:}

19 MR. LANSDALE: This is a clear
20 Noerr-Pennington exception.

21 THE COURT: Yes; and I have ruled
22 on that, have I not?

23 MR. WEINER: You mean to leave out
24 this document?

25 THE COURT: You are claiming these

Rudolph - cross

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2 are not Noerr-Pennington exceptions?

3 MR. WEINER: Yes. I think they
4 ought to be put in, even if they are.

5 THE COURT: I will sustain the
6 objection.

7 I am going to caution you only one more time.
8 {End of bench conference.}

9
10 THE COURT: You may proceed.

11 Incidentally, Mr. Weiner, about the document,
12 608, and the document 610, they are already in
13 evidence, and they have already been testified to.

14 Proceed.

15 BY MR. WEINER:

16 Q Do you feel at that time that the Painesville Municipal
17 System was considering that?

18 A No, I don't recall that.

19 MR. WEINER: Mr. Leo, would you

20 hand the witness Plaintiff's Exhibit 612.

21 Q Mr. Rudolph, that has been stipulated, it has been
22 stipulated as CEI's business record, prepared in June
23 of 1960.

24 Do you have a familiarity with that document?

25 A Well, Mr. Weiner, I am sure that I have seen it

Rudolph - cross

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2 somewhere, but I don't have any particular familiarity
3 with it.

4 Q What is that document, if you could describe it, please?

5 A Well, it is entitled, "Points to be included in
6 agreement with Painesville," and there is a date on it,
7 June, 1960, but otherwise there is no indication of its
8 source.

9 Q And you don't recall now whether or not you saw it at
10 that time?

11 A No, I don't.

12 Q But it has been the type -- would it have been the
13 type of document that you were likely to have seen?

14 A Yes.

15 Q What is the third heading in that document?

16 MR. LANSDALE: Objection.

17 THE COURT: Sustain the objection.

18 Q Do you know who prepared the document?

19 A No, I don't.

20 Q Is there any way to obtain -- for you to find out who
21 prepared it -- is there anything in the document that
22 would help us determine who prepared this document?

23 Are there any company numbers or anything like that?

24 A I don't see anything that would do that, no.

25 Q One of the points made in this document was --

Rudolph - cross

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2 when you were discussing Painesville Municipal Light
3 System?

4 MR. LANSDALE: Objection.

5 THE COURT: Approach the bench.

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

9 MR. LANSDALE: This again is going to
10 the exhibits here, number one, and number two, what
11 has this got to do with the situation? I object,
12 both on the grounds of relevancy and on the grounds
13 of propriety.

14 MR. WEINER: I think it is relevant.

15 THE COURT: Sustain the objection.

16 {End of bench conference.}

17
18 THE COURT: You may proceed, Mr.
19 Weiner.

20 BY MR. WEINER:

21 Q Mr. Rudolph, do you know the kind of assistance during
22 that emergency that the Painesville Municipal System
23 may have been able to provide to CEI?

24 A Oh, I suppose they could have provided some help.

25 I suppose it would go, for example, to assisting our

Rudolph - cross

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2 MR. LANSDALE: Objection.

3 THE COURT: Approach the bench.

4
5 {Bench conference ensued on the record as
6 follows:}

7 MR. LANSDALE: This is again getting
8 into this evidence. It is already in evidence. It
9 came in yesterday.

10 THE COURT: I will sustain the
11 objection. Let's proceed.

12 {End of bench conference.}

13
14 THE COURT: Proceed, Mr. Weiner.

15 BY MR. WEINER:

16 Q Are you familiar with the phrase "Mutual Assistance"?

17 A Yes.

18 Q What does Mutual Assistance mean to you?

19 A Well, I guess a reciprocal arrangement where two parties
20 would each agree to help each other.

21 Q And if the term was used in conjunction with the phrase
22 "During emergencies," what would that mean?

23 A That would mean that if there were an emergency on one
24 system, the other system would help out.

25 Q Was this one of the factors that was being considered

Rudolph - cross

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2 crews.

3 I suppose in a minor way it is conceivable that
4 they might provide some power, but certainly that would
5 not be a big factor, because they were so much smaller
6 than we were.

7 Q What was the CEI position with respect to an
8 interconnection with Painesville?

9 A Well, we talked with them several times about an
10 interconnection.

11 Q Was the company opposed to an interconnection with
12 Painesville?

13 A We would have been willing to interconnect with
14 Painesville under certain conditions, but we were not
15 interested in interconnecting with Painesville without
16 having those conditions.

17 Q What were those conditions?

18 A Well, I just don't recall.

19 Q Do you recall any of the conditions?

20 A No.

21 Q If the conditions had not been met, you were not
22 interested in interconnecting with Painesville?

23 A I think that is right.

24 Q What was the company's position with respect to
25 selling power to Painesville for resale?

Rudolph - cross

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2 A I just don't recall that we had a position on that.

3 I just don't remember that.

4 Q Do you recall what CEI's position was with respect to
5 selling power for resale to the Cleveland Municipal
6 System?

7 A When?

8 Q Let's start in 1971.

9 A In 1971 this would have been following the blackout,
10 the emergency of 1969, and our position in 1971 was
11 that we were not interested in an interconnection.

12 Q Or selling power for resale to the Cleveland System;
13 is that correct?

14 A Yes.

15 Q Such sales would have helped the Cleveland System; is
16 that correct?

17 MR. LANSDALE: Objection.

18 THE COURT: Overruled.

19 A Well, I guess it would, yes.

20 Q Would it strengthen the system?

21 A An interconnection?

22 Q And sale of power for resale.

23 MR. LANSDALE: Objection.

24 THE COURT: Approach the bench.
25

1 Rudolph - cross

2 {Bench conference ensued on the record as
3 follows:}

4 MR. LANSDALE: I don't know why
5 they deliberately try to do this, to abuse the
6 witness or what, but we were selling massive
7 amounts of power to Cleveland for resale in 1971,
8 and we were not getting paid for it, and I don't
9 understand the suggestion in your question, and I
10 object to it -- it was millions of dollars worth of
11 power.

12 MR. WEINER: I will stay with the
13 interconnection.

14 MR. LANSDALE: You are deliberately
15 misleading the jury.

16 THE COURT: Let's proceed. Rephrase
17 the question.

18 {End of bench conference.}

19
20 _____
THE COURT: Rephrase your question.

21 BY MR. WEINER:

22 Q With respect to an interconnection in 1971, Mr. Rudolph,
23 I believe your testimony is that the company was
24 opposed to such interconnection?

25 A Yes, and we were at that time trying to collect money

1 Rudolph - cross

2 from Muny Light that they owed us, which was one of the
3 elements.

4 Q And one of the reasons -- is it not true that an
5 interconnection would have been helpful to Muny Light?

6 A Yes, it is true.

7 Q And it would have made Muny Light a stronger system;
8 isn't that true?

9 A Yes.

10 Q And if Muny Light was stronger, wouldn't it have been
11 harder for CEI to accomplish its goal of eliminating
12 competition from Muny Light?

13 A Not necessarily.

14 Q If Muny Light were --

15 THE COURT: Let's not get

16 argumentative. He is already getting up to object.

17 Q Let's see if I understand --

18 THE COURT: Why don't you ask him

19 the question instead of giving him the answer or

20 the answer that you would like to have.

21 Q Is it easier to eliminate competition with a healthy
22 or weaker system?

23 A Well, with a weaker system.

24 Q And the interconnection would have made Muny Light
25 stronger; is that right?

1 Rudolph - cross

2 A Yes.

3 MR. WEINER: Mr. Leo, would you
4 hand the witness Plaintiff's Exhibit 628.

5 {After an interval.}

6 Q Can you identify that document, Mr. Rudolph?

7 A This is another internal memorandum, dated July 29, 1960,
8 from Mr. Horning to Mr. Thurry on the subject of,
9 "Municipal Acquisitions, other companies."

10 Q Your name does not appear, but do you recall receiving
11 a copy of that document?

12 A No.

13 Q You have no knowledge of that document at this time?

14 A No.

15 MR. WEINER: Mr. Leo, would you
16 hand the witness Plaintiff's Exhibits 617 and 601.

17 THE COURT: 617 and 601?

18 MR. WEINER: Yes.

19 {After an interval.}

20 Q Can you identify that document, Mr. Rudolph?

21 MR. LANSDALE: Which one?

22 THE COURT: Which one?

23 Q I am sorry, excuse me.

24 Can you identify 617?

25 A This is an internally prepared document entitled,

Rudolph - cross

"Plan of Organization for Purchase of Painesville
Municipal Light Plant."

It is dated November 15, 1960.

Q And what is the purpose of that document, if you know?

MR. LANSDALE: Objection.

THE COURT: Sustain the objection.

Q Are you familiar with that document?

A No.

Q Have you ever seen it before, to the best of your
memory?

A I don't think so. I certainly have no recollection of
having seen it.

Q Is there any way that we can tell from the document
itself who prepared it?

MR. LANSDALE: Objection.

THE COURT: Overruled.

A Yes.

Q How do we tell that?

A I will tell you.

Q Please do so.

A Well, I think I know from the initials. It looks like
it was prepared by Mr. Heinton.

Q You have no other familiarity with that?

A No, I don't think so.

Rudolph - cross

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Q Have you had an opportunity to review that document?

MR. LANSDALE: Objection.

THE COURT: Sustain the objection.

Mr. Weiner, get on to something else. He answered the question for you. He is not familiar with it.

Q Are you familiar with the Plan A that is described in that document?

MR. LANSDALE: Objection.

THE COURT: Sustain the objection.

Q Do you have knowledge --

THE COURT: Approach the bench.

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

MR. LANSDALE: I have to object. Mr. Lindseth was interrogated about this, and it was addressed to him, number one, and number two, he said two or three times that he never seen it, and he doesn't recall anything about it.

MR. WEINER: I had asked him if he was familiar with Plan A.

THE COURT: Go to something else.
I will sustain the objection.

1 Rudolph - cross

2 {End of bench conference.}

3
4 THE COURT: You may proceed, Mr.
5 Weiner.

6 BY MR. WEINER:

7 Q Turn to Exhibit 601, Mr. Rudolph.

8 A Yes, sir.

9 Q Did you ever see that document before?

10 A I don't recall seeing it, but obviously I did, because
11 I can recognize among other things the notes on it.

12 Q And which notes do you have reference to, Mr. Rudolph?

13 A Well, I think my handwriting is in the upper right-hand
14 corner.

15 Q Where it says "Painesville File"?

16 A Yes.

17 Q And other than the notes?

18 A Well, there are no others that I can see except the date
19 at the bottom.

20 Q What date is that?

21 A March 3rd, 1961.

22 Q Can you describe this document -- excuse me -- would you
23 have received this document from someone else as
24 opposed to you preparing it?

25 A Oh, yes.

Rudolph - cross

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Q Do you know who would have prepared this document?

A Well, it is not indicated as far as I can see.

Q Well, from the subject matter of the document, is there any way that you can recall who would have prepared it?

A Well, there is nothing here that would indicate clearly the source of the document.

I would expect that it came from Mr. Heinton.

Q Do you know what the purpose of the document was?

A Well, he says -- it is stated on the first page, "Acquisition of Painesville Muny System."

Q Was this a report of some kind, to your knowledge?

A It is more nearly, I think, the result of Mr. Heinton's familiarity and analysis of the situation reduced to writing.

Q Do you know what action you took, if any, after receipt of this document?

A I don't recall any action specifically, no, as a result of this document.

Q Do you recall having any discussions with anyone after receiving this document?

A Mr. Weiner, we might very well have discussed this internally, and other aspects of this particular operation internally, but I can't recall specific discussions, no. That has been 20 years ago.

Rudolph - cross

1
2 MR. WEINER: Mr. Leo, would you hand
3 the witness Exhibits 618, 1154 and 613.

4 {After an interval.}

5 BY MR. WEINER:

6 Q Turning your attention first to Plaintiff's Exhibit

7 618.

8 A Yes.

9 Q Can you identify that, please?

10 A This is an internal memorandum from me to Mr. Lindseth,
11 and also to Mr. Besse, on the subject of the Painesville
12 Municipal Plant.

13 Q Prepared on or about June 9, 1961?

14 A Yes.

15 Q And I assume that you don't recall that memorandum at
16 this time, preparing that memorandum at this time?

17 A Well, yes -- that I obviously prepared it, yes.

18 Q Does the memorandum indicate that meetings were to be
19 set up between you and Mr. Lindseth and Mr. Besse?

20 THE COURT: Approach the bench.

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

24 THE COURT: Mr. Weiner, what do you
25 think the objection is going to be?

Rudolph - cross

1 MR. WEINER: I don't know.

2 THE COURT: Do you want me to
3 guess?

4 MR. WEINER: I don't know.

5 THE COURT: Noerr-Pennington.

6 MR. LANSDALE: Exactly.

7 The whole purpose of this thing is
8 legislative.

9 THE COURT: Why do you insist
10 on following these tactics?

11 MR. WEINER: I believed these
12 are not Noerr-Pennington matters.

13 MR. LANSDALE: I cite the Lamb case.

14 THE COURT: Why are you referring
15 to the document? Why don't you ask him the
16 questions?

17 MR. WEINER: Because he won't
18 remember.

19 THE COURT: How do you know unless
20 you ask him.

21 MR. WEINER: Okay. I will ask him.

22 {End of bench conference.}

23 - - - - -

Rudolph - cross

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2 BY MR. WEINER:

3 Q Do you recall having meetings with Mr. Lindseth or Mr.
4 Besse to discuss points raised in that memorandum?

5 A No, I don't recall the specific meetings, but this
6 document is a request for guidance from my superiors.

7 Q And what guidance did you receive with respect to
8 Paragraph 1, the position on the annexation to the
9 outlying areas of the City of Painesville?

10 A That we were to continue to investigate the possibility.

11 Q And what advice did you receive with respect to
12 Paragraph 2, was the company willing to actively
13 support annexation?

14 A I don't recall any advice on that particularly.

15 MR. LANSDALE: If your Honor
16 please --

17 THE COURT: Approach the bench.

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

21 MR. LANSDALE: If your Honor please,
22 this is obviously -- and the question is being
23 asked, what advice did he receive from his superiors
24 as to the position he should take in discussing
25 with the City Council of the City of Painesville --

Rudolph - cross

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2 THE COURT: It may go to something
3 other than that.

4 If he pursues it within the parameters that
5 he is approaching, it is permissible, because it
6 does go to a reflection of intent.

7 Now, the only objectionable part was the
8 anticipation that the questions were to be elicited
9 in a Noerr-Pennington context.

10 MR. LANSDALE: Yes.

11 THE COURT: But he has avoided that,
12 so he is permitted to go ahead, as long as he
13 continues to avoid it.

14 {End of bench conference.}

15
16 THE COURT: I will overrule the
17 objection. You may proceed.

18 Read the last question.

19 {The last question was read by the court
20 reporter as follows:

21 "Q And what advice did you receive with
22 respect to Paragraph 2, was the company willing
23 to actively support annexation?"}

24 A I don't recall any advice on that.

25 Q Do you recall what the position of the company was on

Rudolph - cross

1
2 that matter?

3 A My recollection of this whole exercise was an internal
4 meeting at which we discussed all of these matters, and
5 there was not necessarily any specific directive on any
6 of these points.

7 We continued to pursue this matter. We were not
8 at the point of ultimate decision.

9 Q Do you recall what advice you received with respect to
10 Point 3, whether the company was willing to buy part of
11 the outside lines or hold out for all the outside lines?

12 A No, I don't recall specifically any conclusion on that.

13 Q What were the outside lines?

14 A Well, Painesville served not only the City of
15 Painesville, but it served some customers, particularly
16 on a line that extended east of Painesville.

17 They may also have had some customers outside of
18 the city, particularly on the southwest segment of their
19 service area.

20 I think this question would refer to those as
21 outside lines, or this document.

22 Q The issue was whether you would buy some of those
23 outside lines or hold out to buy all of them.

24 THE COURT:

He already answered

25 that. Go on to the next point.

Rudolph - cross

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2 Q What advice did you receive with respect to how much
3 the company was willing to pay for the customers of
4 Painesville?

5 A I don't recall.

6 Q Do you recall what the company's position was with
7 respect to how much they would pay for the customers of
8 Painesville?

9 A We would not have arrived, I am certain, in a discussion
10 of this sort, which is essentially preliminary, we would
11 not have arrived on a hard and fast figure.

12 We had a good bit of background with regard to
13 other acquisitions, and we would have been talking about
14 broad ranges.

15 Q Did you ever come up with a hard and fast figure?

16 A No, I don't think so.

17 Q What advice did you receive with respect to the matter
18 of interconnection?

19 A Mr. Weiner, on all of those questions, as I look back,
20 and I can't remember the answers specifically to these
21 questions, but I am sure we would have sat down and
22 discussed all of the aspects of this, and these questions
23 are not mutually exclusive, and that is the problem,
24 whether or not we would be willing to do one, for
25 example, would depend on what happened with number 3.

Rudolph - cross

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2 so this is one document, and to suggest that these
3 questions can be answered yes or no or quantified just
4 isn't realistic in light of the situation.

5 Q Did those questions all get answered at some time?

6 A The upshot was that the Painesville effort never
7 reached fruition.

8 Q Did these questions get answered at some time?

9 A I don't recall.

10 Q Was an effort made to purchase the Painesville
11 system?

12 A We continued our efforts to talk about it with
13 Painesville, about acquisition, yes.

14 Q Do these points all relate to that matter?

15 A Yes.

16 Q You don't recall now whether or not the company ever
17 came to a resolution or a position with respect to the
18 matter of interconnection?

19 A No, I don't recall that.

20 Q Do you recall --

21 A The fact is, Mr. Weiner, that if we had been
22 successful in acquiring the Painesville system, the
23 whole question of interconnection was moot.

24 Q That was one of the questions at the time, was it not?

25 A Well, it is obviously here -- it is in the document, yes.

Rudolph - cross

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2 Q Do you recall whether the company ever came to a
3 position on whether the interconnection would be used
4 only for emergency purposes?

5 THE COURT: Approach the bench.

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

9 MR. LANSDALE: This is the second or
10 third time he asked the question, and the witness
11 said what his recollection is, and we just are
12 grinding over and over this.

13 THE COURT: He answered the
14 question as to the entire document, Mr. Weiner.
15 He said these things are mutually -- not mutually
16 exclusive.

17 MR. WEINER: Could I test his
18 memory on some of the points?

19 THE COURT: Sustain the objection.
20 Let's proceed.

21 MR. WEINER: Well --

22 THE COURT: From your last
23 comment, Mr. Weiner, again, it seems to be the
24 purpose of your examination to test his memory
25 rather than getting to substantive material.

Rudolph - cross

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2 relevant information, that both you and Mr. Norris
3 indicated to me that you were desirous of eliciting.

4 Now, I don't know what you are attempting to
5 elicit. He has testified to the fact that, yes,
6 they wanted to purchase the Painesville Light
7 Plant, and that the efforts never came to
8 fruition, and that -- and I think he testified --
9 and I can go back over my notes, that at one point
10 in time the company would have interconnected with
11 Painesville upon certain conditions.

12 Now, tell me what are you really interested
13 in asking this gentleman beyond the fact of testing
14 his memory as to incidents that took place 20 years
15 ago, and on that representation -- yet only reading
16 into the record through this method the various
17 items -- tell me what you really want to do insofar
18 as something that is probative.

19 MR. WEINER: I want to show what
20 the terms and conditions were and what methods
21 they try to use to take over Painesville, and how
22 they were trying to acquire Painesville, and what
23 methods they were doing and using and what were
24 the mechanics of that.

25 THE COURT: Well, I'm permitting you

Rudolph - cross

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to do that.

MR. WEINER: Well, --

THE COURT: And you are getting into a memory contest.

MR. WEINER: How they were going to operate the interconnection, and how it was going to be offered to them.

THE COURT: He testified to that. I permitted you to go into that at length, and you insist upon departing from relevant issues off into these collateral areas for reasons beyond me; so I would request again, Mr. Weiner, that you conduct your examination with a view of eliciting probative evidence as to the material issues that are involved.

MR. WEINER: I will have to confer with Mr. Norris, if I might, and maybe I can shortcut this.

{End of bench conference.}

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{After an interval.}

BY MR. WEINER:

Q Mr. Rudolph, do you have Plaintiff's Exhibit 1154 in front of you?

Rudolph - cross

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2 A No; I don't see it -- maybe it is here, yes, yes. It
3 is here.

4 Q Can you identify that, Mr. Rudolph?

5 A This is another internal document that looks to be a
6 presentation to our so-called President's Council that
7 we have described earlier on the subject of the
8 Painesville plant.

9 Q This was an agenda for the President's Council?

10 A Yes. It would have been a more or less special item.

11 Q Do you remember that particular meeting?

12 A Yes. I think I remember that there was such a
13 meeting.

14 Q And who spoke at that meeting?

15 A According to this there were three or four different
16 individuals, Mr. Howley and Mr. Bridges, and Mr.
17 Phithpauldi.

18 This, Mr. Weiner, looks to me as though it was a
19 document from which either Mr. Howley or Mr. Bridges
20 would be using to conduct the meeting.

21 Q Who was Mr. Bridges?

22 A He reported to Mr. Howley, and he was in charge of our
23 public relations and advertising.

24 Q Would it be correct that they made certain
25 recommendations, Mr. Howley and Mr. Bridges, to the

Rudolph - cross

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President's Council?

2

3 A Yes; that is correct.

3

4 Q And those recommendations are set forth in the second
5 page of that document?

5

6 A Right.

6

7 Q And to the best of your memory, were those recommendations
8 adopted by the President's Council?

8

9 A It wasn't a matter of adoption of the President's
10 Council, they did not serve that function.

10

11 This would have been a matter of education or
12 exposure, but it would not have been a matter for
13 resolution by the Council.

11

12 exposure, but it would not have been a matter for
13 resolution by the Council.

13

14 Q Do you know whether or not the actions recommended in
15 this memorandum, the action was adopted at some other
16 point by some other group in the Company?

14

15 this memorandum, the action was adopted at some other
16 point by some other group in the Company?

15

17 A No, I don't remember that, but I can say that this would
18 not have been decided at that meeting.

17

18

19 Q If you will turn your attention to Paragraph 3 of that,
20 it is -- where it says "Objective."

19

20

21 A Yes.

21

22 Q Do you see that?

22

23 A Yes.

23

24 Q Do you know whether that objective was an objective the
25 company continued after the President's Council met?

25

Rudolph - cross

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2 A No. We never pursued that.

3 Q The objective set forth in this document was not
4 pursued?

5 A No.

6 Q How do you know it was not pursued?

7 A Well, that is a little difficult to answer, but I would
8 have been in a position to have been part of the
9 decision, and I certainly would have been informed about
10 it later.

11 I can't tell you exactly how I know it, but we did
12 not pursue this recommendation.

13 Q The President's Council would not have voted on this
14 recommendation?

15 A No. It was not that sort of body.

16 Q Who would have made a decision with respect to the
17 recommendation?

18 MR. LANSDALE: Objection.

19 THE COURT: Overruled.

20 A In 1966 this would have been Mr. Lindseth and Mr. Besse,
21 and presumably for the reasons I mentioned earlier, I
22 probably would have been present at a session where
23 this was reviewed.

24 Q You don't recall such sessions?

25 A No, I can't even be sure I would have been there.

Rudolph - cross

1 I am suggesting this because I was included in most of
2 the meetings. I probably was.

3 Q Do you have Plaintiff's Exhibit 613 in front of you?

4 A Yes.

5 Q Can you identify that?

6 A Well, this is another memorandum from Mr. Heinton to me
7 at about the same time, namely, July 13, 1960, and again
8 on the subject of the Painesville Municipal Light
9 Plant.

10 Q What was the general content of that letter or
11 memorandum?

12 MR. LANSDALE:

May I have the

13 question read.

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

16 MR. LANSDALE:

I object.

17 THE COURT:

Overruled.

18 A Well, it is a communication from Mr. Heinton to me
19 that reports on some difficulties that the
20 Painesville system was rumored to have with their
21 generator, and it goes on to say that apparently they
22 were having some difficulty with that generator.

23 Q What was the purpose -- what would have been the
24 purpose for you to have read such a memorandum?
25

Rudolph - cross

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2 A At that time I was Vice-President of Marketing, and
3 Mr. Heinton worked for me.

4 Q Why was that of interest to you, that the Painesville
5 plant was having trouble with one of its generators?

6 A Because it was all part of the general information,
7 whether or not it was feasible for us to move forward
8 with a proposal to acquire the system.

9 MR. WEINER: Mr. Leo, would you
10 hand the witness Plaintiff's Exhibit 650 and 619.

11 {After an interval.}

12 Q Plaintiff's Exhibit -- do you have 650 in front of you?

13 A Yes.

14 Q Are you familiar with that document?

15 A No, I am not familiar with this document.

16 Q You have not seen it before?

17 A No. There is no indication that I would have received
18 a copy.

19 Q Who was the author of that document?

20 A One of our engineers.

21 Q And who was the recipient?

22 A His superior, Mr. Williams, who at that time would have
23 been head of one of the Engineering Departments.

24 Q What role did each of them play with respect to the
25 Painesville Municipal System?

Rudolph - cross

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2 A Well, I think that this would have been part of the
3 general exploration of all aspects of the system, and
4 certainly we would have wanted to know from the
5 engineering elements of the company as much as they
6 could contribute about the system.

7 Q And do you have any familiarity with Plaintiff's
8 Exhibit 619?

9 A 619?

10 Q Yes.

11 A No, I don't.

12 Q The document refers to a meeting that you were going to
13 have with Mr. DeChant, Mr. Pew and Mr. Thomas.

14 Do you remember having such a meeting?

15 A No.

16 Q And 638 -- Mr. Leo, will you give that to the witness,
17 please -- am I correct this is a memorandum from Mr.

18 Brooks to Mr. Lindseth in August of 1962?

19 A Yes.

20 Q Do you recall receiving a copy of that document?

21 A No.

22 Q Did you receive copies of documents even where your
23 name was not indicated on them?

24 A Yes, sure.

25 Q You just have no memory at this point of whether you

Rudolph - cross

1

2 received it?

3 A I received lots of documents, Mr. Weiner, so my
4 recollection of what I received 20 years ago is a little
5 imprecise.

6 Q Would you turn to the third page of that document?

7 A Yes, sir.

8 Q It sets out possible approaches to the Painesville Light
9 System?

10 A Yes.

11 Q And there were three alternatives set forth?

12 A Yes.

13 Q Do you recall having specific discussions with respect
14 to those three alternatives?

15 A No. I have no way of knowing.

16 This was addressed -- prepared by Mr. Brooks, who
17 was our financial vice president to Mr. Lindseth.

18 Whether or not there were ever any discussions on
19 this, I have no way of knowing.

20 Q You have no present recollection of any discussions?

21 A We had lots of discussions on the subject.

22 THE COURT: Approach the bench.

23

24 {Bench conference ensued on the record as

25

follows:}

Rudolph - cross

1
2 MR. LANSDALE: The witness testified
3 that he didn't get the document, and you are asking
4 him about these discussions, and he says he doesn't
5 remember about any discussions.

6 I object to this continuous stuff.

7 THE COURT: Why do you insist on
8 following these tactics?

9 When the man says he doesn't know about the
10 document and has never seen the document, why do
11 you insist? That is the end of it.

12 MR. WEINER: He may have had
13 discussions --

14 THE COURT: I don't care. If you
15 have evidence of that, put it on. I will sustain
16 the objection.

17 Now, Mr. Weiner, I am telling you again, unless
18 you desist from this line of questioning, I am going
19 to cut you off.

20 Now, you ought to know better than that, that
21 when a man says, "I have never seen the document and
22 I have no recollection of it," you ought to know
23 that that concludes it, unless of course you can
24 impeach him with another document.

25 You are just floundering aimlessly around here.

1 Rudolph - cross

2 MR. WEINER: Could I ask him if he
3 ever had discussions with respect to these three
4 alternatives?

5 THE COURT: No.

6 Why are you referring to this document?
7 You already referred to the document, and the
8 testimony is not to be elicited within the context
9 that you have laid, which is purely speculation. It
10 is pure speculation and prejudicial, a prejudicial
11 representation to the jury, and you know it.

12 MR. WEINER: No, I don't.

13 THE COURT: You shake your head
14 here and look at me and tell me you don't know it.
15 You are a bright person, Mr. Weiner, I just don't
16 believe it.

17 Let's proceed. I am sustaining the objection.

18 MR. WEINER: Okay.

19 {End of bench conference.}

20
21 THE COURT: You may proceed, Mr.

22 Weiner, if you do it properly.

23 BY MR. WEINER:

24 Q Mr. Rudolph, do you recall ever having conversations
25 in the company with other officials of the CEI with

1 Rudolph - cross

2 respect to considering whether CEI and Painesville
3 should swap customers and square their difficulties?

4 THE COURT: Sustain the objection.

5 Go on to another subject now. We just
6 finished discussing that up here, Mr. Weiner, and
7 I sustained the objection.

8 Approach the bench, please.

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

12 THE COURT: Now, Mr. Weiner, I
13 have been noticing your gesticulations at the
14 lectern and I just noticed now the expression on
15 your face as you faced the jury together with the
16 negative shaking of your head.

17 MR. WEINER: I apologize. I didn't
18 certainly intend to do that.

19 THE COURT: Well you did it, not
20 once but you have done it many times.

21 MR. WEINER: I certainly won't --

22 THE COURT: Certain of your
23 conduct leaves something to be desired.

24 Let's proceed, please, and I ask you again
25 to display some professionalism. Let's proceed.

Rudolph - cross

1
2 MR. WEINER: I would like to
3 reserve to call this man with respect to CAPCO
4 aspects of this case.

5 THE COURT: Yes, that reservation
6 will be honored as it has with all witnesses.

7 MR. WEINER: I have no further
8 questions of this witness at this time.

9 THE COURT: Are you desirous of
10 examining?

11 MR. LANSDALE: No.

12 {End of bench conference.}

13
14 THE COURT: Mr. Weiner, I believe,
15 has concluded his direct examination.

16 Are you desirous of examining at this time or
17 do you defer?

18 MR. LANSDALE: No, your Honor, I have
19 no questions.

20 THE COURT: Thank you, Mr. Rudolph.
21 Ladies and gentlemen, we are beyond the noon
22 recess time. Please during the recess do not
23 discuss the case among yourselves and keep an open
24 mind until such time as the evidence has been
25 introduced and I have instructed you on the law

Rudolph - cross

and the matter is submitted to you for your final
deliberation and judgment.

Thank you very much, ladies and gentlemen.
You are free to go to lunch. You will return here
at 1:30.

{Court was in recess for the lunch period.}

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1 FRIDAY, SEPTEMBER 26, 1980; 1:30 P.M.

2
3 THE COURT: Please be seated.

4 MR. NORRIS: Your Honor, if it
5 please the Court, we have exhibits that we are
6 ready to have the Court rule on, and we are ready
7 to offer them into evidence, those that are subject
8 to no objections, and I also filed this noon the
9 brief on interstate commerce that I told the Court
10 we would file before the end of the week.

11 THE COURT: Approach the bench.

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

15 THE COURT: As a matter of
16 curiosity, I have reviewed my notes concerning
17 the proffered testimony about the Painesville
18 evidence that the Court subsequently permitted in;
19 and I also reviewed my notes of what transpired
20 thereafter, and my question is: what went in that
21 wasn't already in, Mr. Weiner?

22 MR. WEINER: I was trying to get
23 more in that wasn't in.

24 THE COURT: I know what you were
25 trying to do.

1 MR. WEINER: I don't think I got
2 any more in.

3 THE COURT: And this is the very
4 thing that I have tried to emphasize to counsel, and
5 you keep coming up here and saying that you are
6 going to do this and you are going to do that and
7 you are going to prove this and you are going to
8 prove that, and ultimately when you are given an
9 opportunity, it is nothing but the same evidence
10 that is already in, and you reviewed the Exhibit
11 b28, b17, b01, all of which were already in.

12 The balance of the time you spent with Mr.
13 Rudolph concerning documents, and he had no
14 familiarity with them whatsoever. It was just an
15 exercise in futility, and I might ask the same
16 thing about yesterday's testimony of Mayor Locher.

17 What did he testify to that was not already in
18 the record?

19 MR. WEINER: I thought he had a lot
20 of good things to say.

21 THE COURT: You tell me what he
22 testified to that was material that wasn't already
23 in the record.

24 MR. NORRIS: The effort by the City
25 to get an interconnection consistently through the

1 '60's.

2 THE COURT: That was all in the
3 record before. Those letters were in the record
4 before, and they were all identified and nobody
5 denied them.

6 MR. WEINER: The benefit of the
7 Muny Light System to the City of Cleveland.

8 THE COURT: That was all in the
9 record on cross-examination. It was admitted from
10 the stand, and it was admitted, and it was gone
11 into with your other witnesses.

12 MR. NORRIS: He also testified on
13 the yardstick --

14 THE COURT: What yardstick?

15 MR. NORRIS: -- that the
16 administration viewed the value of the Muny Light
17 System as a yardstick.

18 THE COURT: I suggest that you
19 review that testimony, and all I am telling you,
20 gentlemen, is -- I don't know what you are going to
21 do on it, Mr. Lansdale, when you start calling your
22 witnesses -- but all I am saying is there is no
23 necessity to bring in witnesses that are going to
24 testify to repetitious matter, and that is what
25 you have been doing.

1 MR. WEINER: _____ Mr. Lindseth said

2 Mr. Rudolph was in charge of the effort to take
3 over the Painesville system, and when the question
4 was asked of Mr. Rudolph, he said, "No," it was
5 Mr. Howley.

6 THE COURT: Well, assuming it is so.
7 It is a credibility matter.

8 MR. WEINER: I was trying to attempt
9 to show he was in charge and knew what was going on.

10 THE COURT: They admit that they
11 were trying to buy it and eliminate competition in
12 the entire area.

13 Absent that admission, you may have a valid
14 point, but not with the admission.

15 MR. WEINER: The admission didn't go
16 to Painesville.

17 THE COURT: I thought the admission
18 goes to the entire area.

19 Let's proceed, gentlemen. Please go to your
20 seats.

21 MR. WEINER: Do you want to take up
22 the points now or later on the exhibits?

23 THE COURT: Are you going to allude
24 to them now? Well, do it at the recess. Come on,
25 go back.

1 MR. WEINER: We will do it at the
2 recess.

3 {End of bench conference.}

4 - - - - -

5 {Further bench conference ensued on the
6 record as follows:}

7 THE COURT: Gentlemen, the Court
8 has considered the motion of CEI as it relates to
9 the CAPCO evidence taken in conjunction with the
10 releases executed by the City, and the Court has
11 treated the motion as a motion for summary
12 judgment and I have overruled the motion for the
13 reason set forth in the opinion and we will
14 proceed accordingly at the appropriate time.

15 ~~Send in the jury.~~

16 {End of bench conference.}

17 - - - - -

18 {The jurors resumed their places in the jury
19 box.}

20 THE COURT: Call your next witness.

21 MR. HJELMFELT: The City would call
22 Jerry Salko.

23 - - - - -

24

25

1 J E R O M E S A L K O;

2 a witness called on behalf of the plaintiff,
3 being first duly sworn, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION OF JEROME SALKO

7
8 BY MR. HJELMFELT:

9 Q Would you please state your name and address?

10 A Jerome Salko, 625 Tollis Parkway.

11 Q By whom are you employed?

12 A City of Cleveland, Division of Light and Power.

13 Q In what capacity are you employed?

14 A Presently, I am the Manager of Production and Power
15 Generation. I have been so since February 1978.

16 Q What was your position prior to 1978?

17 A Prior to 1978 I was a Senior Assistant Electrical
18 Engineer.

19 Q What were your responsibilities as the Senior Assistant
20 Electrical Engineer?

21 A As a Senior Assistant I studied the transmission and
22 distribution system of Muncy Light under Sesler Titus
23 and Bill Matthews in training for familiarizing
24 myself with system operations, load transfers,
25 restoration of service and locating trouble on the

1 Salko - direct

2 system.

3 Q Did you have any responsibilities with respect to the
4 generating system portion of the plant?

5 A With respect to the gas turbines, I did.

6 Q Would you please describe your educational background?

7 A I graduated from St. Stanislaus High School in 1965
8 and I attended Ohio University in Athens for two and
9 a half years.

10 In 1968 I went to work for the City and continued
11 my school at Cuyahoga Community College. I am
12 presently attending Cleveland State right now.

13 Q Would you describe what was involved in your
14 responsibilities with respect to the distribution and
15 transmission portion of the Muny Light System during
16 the years 1973 to 1975?

17 A From 1973 to 1975 I took charge of the actual operation
18 of the transmission and distribution as far as doing
19 load transfers, locating any cable trouble in the
20 system, studying the system loads and doing load
21 forecasting, projecting what our daily load would be.

22 Q What was the purpose of your daily load forecast?

23 A The purpose of the daily load forecast is to determine
24 what our maximum peak will be for the day in megawatts
25 and determine whether we have enough generation

1 Salko - direct

2 available to meet that peak. If we don't have
3 generation available, then we would look to either
4 putting a tie-in with CEI in effect or else doing a load
5 curtailment.

6 Q What do you mean by a load curtailment?

7 A Load curtailment means you reduce your system load.

8 The first steps you would take would be to ask for
9 a voluntary reduction in our water pumping loads and
10 then go on to reduce our street lighting load.

11 Q Why is it necessary to dump load?

12 A Why is it necessary?

13 Q Yes.

14 A If you don't have enough generation to meet your load
15 and you don't drop the load, then you have a chance of
16 losing your whole system. The generators will grind
17 to a halt if you are putting too much on them than they
18 can handle.

19 Q You mentioned some tie points to CEI. What do you mean
20 by tie points?

21 A Well, from 1970 through 1975 there were 11 KV tie lines
22 with CEI. They were termed five different tie points.
23 That's CEI's terminology for them. There were Clinton,
24 Clark, and three points that emanated from their
25 Lake Shore station. They actually served nine

Salko - direct

1
2 different Muny Light substations and Muny Light
3 referred to them as the different substations which
4 they serviced.

5 Q What was the purpose of these tie points?

6 A It was to purchase power from the CEI system for the
7 Muny System.

8 Q Were there any other points at which electricity was
9 purchased by Muny Light from CEI?

10 A Yes, there was. In the early part of 1970 there was a
11 mobile station that was connected at our Collinwood
12 station and there was also a 69 KV tie point which was
13 also a dead load transfer point between CEI transfer
14 station and Muny Light Lake Road generating station.

15 Q What is a mobil substation?

16 A The mobile substation is actually a transformer on
17 wheels that can be taken from one place to another.
18 It is used to drop the voltate to a transmission or
19 distribution level to be able to serve our customers.

20 The one out at Collinwood dropped the voltage
21 from, I believe, 33,000 to 11,000.

22 Q Is that the same purpose as any other substation in
23 your system?

24 A Yes, it is.

25 MR. HJELMFELT:

I would ask Mr. Leo