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

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Transcript

Monday, October 20, 1980

Hindrich, Williams, Sever



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1980

C-60202

1 MONDAY, OCTOBER 20, 1980, 10:10 A.M.

2 {The following proceedings were had out of
3 the hearing and presence of the jury:}

4 THE COURT: Bring in the jury.

5 {The Court and Mr. Leo conferred off the
6 record.}

7 THE COURT: Gentlemen, before I
8 summon the jury, the parties will note the Court
9 did not address the issue of pass-through defense.

10 Have we received the reply brief of the
11 defendants?

12 MR. LANSDALE: Yes, your Honor. We
13 submitted it this morning. I don't think your
14 Honor would have seen it.

15 THE COURT: I have not seen it.

16 I don't know if it is the intention of the
17 defendants to immediately introduce or attempt to
18 elicit testimony concerning that defense at this
19 time.

20 The Court would request that such evidence --
21 that the defendant defer from introducing such
22 evidence until at least the Court has had an
23 opportunity of reviewing the parties' briefs and
24 ruling upon that aspect of the case.

1 With that, gentlemen, I'm prepared to
2 proceed.

3 Yes, Mr. Norris?

4 MR. NORRIS: I would like to put on
5 the record that this morning we received two books
6 of work papers from Mr. Kemper, including a survey
7 that was done last week, and Friday afternoon we
8 received Dr. Gerber's work papers, which likewise
9 included a survey, and we are now commencing to
10 analyze these documents that we received today.

11 THE COURT: Very well.

12 {The foregoing proceedings were had out of
13 the presence of the jury.}

14 - - - - -

15 THE COURT: Good morning, ladies
16 and gentlemen. I think we are prepared to proceed.

17 The plaintiff has now rested its case, and we
18 come to that portion of the trial where defendant
19 will proceed if they are desirous of proceeding.

20 You may proceed, Mr. Lansdale.

21 MR. LANSDALE: Call Mr. Lindseth.

22 - - - - -

23
24
25

ELMER LINDSETH,

called as a witness by the defendant, being
first duly sworn, was examined and testified
as follows:

MR. LANSDALE: Mr. Lindseth, I believe,
has already been sworn.

THE COURT: Yes, Mr. Lindseth. You
shall be testifying under the oath heretofore
administered in this case.

Do you understand that, sir? Do you understand
that?

THE WITNESS: Yes, I do, your Honor.

THE COURT: All right.

You may proceed, Mr. Lansdale.

- - - - -

DIRECT EXAMINATION OF ELMER LINDSETH

BY MR. LANSDALE:

Q Mr. Lindseth, we already have on the record your
education and employment background. One thing we
didn't elicit is whether or not you are a native of
Cleveland and where you went to high school.

A Well, I grew up in the City of Cleveland, went to

Lindseth - direct

Cleveland public schools, went to Glenville High School, from which I got a scholarship to go to Case, and I lived all my youth and working life in Cleveland.

Q Now, Mr. Lindseth, we asked you to do some research and to review the records of your time with the company and beyond that.

Will you tell me what it was that you were asked to do to prepare yourself for this testimony?

A Well, I was asked to review in general the history of the Municipal Light System, the relationship of the CEI Company and the Municipal Light Plant during my tenure as an employee of the Illuminating Company, which was some 40 years; and to review the relationship prior to my becoming an employee from the available sources.

Q Tell us how you went about preparing yourself for this testimony?

A Well, I mentioned available sources. In the earliest period prior to my commencing work in 1962, when Muny was then 20 or more years old, I reviewed the published records of the Municipal Light System, a history of the Municipal Light System prepared by one of its engineers.

1 Lindseth - direct

2 I reviewed the company's records of those early
3 years.

4 I relied heavily on published statements of the
5 Mayors of Cleveland and the administrative executives
6 and the heads of the Municipal Light System, many of
7 whom made their reports to the public, largely to
8 statements reported in the press.

9 Following my period of employment with the
10 company I had access to the company's own records and
11 the continued publication by Muny Light System of its
12 records to the Federal Power Commission; and in
13 addition, I had the benefit of reports from
14 professional consultants, consulting engineers and
15 accountants that the Muny Light System had retained.

16 MR. LANSDALE: Mr. Leo, would you
17 show Mr. Lindseth CEI Exhibit 30?

18 {Mr. Leo complies.}

19 Q Mr. Lindseth, is CEI Exhibit 30 the written publication
20 of the Muny Light officials to which you referred?

21 A Yes, it is.

22 Q And who was that official?

23 A It was written by Mr. Edward J. Kinnealy.

24 Q When was it published?

25 A 1935.

Lindseth - direct

Q What was Mr. Kinnealy's position at that time?

A He was then electrical engineer for the Division of Light and Power in Cleveland.

Q And you had personal acquaintance with Mr. Kinnealy, did you not?

A Yes, I did.

Q And can you tell us approximately how long he remained with the city, and what the final position of his career was?

A Well, Mr. Kinnealy began with the Municipal Light System very early -- I wouldn't have a precise date, but I would be sure it was before 1920, in the period of very rapid growth.

He remained with the Municipal Light System and, later, with the Department of Law, until -- I don't have a precise date -- but the late 1950's or 1960's, when he became a member of the Public Utilities Commission of the State of Ohio at Columbus.

Q All right, sir.

Now, you referred to the fact that you looked at early newspaper accounts of statements or reports of officials of the City of Cleveland respecting Munny Light or the Munny Light System.

In your career at the Illuminating Company, did

Lindseth - direct

you have any experience with the use of newspaper accounts of the position of Muny Light or any reliance on them?

A Yes, I did.

In the earliest years, the very earliest years, the first one or two years Muny Light issued what would have amounted to an annual report to the public not different from, although quite abbreviated, a corporation report to its stockholders.

But beyond the first couple of years, Muny did not issue such annual reports, and the company relied heavily on the statement of the Director of Public Utilities, the City of Council, and the cabinet -- the Mayor's cabinet and the Commissioner of Light and Power, who made, from time to time, statements to the press, because their constituents were -- comparable to a company's stockholders -- were the citizens of Cleveland, to whom they reported importantly in the newspapers.

Q What is the fact as to whether, in your time with the company, you relied on such reports to inform you as to the intentions and positions of Muny Light?

A Yes, we did, very definitely, because those reports often indirectly, I'm sure, were made in order that

Lindseth - direct

they could state their position for us to know.

Q Now, Mr. Lindseth, did you reduce to writing or compile a writing showing the results of your research?

A Yes, I did.

Q Mr. Lindseth, what period did you cover in your study?

A Well, I covered the period from the annexation of the first predecessor system of the Municipal Light System which occurred in 1906, when the City of Cleveland annexed the City of South Brooklyn and, with it, its Municipal Light Plant.

Then that period from 1906 to 1910, the expansion of the Brooklyn System into the City of Cleveland; and, in 1910, the annexation of Collinwood Village, which also had a municipal system. And, at that time, the movement to create a Division of Light and Power of the City of Cleveland was very active; whereupon, a bond issue was proposed, and in 1911 that bond issue was passed by the voters for \$2 million creating a unified municipal light system.

Q Well, Mr. Lindseth, in a moment we will cover this thing in more detail. But I want to know now, what period of time you covered? You said you started back in 1910. When did you end your study?

A I ended it with the period when I -- the time -- the

Lindseth - direct

date when I retired from the company, which was 1967,
February of '67.

Q All right. Now, as a result of your studies, did you
discern any consistent patterns as to the competitive
relationship between CEI and the City?

MR. NORRIS: May I approach the
bench?

THE COURT: Yes.

- - - - -

{Bench conference ensued on the record as
follows:}

MR. NORRIS: I would object to
questions being put to Mr. Lindseth as an expert.
I don't think that a former chairman of the board
who, even though he has had long experience with
the company, has made a study of reading newspaper
accounts and so forth -- that would not be
sufficient to justify his being recognized as an
expert, and I don't think that the rules of
expert testimony should apply to him.

I assume that is what you are going into, and
I just wanted to make that clear in the record.

MR. LANSDALE: We will see what I go
into.

1 Lindseth - direct

2 But he lived as an employee or executive of
3 CEI since 1926. If he doesn't have any basis for
4 opinions as to the competitive relationship, I
5 don't know how one would obtain it.

6 Secondly, I have brought out so far that he
7 has examined the records, including CEI's records
8 for these periods and all the rest of it. I think
9 he has been shown to be competent to testify to
10 his views as to what this shows.

11 MR. NORRIS: Well, my only objection
12 at the moment goes to the period prior to which he
13 was in a senior executive position at CEI. It
14 seems to me that during that period, I would have
15 no objection to his testifying to what is within
16 his own knowledge. But to testify at length with
17 respect to material that he is not familiar with
18 I think is governed by the hearsay rule.

19 Now, this particular Kinnealy report, that
20 is already admitted. That is already in evidence
21 and it speaks for itself.

22 MR. LANSDALE: I don't know how else
23 one would show these things than to have somebody
24 study and testify to what it shows. And we have a
25 man who is particularly fitted to do this.

1 Lindseth - direct

2 THE COURT: Well, first of all, I
3 think that from his experience with the company
4 and his educational background, he certainly is
5 qualified to speak to the question as directed to
6 him.

7 And again, if he is an expert, we are
8 confronted with the utilization of Rule 703 as it
9 applied to the testimony of Dr. Wein with
10 relationship to the records that he examined, it
11 would appear to me, Mr. Norris.

12 MR. NORRIS: Well, I think that the
13 disciplines that are pursued by an economist, both
14 from study and through practice of the profession,
15 are significantly different than the disciplines
16 pursued by a successful businessman.

17 THE COURT: He is not a successful
18 businessman. Didn't he go to Case Western
19 Reserve?

20 MR. LANSDALE: He went to Case
21 Western Reserve and Yale.

22 THE COURT: And what was --

23 MR. LANSDALE: And not only that, I
24 don't know how else anybody could become an expert
25 in competitive relationships in the electric

Lindseth - direct

business than a man who has lived through it uniquely.

THE COURT: Yes.

I will overrule the objection to this question.

MR. NORRIS: Well, the basis of my objection was that he is not an expert.

Now, have you ruled on his status as an expert?

THE COURT: I think that he is capable of answering this question, yes. He certainly is an expert as far as rate matters are concerned. Here is a man that was -- I don't know. He was an employee with CEI from 1926 and thereafter until 1967, and he is probably familiar with all aspects of the business. He came up through every phase of the company and ended up as Chairman of the Board.

Certainly that qualifies him as an expert as to -- at least it should as to an analysis of comparative rates as between Muny Light and other competing companies.

MR. NORRIS: The question that has been put is "Did you discern a relationship, a competitive relationship between Muny Light and

1 Lindseth - direct

2 CEI, and my objection, your Honor, is until he got
3 to a point where he himself had personal knowledge,
4 that it is hearsay testimony.

5 THE COURT: Well, this is the same
6 thing that we addressed before with the testimony of
7 all experts, the same as Dr. Wein and Mr. Mayben.
8 You know, I had to overrule myself on that one as
9 far as Rule 703 is concerned.

10 And Rule 703, it appears that experts can
11 testify as to almost anything, and then the ball
12 goes to you on cross-examination to elicit
13 whatever you are desirous of eliciting, either as
14 to credibility or as to the substance of his
15 testimony. I was surprised as to the breadth of
16 703, as you well appreciate from the manner in
17 which I ultimately ruled.

18 But I overrule the objection. Let's proceed,
19 gentlemen.

20 Exceptions are noted.

21 {End of bench conference.}

22 - - - - -

23 MR. LANSDALE: May we have the
24 question reread, if your Honor please?

25 THE COURT: Yes. Read the question,

Lindseth - direct

please.

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

"Q All right. Now, as a result of your
studies, did you discern any consistent patterns
as to the competitive relationship between CEI
and the City?"}

A Yes, I did.

Q Would you summarize what you learned?

A In general I found a consistent pattern where Muny was
very aggressive in its competitive posture and sought
aggressively to grow whenever it had capacity to do so.
By capacity I mean generating plant capacity,
transmission and substation and distribution capacity.

When Muny lacked such capacity, Muny adopted a
posture of live and let live; and, in short, Muny
called the tune and set the pace.

Q Do you have, as a result of your studies and
experiences, a view as to the character of Muny Light
management from time to time during this long period?

MR. NORRIS: Objection.

THE COURT: Approach the bench.

- - - - -

{Bench conference ensued on the record as

Lindseth - direct

1 follows:}

2 MR. NORRIS: Objection to the
3 question, "opinion about Muny Light's management."
4

5 Again, I think he is restricted to the time
6 that he had personal knowledge about it. I think
7 that there has been no foundation laid that he can
8 testify as to Muny Light management, except for
9 that period of time that he had personal knowledge
10 of.

11 MR. LANSDALE: Your Honor, perhaps I
12 should have added the thing, "is manifested by
13 its activities and results as you observed it."

14 I am willing to add that to it.

15 THE COURT: Well, as to this
16 objection, Mr. Lansdale, certainly he would be
17 permitted to testify during his tenure, and from
18 his own personal observations. But for him to
19 attempt to express an opinion before his time,
20 from 1910 to when he became personally cognizant
21 of it, I think would be very remote that --

22 MR. LANSDALE: It doesn't make any
23 difference. I'll strike the whole thing.

24 THE COURT: All right.

25 Sustain the objection, Mr. Norris.

1 Lindseth - direct

2 {End of bench conference.}

3 - - - - -

4 MR. LANSDALE: We will withdraw the
5 question, Mr. Lindseth.

6 THE COURT: Sustain the objection.

7 BY MR. LANSDALE:

8 Q Let me ask you this. Did the, as you observed it during
9 your time and as the result of your studies of the prior
10 history, did the character of the competitive
11 relationship between Muny Light and CEI shift
12 frequently in the past 70 years, or was there some
13 slower pattern to this?

14 A No. Rather than shifting frequently, I discerned three
15 basic periods or eras in Muny Light's relationship with
16 the company.

17 The first of these was a period of very aggressive
18 growth, from the creation of Muny until the late '30's.

19 Then a second period I detected, from the late
20 '30's to the late '50's, which was a quiescent period,
21 when, under capacity restraints and Muny having little
22 capacity to sell, there was a period of live and let
23 live.

24 The City itself recognizing that, christened it a
25 yardstick era, and many times stated that the function

Lindseth - direct

of the Municipal Light Plant was a yardstick function, until the late 1950's, when, with a new director of Public Utilities, a very aggressive attitude grew, and Muny resumed aggressive competition.

From then on until the end of my tenure, Muny had a posture of aggressively seeking all the business it could in the area it served.

Q Mr. Lindseth, we already have in evidence the facts as to the status of Muny Light, the physical status of Muny Light in about 1910 and '11, when the City acquired the Collinwood and South Brooklyn.

Can you describe for us CEI's system as it existed at this same period?

A Well, as of about the date of the creation of the Municipal Light System -- and it built its first generating plant in 1914 -- CEI had two power plants; it had 10 substations in the City of Cleveland, plus a number of others in the surrounding environs; it had a distribution system covering the City of Cleveland. It was prepared to serve the City as it had been serving the City of Cleveland; and it was the established electric utility in the City of Cleveland.

Q Where were the two power plants? Where were they physically located?

Lindseth - direct

1
2 A One was at Canal Road, which dated of the 1890's,
3 behind the Public Square, on the Cuyahoga River.
4 The other was on the shore of Lake Erie, commissioned
5 in 1911, roughly in the area of Gordon Park at East
6 70th Street.

7 Q Is that generating station still in use?

8 A Yes, it is, called the Lake Shore station.

9 Q How about Canal Road?

10 A Canal Road is in service as a steam heating plant
11 which services downtown Cleveland with steam heat.

12 Q It no longer generates the electricity?

13 A It does not.

14 Q Now, I take it in that era that we're referring to,
15 1910-11, what is the fact, as your research shows, as
16 to whether or not electricity was universally enjoyed
17 by the inhabitants of Cleveland?

18 Were all the houses wired for electricity as
19 they are now, or what was the fact?

20 A No. Electricity was coming into its own, and not all
21 the houses were wired; and the complete electrification
22 of the older residences in Cleveland was not completed
23 until roughly the middle 1920's.

24 Q I'll show you, Mr. Lindseth, CEI Exhibit 1037 on the
25 screen, if I could have Mr. Murphy to show it.

Lindseth - direct

{Mr. Murphy complies.}

Q What I would like to do, we have a mechanism for covering up some of those, and I would appreciate it if you would isolate the area labeled "1910."

{Mr. Murphy complies.}

Q Exhibit 1037, that portion of it which is labeled "1910 customers 2,300:"

What does the "customers 2,300" refer to, Mr. Lindseth?

A The 2,300 customers were the combined customers in the two red areas.

The one in the upper right-hand corner is formerly Collinwood Village and annexed in 1910; and the one in the lower center is the Village of South Brooklyn annexed in 1906.

Q Mr. Lindseth, the black outline which extends beyond the colored areas of the map represents what?

A That represents the municipal boundaries of the City of Cleveland as it exists today.

Q As it exists today.

And how about those lines extending out from the red space at the bottom of the map which you have indicated was South Brooklyn?

A I mentioned that the bond issue to create the Cleveland

Lindseth - direct

Municipal Division of Light and Power was not passed until 1911.

But by 1910, the City of Cleveland, in an aggressive attitude, had extended lines from South Brooklyn, as shown in the lower left-hand area of the green portion, penetrating along main arteries of the City of Cleveland, building street lights, installing street lights, and transferring customers from the -- formerly served by CEI over to the then fledgling municipal system.

Q What is the fact as to whether or not the record shows that CEI already had lines in that -- on those streets where those lines are indicated?

A All of those streets were covered by facilities of the CEI company prior to the building of lines on the same streets by Muny.

MR. LANSDALE: Will you uncover the second one?

{Mr. Murphy complies.}

Q Looking at the map labeled "1914 Customers 9,100," it refers to what?

A The 9,100 figure is the number of customers served by the Division of Light and Power at year end 1914.

During 1914, the power plant presently -- or then

Lindseth - direct

known and now known as East 53rd Street was built; and the lines in the four-year interval between 1910 to 1914 were extended as shown on the right-hand side of that diagram all the way from Collinwood to South Brooklyn on existing streets, duplicating existing CEI lines.

Q Mr. Lindseth is 1914 the time that Muny Light's maximum rate of 3 cents per KWH went into effect that we've heard about previously in this case?

A Yes, it was.

In the program to enlist the support of the voters to authorize the bond issue, 3 cents light was promised. And in 1914, the City Council passed an ordinance figure being the maximum rate for electricity in the City of Cleveland at 3 cents a kilowatt hour.

Q At that time, CEI's maximum rate was what?

A The CEI maximum rate was 10 cents per kilowatt hour for the first block of its rate schedule.

Q Do you know what its average rate was about, the balance?

A Its average rate was about 5-1/2 cents, because promptly -- not promptly -- but the first block of the rate schedule was 10 cents, the second block was 5 cents, the third block was 3 cents, with the result that

Lindseth - direct

average residential energy was sold at about 5-1/2 cents.

The bill for 25 kilowatt hours was \$1.60.

Q Okay, sir.

Now, Muny's -- Muny Light's increase from 2,300 customers, which you said were primarily in the red areas served by South Brooklyn and Collinwood -- by the way, Mr. Lindseth, did Muny Light -- did CEI serve either in Collinwood or South Brooklyn in the areas marked in red on the map?

A No, they did not.

Q And in the increase from 2,300 to 9,100 from 1910 to 1914, do you know where that customer increase came from? Were they new customers, were they taken from CEI or what?

A Well, in the year 1914 alone, the number of Muny customers increased from 5,300 to 9,100. Of those, 1,300 had been previously served by CEI and were switched from CEI's system to Muny's system. It was a very rapid rate of growth for Muny. The number of customers on their system increased by 30 percent in a single year. A very rapid rate of growth.

MR. LANSDALE:

Now let's look at the

next map, Mr. Murphy, please.

Lindseth - direct

Q This shows the situation in 1920, does it, Mr. Lindseth?

A Yes, it does.

Q And the red area indicates what?

A The red area indicates there the aggregate service area of Muny Light at the 1920 period when they had expanded to encompass some 18 square miles and served some 27,000 customers.

Q What is the fact as to the growth of Muny Light as to whether it represented new areas or whether there was duplication of CEI's existing plants?

A Well, the fact was this was virtually entirely -- actually entirely duplicating CEI lines except in the areas of Collinwood and South Brooklyn, where Muny was adding customers to newly-built homes in those areas where CEI did not serve. But in the green area, where the red overlies the green area, Muny duplicated CEI's lines and went down street after street and replaced the service of former CEI customers.

In the year 1915 alone they switched 3,000 customers, and from 1914 to 1917, they switched more than 5,300 customers formerly served by CEI over to the Muny system.

Q Mr. Kinnealy has some observations about this in his book, does he not?

Lindseth - direct

1
2 A Yes, he does.

3 MR. LANSDALE: Will you show us that,

4 Mr. Murphy.

5 Q That indicates one of the statements made by Mr.
6 Kinnealy in Exhibit 30, does it not?

7 A Yes, it does.

8 Q Will you read that, please.

9 A Mr. Kinnealy reported that "During these years
10 {1913 to 1919}, the Muny Plant extended its system into
11 territories supplied by the private utility; this meant
12 a duplication of poles, wires, cables, and so forth,
13 with the result that much of the private utility's
14 equipment was made useless."

15 Q Now, referring again to this period 1914 to 1920, what
16 was the growth, in addition to extending into the
17 distribution system as you have indicated, what was the
18 growth in Muny's generating capacity?

19 A The initial capacity of the new Muny Light Plant, the
20 so-called East 53rd Street station, which opened in
21 1914, was 15,000 kilowatts. When that station
22 opened, the former Collinwood and Brooklyn plants were
23 abandoned.

24 By 1919, under the very rapid rate of growth that
25 Muny had been experiencing and the onslaught of

Lindseth - direct

World War I, Muny added 10,000 additional kilowatts, bringing their total plant to 25,000 kilowatts.

Q Mr. Lindseth, I show you CEI's Exhibit 1050.

MR. LANSDALE: Mr. Murphy, will you put that on the screen.

Q Can you tell me what this illustrates, Mr. Lindseth?

A This is a view taken within the last year or so, within the last year, of the duplicate facilities on St. Clair Avenue in the portion of the City of Cleveland west of the one-time Village of Collinwood.

Q Mr. Lindseth, you said this was taken recently.

What is the fact as to whether it represents conditions existing previous to the time the photograph was taken?

A The lower lines on that picture on the left-hand side are the Muny Light system.

The upper lines are the CEI system.

That line of Muny we saw on one of the diagrams representing the very early extension of the Muny system from Collinwood into Cleveland at or around 1914.

Q Now, let's show CEI Exhibit 1051.

This photograph shows conditions existing where?

A This represents the conditions on Clark Avenue, and

Lindseth - direct

shows duplicate facilities of the Municipal Light System being built on the left-hand side of the street and CEI on the right-hand side of the street.

The records show that the CEI line was there at the time Muny encroached on the territory and duplicated facilities already in being.

Q Mr. Lindseth, is there similar duplication in the old Collinwood and old South Brooklyn areas originally served by the Muny Light?

A No, there are not, because CEI did not follow the practice of Muny of duplicating existing facilities; as a consequence of which, while CEI does have lines in both the former Collinwood area and the former South Brooklyn area, that, in general, projections from the periphery into portions of those villages which were, in large measure, not served at the time of annexation.

Q Mr. Lindseth, is there similar duplication in the downtown area of Cleveland?

A Yes, there is. But that is underground and not quite amenable to illustrating on a photograph.

Q Will you put back on the screen Exhibit 1037, please.

I show you this time the portion of the map going to 1930. What does the map labeled 1930 show, Mr.

Lindseth - direct

Lindseth?

A This map shows another decade of expansion of the Municipal Light System from 18 square miles to 24 square miles.

It shows some expansion by annexation of the green area. Not especially in the lower left-hand corner, where the City of Cleveland has annexed more territory already served by CEI.

It shows that the number of customers served by Muny in that 24 square miles was now 44,000 customers, many of which had been former customers of CEI.

Q Do you have any records of the number of switches for this period?

A No. From 1917, the wartime period, until 1930, we don't have records -- at CEI, at least -- of the switches of former CEI customers to the Muny system.

Q All right, sir. Will you uncover the next square.

We show you now the portion of this exhibit relating to 1935. Will you tell us what happened to Muny Light and its relationship to CEI during this five-year period, 1930 to '35?

A Well, this was a very dramatic period in the city and the country, because it represented the period of so-called Depression.

Lindseth - direct

Muny Light expanded its territory in that five-year period by 3 more square miles, from 24 to 27. It expanded its total customers from 44,000 to 52,000, or 8,000 customers during a period in which the number of customers switched from the CEI company in five years' time was an extremely large number. I don't have the -- oh, yes, I can.

The number of those switches was, from 1930 to 1935, was almost 10,000 customers, during a period when Muny Light gained a number of customers only about 8,000. Meaning that they switched more customers from CEI than they grew, because customers, during the pressure of the Depression, gave up electric service completely, or houses were vacant, and customers were lost on both CEI and the Muny systems.

But the number of switches from the CEI system to the Muny system during that period, 1930 to 1935, was almost 10,000.

Q Mr. Lindseth, tell me what the situation was at Muny Light at this time relative to its capacity and its ability to serve additional customers?

A Well, by this time, even by 1930, Muny had doubled the generating capacity of its system from 25,000 kilowatts to 50,000 kilowatts.

Lindseth - direct

1 It's then most-recent unit was installed in 1925.
2
3 It had increased the number of customers, as the
4 figures indicate on the chart; and it was quite fully
5 loaded by 1935.

6 In fact, they ran a high-risk operation, with a
7 total customer load exceeding the so-called safe
8 capacity of their system. They ran to the limit of
9 their -- they expanded in number of customers to the
10 very limit of their ability.

11 Q Did they make any effort to expand capacity during this
12 period?

13 A No. From 1925 to 1941 there were no additions of
14 generating capacity.

15 The people of the City of Cleveland disapproved
16 or failed to approve a bond issue proposed in 1931;
17 the City Council failed to approve a bond issue
18 expansion in 1932; and the City Council again declined
19 to approve an expansion in 1933.

20 So we had the situation of financial stringency
21 preventing the expansion of the plant, but the
22 operators of the Muny System operating to the very
23 threshold of their capacity, and expanding to the
24 limit of their financial resources.

25 But the City of Cleveland was in tough financial

Lindseth - direct

straits, and owed the Municipal Light Plant, for unpaid bills, \$2.7 million by the end of this period.

Q Let me show the next map, please.

This map is labeled 1975, Mr. Lindseth. Would the map look any different if it were labeled 1967, the year of your retirement?

A It would differ not in the area served. The number of customers would have been about 55,000 instead of 46,000.

Q Sir, now, I would like for you to discuss a little bit the period after 1935 up to 1967.

What happened during the war years, so far as electric service is concerned, by Muny Light and CEI?

A Well, during the war years, 1941 specifically, the Municipal Light Plant installed its first capacity addition by building its so-called Lake Road station, which opened for service in 1941 and 1942.

Q How was that financed?

A That plant was built in, in important part, with a massive grant, a free gift from the Federal Government of virtually \$3 million.

Q Was Muny Light able to carry its full load during these war years?

A No. In the year 1941-42, Muny was not able to carry its

Lindseth - direct

own load.

CEI, as they had previously, several times, came to the aid of the Municipal Light System, this time for a period of 11 continuous months. Muny's Collinwood substation was transferred, through a load transfer facility, to the CEI system. And CEI carried an important part of Muny's load for the 11 months during the war period.

Q Now, you mentioned earlier that a period, 1930's -- late 1930's through about 1957 of a competitive relationship.

Will you describe the competitive relationship between CEI and Muny Light during this period?

A Well, this was characterized -- or I have characterized this period as a period of a conflict of philosophy as between an expressed public statement on the part of the Mayors of the period, called the "yardstick era," when the professed period of the top echelon in the City Government was of non-competition, and the use of the plant for yardstick.

Underlying this philosophy, however, which, actually, was a philosophy of necessity instead of a philosophy of true yardstick rate making, underlying that was the competitive spirit of the persons in

Lindseth - direct

charge of the Municipal Light System itself resulting, as is seen there, of some 10 square miles in service area and the addition of customers with a philosophy of operation which was a high-risk philosophy; they exceeded the safe capacity of their facilities but had an ability to curtail their load by curtailing street lighting and curtailing water pumping so that their high risk was absorbed by the Water System and the Street Lighting System.

MR. NORRIS: May I approach the bench?

THE COURT: Yes, you may.

- - - - -

{Bench conference ensued on the record as follows:}

MR. NORRIS: I have been trying now to object, but I think it's objectionable that the witness is characterizing, without a proper foundation being laid, about the high-risk operation and taking chances.

Also, I think the witness is rambling and being much more voluble in answer to the question than appropriate.

And I would request that counsel's questions

Lindseth - direct

not invite such rambling dissertations so that I can object if I feel it appropriate.

MR. LANSDALE: I quite agree with you, he's talking more than I expected him to talk, and I will try to be more restrictive in my questions.

MR. NORRIS: But I would request that the jury be instructed to disregard the testimony about high risk unless there is a proper foundation laid.

MR. LANSDALE: I think he has explained why it's a high risk.

THE COURT: That is what he said, it's a high risk.

MR. LANSDALE: I disagree. He has shown that he knows what he's talking about.

THE COURT: Because they're exceeding the generating capacity by load or --

MR. NORRIS: But that is a characterization.

He can say that their load was such and such, and that capacity was such and such.

Why does he have to characterize it in terms of "high risk"? That might mean one thing to one

1 Lindseth - direct

2 person and something else to another person.

3 THE COURT: All right. Let's
4 proceed.

5 I will instruct the witness to conform to the
6 questions.

7 {End of bench conference.}

8 - - - - -

9 THE COURT: Mr. Lindseth, please
10 listen to the question and respond to the question
11 and don't go beyond the question, and endeavor not
12 to characterize your answers.

13 Let's proceed.

14 BY MR. LANSDALE:

15 Q Mr. Lindseth, still referring to this period
16 approximately 1935-36 to 1957 which you characterized
17 as live and let live, what was the nature of the
18 competitive relationship during this period between
19 Munny Light and CEI insofar as shifts of customers
20 were concerned or attempts to solicit one another's
21 customers?

22 A Well, this was quite a quiescent period, --

23 MR. NORRIS: Objection.

24 Excuse me, your Honor, there are two
25 questions there.

1 Lindseth - direct

2 THE COURT: Just a minute, please.
3 If you are desirous of making an objection, please
4 come to the bench.

5 - - - - -

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

8 THE COURT: Read the question back,
9 please.

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

12 "Q Mr. Lindseth, still referring to this
13 period approximately 1935-36 to 1957 which you
14 characterized as live and let live, what was the
15 nature of the competitive relationship during
16 this period between Muny Light and CEI insofar as
17 shifts of customers were concerned or attempts to
18 solicit one another's customers?"}

19 MR. LANSDALE: I'm trying to cut him
20 down.

21 THE COURT: It is only one question.

22 MR. LANSDALE: I'm trying to narrow him
23 down as you want me to do.

24 MR. NORRIS: The thing I have
25 objected to, the question is about "shifts", and

1 Lindseth - direct
2 then, another part of the question "attempt to
3 solicit", so that --

4 THE COURT: Rephrase the question.
5 {Bench conference concluded.}

6 - - - - -

7 THE COURT: Rephrase the question.

8 BY MR. LANSDALE:

9 Q Mr. Lindseth, referring to this period 1935-1936-1957,
10 what was the situation between Muny Light and CEI
11 insofar as solicitation of one another's customers
12 was concerned?

13 A This was a period of relatively little switching of
14 customers from one system to the other.

15 The statistics are -- at the CEI are not available
16 for the entire period; but after the war-time years,
17 starting about 1949, the number of shifts one way or
18 the other was of the order of 100, with a net shift
19 in favor of the Muny Light system each year from 1955
20 or '6 to 1960 or so, but the net effect over the
21 decade was essentially a standout.

22 Q All right, sir.

23 Now, what -- you have mentioned a sort of a new
24 era in the relationship beginning in 1957.

25 What happened then?

Lindseth - direct

1
2 A This quiescent period of a very low number of
3 switches from one system to the other came to an end.

4 The number of customers Muny -- or CEI lost to
5 Muny in 1958 reached about 200; by 1959 it reached
6 almost 400; by 1960 it was essentially 400, and CEI
7 realized that the times had definitely changed.

8 Q I show you, Mr. Lindseth, Exhibit 1041, CEI Exhibit
9 1041.

10 {Mr. Murphy places the exhibit on the lighted
11 screen.}

12 Q Will you tell us what this represents, what this chart
13 represents?

14 A This is a chart of the number of customers shifted from
15 the CEI system to the Muny Light system by years.

16 A vertical bar is proportional in its length to
17 the number of customers. So that the first line
18 represents 500 customers, and the next horizontal line
19 a thousand customers; which would indicate then, for
20 example, in a depression year like 1932, 3,400
21 customers that were shifted from CEI to the Muny
22 system, and sharply tapering off during the war-time
23 years, there is a little hiatus in the data where the
24 chart is all white, in about 1948 or '49, just a
25 minimum -- minimal number of customers, until 1958,

Lindseth - direct

it seemed to me that that curve rises to 200; by 1959 it's to 400; by 1962 it's at almost 500 customers shifting from CEI to Muny, which indicated to CEI an aggressive period of competition embarked on by Muny.

Q Mr. Lindseth, this, of course, represents customer shifts from CEI to MELP.

During that same period there were also shifts from Muny Light to CEI, were there not?

A Yes, there were.

Q All right.

Now, Mr. Lindseth, we're in the period now after the war when you were the chief executive of the Illuminating Company, are we not?

A Yes.

Q I'll -- with reference to your statement that because of the increasing shifts to Muny Light you realized that Muny was becoming aggressive again, did you get any other reports in this respect -- and I will show you CEI Exhibit 246 -- would you mind showing -- do you have a copy of that --

MR. LANSDALE: Would you mind giving

Mr. Lindseth CEI Exhibit 246? And I'll ask you to put the portion of that on the screen.

{The Clerk and Mr. Murphy comply.}

Lindseth - direct

Q Tell me what CEI Exhibit 24b is, Mr. Lindseth?

A This is a portion of a memorandum from one of our field service --

Q May I interrupt you, Mr. Lindseth?

The exhibit itself is not a portion. You are talking about the screen. I asked you about Exhibit 24b. That is not a partial thing, is it?

A No, it is not.

Q All right. Tell us what 24b is.

A Exhibit 24b is a three-page memorandum from a Mr. Walchli, W-a-l-c-h-l-i, in the Service Department of the company reporting on a discussion he had with his counterpart at Muny Light detailing the service practices which Muny would follow and the corresponding practices which CEI was following as of the date of the memorandum, early 1961.

Q And the slide on the screen is a portion of that memorandum?

A Yes, it is.

Q Did the receipt and consideration of this memorandum generate any activity by CEI?

A Well, this served to reinforce a decision CEI had already reached from its field personnel outlining service practices which Muny Light was following and

Lindseth - direct

1
2 which accounted in considerable measure for the
3 increased number of shifts from CEI to the Muny system
4 in combination with the aggressive solicitation that
5 Muny's field sales personnel had embarked upon.

6 Q Did CEI then develop any plans or practices to combat
7 this competition?

8 A Yes, CEI did. CEI used a procedure called its planning
9 process, and with a planning project which they
10 embarked on, they analyzed the situation of Muny's
11 competition and concluded that to defend itself against
12 Muny aggression, CEI should adopt a policy commensurate
13 with Muny's of providing certain wiring on customers'
14 premises, certainly commercial type customers where
15 the most serious losses took place, and the project
16 recommended and the policy was adopted of authorizing
17 wiring on consumers' premises in the amount of a half
18 of a year's revenue as a sales tool by which to induce
19 customers to shift to CEI's facilities.

20 Q I show you now Exhibit 1040.

21 MR. LANSDALE: Would you put that
22 on the screen, please.

23 A Does this exhibit, Mr. Lindseth, at least up to the
24 year 1967, summarize what you have stated about the
25 growth in the territory and customers of Muny Light?

Lindseth - direct

1 MR. NORRIS: May I approach the
2 bench?
3

4 THE COURT: Approach the bench.
5

6 - - - - -

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

9 MR. NORRIS: Objection to leading
10 the witness. Let him testify to what it is.

11 THE COURT: Sustained.

12 {End of bench conference.}
13 - - - - -

14 THE COURT: Sustain the objection.

15 Please don't lead the witness, Mr. Lansdale.

16 BY MR. LANSDALE:

17 Q Mr. Lindseth, was this exhibit prepared by you or under
18 your direction?

19 A Yes, it was.

20 Q And what does it show?

21 A This chart shows in the dotted line the growth in the
22 service area of the Municipal Light System where the
23 scale is on the right, and it is shown that by 1950,
24 the Muni Light System had achieved a growth and
25 expansion into a service area of roughly 30 square
miles, which it had sustained for the last 30 years.

Lindseth - direct

The solid red line shows the number of customers served by the Muny System and shows the very rapid increase in the period of aggressive growth pre-Depression, pre-1935 or so, and the period of relatively non-competition following 1937 up to the late 1950's.

It is then noted that the total number of customers of Muny sharply increased from about 1937 to 1962; during this period of renewed aggression.

Q I show you now Exhibit 1044.

MR. LANSDALE:

Mr. Murphy, would you

put that up.

Q This is CEI Exhibit 1044. Was that prepared by you or under your direction, Mr. Lindseth?

A Yes, it was.

Q What does it reflect?

A This reflects not gross number or total number of customers shifted to the Muny, but the net number; that is, the number which went to Muny reduced by the number which was transferred from Muny to CEI.

Q I notice some dotted lines on there. What does that show?

A The dotted periods are periods in which CEI lacks the data, largely during World War I and post-war period

Lindseth - direct

of World War II.

Q All right. Now, Mr. Lindseth, you indicated that there was an interconnection or rather a load transfer service provided by CEI to Muny Light during World War II to supplement Muny Light's power plants.

From that period until the time you retired, what is the fact as to whether CEI received any request by Muny Light to interconnect or otherwise install an electrical tie between CEI and Muny Light?

A No. Never during that period did the Muny Light people approach the people for an interconnection.

Q During that same period, Mr. Lindseth, was there ever any time when Muny Light or representatives of the City of Cleveland discussed with you or suggested to you any desire for such an interconnection?

A No, there was not.

MR. LANSDALE:

You may inquire.

MR. NORRIS:

May I approach the

bench, please?

THE COURT:

Yes.

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

MR. NORRIS:

I would like the last

Lindseth - direct

two questions to be read back.

THE COURT: Sure.

{The record was read by the reporter.}

MR. NORRIS: Thank you.

{End of bench conference.}

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THE COURT: Cross-examination.

- - - - -

CROSS-EXAMINATION OF ELMER LINDSETH

BY MR. NORRIS:

Q Mr. Leo, would you hand Mr. Lindseth what has been marked for identification as Plaintiff's Exhibit 3106.

Mr. Lindseth, can you identify Plaintiff's Exhibit 3106, if you will?

A Yes, I can.

Q What is that?

A This is a report I prepared of the studies I made of the relationship between Muny Light and the CEI Company for the period I described in my statement, my testimony.

Q You prepared that specifically for this case; is that correct?

Lindseth - cross

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A Yes, I did.

Q Turning to page 3-7, I notice at the bottom of the page there is a paragraph that refers to the wide circulation that Muny Light gave to the sales promotion brochure.

Do you see that reference on page 3-7?

A Yes, I do.

Q What was the nature of that brochure?

A As I recall it, it was an 8-1/2 by 11 printed document, printed on both sides, which stated that the Muny Light System was a fine asset for the City of Cleveland, and urged customers to become customers.

Q What was the extent of the circulation of that brochure?

A Well, my note here states it was mailed to all Muny customers.

Q In what year was that done? In the early 1960's?

A The memorandum says 1960.

Q Would you have any opinion -- well, strike that.

Have you participated in the preparation of sales promotion brochures at CEI?

A No, I have not.

Q Have you ever authorized the circulation of sales promotion brochures?

Lindseth - cross

1 A Yes, I have.

2 Q Would you have any opinion as to what kind of cost
3 would have been involved in the circulation of that
4 particular sales promotion brochure?

5 A No, I don't believe I would.

6 Q The mailing costs at that point in time -- the number
7 of customers was what, Mr. Lindseth?

8 A As of 1960, it would have been about 58,000 Muny
9 customers.

10 Q Did Muny Light generally, as a general practice,
11 engage in advertising?

12 A No, they did not.

13 Q Did Muny Light generally engage in Sunday sales
14 promotion brochures like this, or was this a unique
15 circumstance?

16 A Well, unique might be overdescriptive, but it was not
17 customary.

18 Q Would you accept the proposition that during the early
19 1960's, CEI was spending a million to a million and a
20 half dollars a year in advertising and public relations?

21 A Not without reference to the figures. I don't believe.
22 I have a number.

23 Q Mr. Lindseth, I have handed you a copy of the CEI
24 Form 1 for the year 1964. Do you recognize that
25

Lindseth - cross

document?

A Yes.

Q That is a document which was filed annually with the Federal Power Commission; is that correct?

A Yes.

Q If you would kindly turn to page 419 -- I put a paperclip on that page just to assist you in doing that -- is it accurate that in account No. 913, that during this year CEI's advertising expenses listed on that page and in that account were \$955,060?

A The report so states, yes.

Q Would you have any reason to disagree with the accuracy of that report?

A No, I do not.

Q Would you kindly turn to page 427, under account No. 930. Is it also the fact that, during the same year, CEI spent an additional \$596,296 on advertising and public relations in general?

A The report so states, yes.

Q Would you have any reason to disagree with that?

A No, I would not.

Q The total of those two numbers would come up to approximately \$1-1/2 million; is that correct?

A Yes, it would.

MONDAY, OCTOBER 20, 1980; 1:40 P.M.

THE COURT:

You may proceed, Mr.

Norris.

- - - - -

CROSS-EXAMINATION OF ELMER LINDSETH {Cont'd}

BY MR. NORRIS:

Q Mr. Lindseth, I believe you said that when the quiescent period came to an end, that CEI lost 200 customers, net customers, to Muny Light in the year 1958. Was that your testimony?

A The number was 196.

Q Is that a gross loss or a net loss?

A That is a gross loss.

Q How many customers system-wide did CEI gain in the year 1958, if you know?

A I don't know.

Q Would you accept something over 11,000 customers in that one year, subject to check?

A Yes, certainly subject to check.

Q In the year 1969, CEI lost 400 customers to Muny Light? Was that your testimony?

A The number is 384.

Lindseth - cross

Q Would you accept the proposition that in 1959, CEI gained 9,919 customers system-wide?

A Very likely.

Q And in the year 1960, was it your testimony that CEI lost 400 customers to Muny Light?

A The number was 345.

Q Would you accept, subject to check, that in 1960, CEI gained 7,101 customers system-wide?

A I don't have the statistics, and if these are from one of our reports, I would accept it.

Q Coming back to page 4-1 of your work papers, Plaintiff's Exhibit 3106, is it accurate that it was in or around 1958 that CEI reached the determination to combat Muny Light's renewed aggression and to offset losses of customers and revenue due to Muny Light's solicitation of the CEI customers?

A Well, I don't know whether that was the date when we made any specific, as-of-today determination. The reports from the field had increasingly been indicating that Muny was stepping up the tempo of its solicitation of our customers with the result that you have noted, that Muny gained 196 customers in that year.

Q Well, addressing your attention to the next-to-last sentence on page 4-1, it states "CEI reached a

Lindseth - cross

determination to combat MELP's renewed aggression around 1958 and to offset losses of customers and revenue due to MELP's solicitation of CEI customers"; is that correct?

A Well, you saw the revision in my book when you looked at it at noon, and the number I had changed it to was around 1959.

Q I didn't notice that. But let me make a note of that now.

So that that decision was made around 1959; is that correct?

A Yes, I believe so.

Q All right, thank you.

Now, at the top of the next page you describe three fronts on which CEI was reacting.

Is that correct?

A The top of page 4-2?

Q Yes.

A Yes. Those were my conclusions with regard to how I would describe their feelings or thinking.

Q The first was that CEI began efforts to solicit MELP's customers to induce them to shift to CEI; is that correct?

A That's what this states, correct.

Lindseth - cross

Q Then the second front was that CEI increased its attention to its own customers' needs to retain them when they were solicited by MELP; is that correct?

A Yes.

Q Then, thirdly, CEI began to match MELP promotional and other offers to prospective new customers on new installations not theretofore served by either system; is that correct?

A Yes.

Q Was combined billings one of the Muny Light practices that CEI decided to meet the competition of?

A Well, CEI never decided to combine billing of two entrance points. It was a device that Muny employed which the Illuminating Company never employed.

Q Addressing your attention please to 4-3.

The first full sentence on the page states:

"CEI gave substantial study to the problem of meeting this MELP practice of such combined billing of separate services in order to enable the prospective customer to shift to CEI without too great a cost differential."

Now, is it your testimony that that problem was studied but CEI never met that competition?

A No. It is my point that CEI could never adopt the

Lindseth - cross

practice Muny followed of combining three meter readings and rendering a single bill. We had to adopt a different program in order that the customer would not be disadvantaged if he shifted from Muny to CEI.

Q On page 4-4, Mr. Lindseth, addressing your attention to the first sentence in the first full paragraph.

Did CEI find it necessary to do internal wiring for large customers in order to meet the Muny Light competition?

A What paragraph are we looking at?

Q I am looking starting the fifth line on the page, beginning of the paragraph starts, "Additionally, among MELP customers."

My question is: did CEI find it necessary to perform internal wiring for large customers in order to meet the Muny Light competition?

A For the reasons described in this paragraph, yes.

Q Looking down at the bottom of that page, Mr. Lindseth -- well, no, in the middle of this paragraph, about the sixth or the seventh line down, do you see the language, "In some cases it was necessary to build a separate CEI service adjacent to MELP service": do you see that?

A Yes, I do.

Lindseth - cross

Q What does that mean, Mr. Lindseth, "Building a separate CEI service adjacent to the MELP service"?

A This is an industrial customer.

Usually there would be a loop coming to the customer at distribution voltage 4,600 volts, in the case of CEI and 2,300, usually, if it was Muny, and there would be a transformer.

If Muny had a transformer there and a loop from their fold and CEI sought to provide service to that customer, CEI would have to provide a loop and a transformer adjacent to the Muny service.

Q And that was one of the things that CEI felt it had to do to meet the Muny Light competition, is that correct?

A Without interrupting service to the customer, we had to find space to put this equivalent equipment.

Whereupon, they had to build it somewhere, and this says they built it adjacent to where Muny had theirs.

In other words, that the amount of interior wiring on the customer's premises would be a minimum.

Q And you had to do that in order to switch the customer over but not interrupt service, is that right?

A That's correct.

Lindseth - cross

Q Towards the bottom of page 4-4, Mr. Lindseth, you indicate -- and I'm looking at 1, 2, 3, 4, 5 lines up from the bottom of the page -- you indicate that "sometimes CEI would replace a motor in order not to have to provide more than the CEI's standard number of secondary voltages which MELP had formerly provided".

Is that one of the things that CEI had to do to meet the Muny competition?

{After an interval.}

Q Do you understand my question?

A The sentence speaks for itself, to-wit: Muny provided one voltage for a motor and a different voltage for its total service, and CEI would not provide those two voltages. So that in order that the customer could utilize CEI's service, the voltage of the motor was changed to the service entrance voltage of the customer.

Q And, on occasion, it was necessary to actually replace a motor for the customer in order to meet the competition, is that correct?

A In order that he could be provided with that single voltage, both that motor and his other motor.

Q And you would only do that in the case of a customer that was switching from Muny Light to CEI, is that not

Lindseth - cross

correct?

A That's the only circumstance under which it would be necessary; because if he were already a CEI customer, he'd have a single voltage in the plant.

Q And then the next sentence, Mr. Lindseth, states that "CEI provided such internal wiring as was necessary to offset what MELP had provided."

Was that also one of the things that CEI did to meet the Muny Light competition?

A Well, Muny presumably had provided the wiring to get to that motor, and this still refers to the same subject, but the sentence says, "CEI provided such internal wiring as was necessary to offset what Muny had provided," yes.

Q At the top of your next page, Mr. Lindseth, addressing your attention to the second line, is it accurate that "CEI sometimes required a commitment by the customer to take service for a contract period because MELP had followed the same practice?

A I don't know whether it was because Muny had followed the same practice. CEI and Muny both followed that practice.

Q And during this particular period, do I understand that CEI following that practice was part of the

Lindseth - cross

competitive response that you were giving to the Muny Light renewed aggression?

A This was meeting normal competition for either new or switched customers; and, in general, CEI had to meet what Muny was doing.

Q Do I understand correctly then that CEI was not following this particular practice earlier in the '50's and in the '40's; that this practice was part of the response in '58 and '59 to Muny Light's renewed aggressive behavior, is that a fair summary?

A I don't know that this particular practice began as early as '58 or '59; but neither do I know the specific date when it would have started.

Q Well, at the top of the page, Mr. Lindseth, you say, "Beginning about the same time for larger jobs", are you not referring to the '58-'59 period in that?

A This is a very generalized statement, and I didn't pinpoint a date when we first began the practice of requiring a contractual period commitment by our customers. This is silent on it, and I don't know the answer.

Q Well, is it a fair statement that this entire section starting at 4-1 is under the heading "CEI Efforts to Meet MELP Renewed Aggression"?

Lindseth - cross

A Yes, it is.

Q Turning back, then, again to page 4-5, in the second paragraph there is a reference to single and two-family homes. Do you find the paragraph that I'm referring to?

A Yes, I do.

Q And the second sentence in that paragraph states:

"For single and two-family homes, in addition to normal service entrance equipment usually provided, CEI met MELP's practice of upgrading branch fuse panels and wiring back to the main switch."

My question is: Is it your testimony that that was one of the things that CEI found necessary to do in response to Muny Light's renewed aggression?

A Yes. The sentence just before the one you read states that.

Q In the next paragraph you are discussing apartment buildings, Mr. Lindseth, and there you state "For apartment buildings, CEI also met prevailing MELP practice to induce customer shifts. Accordingly, CEI dressed up the customers' meter board by providing distribution trough and wiring, individual switches, meter sockets, as well as the meters for individual suites."

Was this practice with respect to apartment

Lindseth - cross

buildings something that CEI felt it had to do to meet the Muny Light competition?

A Yes, it was.

Q Turning now to page 4-7, the last sentence on that page speaks about CEI's efforts to retain its existing customers. Do you find the sentence that I'm referring to?

A The very last sentence on the page?

Q The last sentence on page 4-7, which reads "CEI was able to regain the customer in such cases by, in effect, doing only what MELP did as routine practice. CEI was there meeting competition."

Is that an accurate statement of part of the response that CEI made to the Muny Light renewed aggression?

A Yes, it was.

Q At the top of the next page you gave an example of the Carnegie Auto Wash. Would you kindly describe what CEI did with respect to the Carnegie Auto Wash in order to meet the Muny Light competition.

A The customer here was the Carnegie Auto Wash, who was a customer of CEI. Muny solicited the customer, offered to do something to give him a second voltage without charge.

Lindseth - cross

The CEI practice under what is called its Red Card Program, which means the customer must bear the cost, that cost would have been \$170. CEI agreed to do the necessary wiring to retain that customer and waived a charge of \$170.

Q The result of all of these efforts proved favorable to CEI in a fairly short time, did they not?

A Well, the cause and effect are somewhat blurred by the fact that concurrent with this, there was a decay in the service reliability of Muny, including some very massive failures due to the condition of their power plant and their system. So that cause and effect for specific efforts cannot be accurately pinpointed.

Q Well, turn back, if you would, to page 4-b. I address your attention there to the second full paragraph on that page, Mr. Lindseth. You are describing the results for 1960 and '61. You say the result for 1960 and '61 was basically a standoff. Revenue losses by CEI in the two years were a total of \$114,000 and gains were a total of \$108,000 for the two years. Is that accurate?

A Yes, it is.

Q So that by the end of 1961, from a revenue standpoint,

Lindseth - cross

you had really met Muny Light's competition, and revenue switches were at a standoff, is that a fair summary?

A Revenue switches and revenue. I don't know whether they were in numbers of customers.

Q Well, if you will turn to the next paragraph perhaps we can address that subject of the number of customers.

I submit to you that by 1963 the number of customer shifts favored CEI for the first time since Muny Light's renewed aggression had commenced in the late 1950's. Is that correct?

A The years 1957 to '62 inclusive Muny gained more customers than CEI did. So CEI lost customers in each of those six years, and by 1963, for the first time in that period, CEI gained more customers than Muny did.

Q On page 4-9 you state, in the second paragraph, the first sentence as follows:

"Muny Light's effectiveness in inducing CEI customers to shift diminished beginning about 1964."

Is that correct?

A That's what this says.

Q Well, is that correct?

A Well, that was my conclusion at that time, yes.

Q The reasons for this are given in your next sentence;

Lindseth - cross

is that correct?

A It states that it was an important factor, and this is correct.

Q What you are saying there is because CEI was paying more attention to its own customer service needs, that that is what diminished Muny Light's effectiveness in inducing CEI customers to switch; is that a fair statement?

A This was -- it states here it was an important factor in resisting Muny Light's ability to take CEI customers.

Q We have been talking about a span of five years, if I am correct, I believe you said you took the decision in 1959 to meet this competition and by 1964 you had reached this stage, is that correct?

A Well, you cited that by 1963 we were successful in switching more customers than we lost to Muny. So that may be the effectiveness of Muny inducing our customers to shift diminished the year before, the '63 year in which the tide turned away from Muny's transferring more customers than they lost.

Q Turn now, please, to page 4-11, Mr. Lindseth. At the bottom of the page where you talk in terms of both customers and dollars of revenue.

Are you on page 4-11?

Lindseth - cross

1
2 A Yes.

3 Q The last full paragraph commences by saying, "But by
4 1965 the balance of shifts both in number of customers
5 and in dollars of revenue were modestly in favor of CEI."

6 Is that correct?

7 A That's what that states, yes.

8 Q On the next page, 4-12, am I correct that there you are
9 talking about the net revenue gains enjoyed by CEI and
10 in 1965 CEI enjoyed a net revenue gain of \$73,000?

11 In 1966 a net revenue gain of \$92,000?

12 In 1967 a net revenue gain of \$83,000; is that
13 correct?

14 A Yes, it is.

15 MR. NORRIS: Mr. Leo, would you
16 kindly hand Mr. Lindseth Plaintiff's Exhibit 3107
17 as well as -- that's the new exhibit that was
18 placed up there -- as well as the exhibits that
19 were pulled this morning, 1973, 1975, 1978, 1979,
20 10, 141, 261 and 682.

21 Q Mr. Lindseth, I hand you Plaintiff's Exhibit 3107 for
22 identification, and you will notice this purports to be
23 a summary of information from various CEI documents,
24 and the columns are headed "Year-Total Customers
25 Gained by CEI - Total Customers Lost by CEI - Net

Lindseth - cross

Gain or Loss to CEI."

Would you kindly take the year 1961, and you should find there PTX 1973 and 1974.

Now, 1974, Mr. Lindseth, is the compilation of data -- excuse me. Withdraw that.

Plaintiff's Exhibit 1973 is the cover memo. Could you get that in front of you, please.

Do you have Plaintiff's Exhibit 1973 in front of you?

A Yes, I do.

Q That's a memo dated January 10, 1964, and you received a copy of that; is that correct?

A Yes. It is addressed to me.

Q Pardon me?

A Yes.

Q Attached to that memo is the next exhibit which is 1974.

Would you kindly address your attention to the CEI-MELP meter replacement data set forth there, and what I would like to request that you do is tell me the gross numbers of switches from CEI to Muny Light.

MR. LANSDALE: May I approach the

bench, if your Honor please?

THE COURT: Yes, you may.

- - - - -

Lindseth - cross

{Bench conference ensued on the record as follows:}

MR. LANSDALE: It seems to me unnecessary to demonstrate the correctness in your exhibit by having this witness go through each one of these.

MR. NORRIS: Will you stipulate that they are correct?

MR. LANSDALE: I will accept them subject to check. I mean, you confronted me with this without an opportunity to check it. I would accept your word.

MR. NORRIS: Subject to check, I appreciate it.

{End of bench conference.}

- - - - -

THE COURT: We are talking about 3107?

MR. LANSDALE: Yes.

THE COURT: Counsel has agreed to accept the summaries of the figures depicted for the years listed thereon are accurate.

BY MR. NORRIS:

Q Addressing your attention now, Mr. Lindseth, to

Lindseth - cross

1 Plaintiff's Exhibit 3107, which the Court has just
2 commented about.
3

4 During 1961 and 1962 CEI was still in a net loss
5 position with respect to customer switchovers; is that
6 correct?

7 A Yes.

8 Q But by 1963 CEI was in a net position of a net gain of
9 241 customers; would you agree?

10 A That's what the exhibit shows.

11 Q CEI stayed in that net gain posture for a decade,
12 didn't it, right through the year 1973?

13 A Yes, it did.

14 Q It wasn't until 1974 that once again CEI lost more
15 customers to Muny Light than it gained from Muny Light;
16 is that correct?

17 A Yes, it is.

18 Q I address your attention to Plaintiff's Exhibit 2479,
19 which is on the easel immediately to your left.

20 MR. NORRIS:

May I approach the

21 bench, your Honor?

22 THE COURT:

Yes, you may.

23 - - - - -

24 {Bench conference ensued on the record as
25 follows:}

Lindseth - cross.

1
2 MR. NORRIS: This is covered by a
3 stipulation, and I want to ask either that the
4 stipulation be read -- it has been read once to
5 the jury, but within the context of this
6 testimony I will either request that I be permitted
7 to ask a couple of short questions of this witness
8 or that Stipulation 163 be read to the jury.

9 MR. LANSDALE: May I see 163? Well,
10 I have forgotten what Exhibit 682 is.

11 MR. NORRIS: It's that chart, Jack.

12 MR. LANSDALE: Is it the so-called
13 Zimmerman report?

14 MR. NORRIS: No. You will remember
15 these. Look at these four exhibits.

16 MR. LANSDALE: I don't know why I
17 should have any objection to reading the stipulation.

18 MR. NORRIS: The four summary charts.
19 This is after the Muny Displacement Program was over.

20 MR. LANSDALE: I don't have any
21 objection to reading the stipulations.

22 MR. NORRIS: I would ask that that
23 be done, your Honor.

24 {End of bench conference.}

25 - - - - -

Lindseth - cross

THE COURT: Mr. Lansdale, --

MR. LANSDALE: Yes, I'm sorry.

THE COURT: -- don't forget your papers.

MR. LANSDALE: I'm sorry.

{Papers handed to Mr. Lansdale by the Clerk.}

THE COURT: Ladies and gentlemen of the jury, Joint Stipulation 163, which has already been read, reads as follows:

"Plaintiff's Exhibit 23 --" I should say, "-- Plaintiff's Exhibit 2479 is an enlargement of the third page of PTX 682 and is a CEI business record. With respect to customers switching between CEI and Muny Light, PTX 2479 shows CEI's quantification of cumulative net revenue gain or loss {expressed in terms of EAR} by years from 1956 to 1960 and, by quarter, since 1960 through 1974."

BY MR. NORRIS:

Q Now, Mr. Lindseth, would you kindly turn now to page 5-22 of your work papers, Plaintiff's Exhibit 3106?

{The witness complies.}

Q Referring your attention to your last three sentences on that page, you state as follows:

Lindseth - cross

"Beginning in 1962 CEI offered interconnection as an incentive to the City to equalize rates. The City repeatedly flatly rejected the idea and never made either a counterproposal or even showed any willingness to discuss alternate terms to achieve an interconnection."

Would you address your attention to Plaintiff's Exhibit 603 which --

THE COURT: Are you objecting, Mr. Lansdale?

MR. LANSDALE: Yes, sir; I started back down because he hadn't finished his question.

THE COURT: All right. Finish the question, please.

MR. NORRIS: Mr. Leo, have I asked you to give the witness Plaintiff's Exhibit 603?

MR. LEO: No.

MR. NORRIS: If not, I withdraw the question, and ask you to give the witness that exhibit.

{Mr. Leon complies.}

BY MR. NORRIS:

Q Mr. Lindseth, are you aware of Mayor Locher's letter to Mr. Besse dated February 17, 1975, which is Plaintiff's Exhibit 603?

A Yes, I am.

Lindseth - cross

1
2 Q Now, turning back -- and in this letter, is it not a
3 fact that Mayor Locher indicated a willingness to
4 consider an interconnection on a business basis without
5 unfair strings attached?

6 A That's what his letter says.

7 Q Turn back to your page 5-22, the next-to-the-last
8 sentence on that page states that the CEI "never made
9 any counter proposals or even showed any willingness to
10 discuss alternate terms to achieve an interconnection",
11 and I am asking you whether or not you don't have to
12 make an exception to your statement taking into
13 consideration Mayor Locher's letter of February 17,
14 1965?

15 A He never followed up that letter, and that was the
16 basis for my statement in page 5-22; and while he
17 stated in his letter that he was willing to do so, he
18 never followed up.

19 Q Turn to the next page in your report, 5-23, if you
20 please, in the third full paragraph, you state,
21 "Free street lighting, for example, may have been the
22 answer, and CEI would clearly have been on the
23 offensive."

24 What are you referring to, might have been the
25 answer to what, Mr. Lindseth?

Lindseth - cross

MR. LANSDALE: May I approach the bench, if your Honor please?

THE COURT: Yes.

- - - - -

{Bench conference ensued on the record as follows:}

MR. LANSDALE: I never went into the question of the company's offers to interconnect or these various conditions of rate equalization or the Detroit Plan or whatever.

Now, if it is your intention -- then I object on that ground.

If it is your intention -- if it is the plaintiff's intention to offer in evidence what you have designated as Plaintiff's Exhibit 3106, I believe Mr. Lindseth's report, I'm willing for it to go into evidence and withdraw objection to cross-examination on the basis; but short of that, I object to over the back of that which were furnished to you as his working papers, I object to over the back of producing working papers and bringing in new material which has not been the subject of direct examination.

MR. NORRIS: I marked it, and I

Lindseth - cross

offer it in evidence right now.

MR. LANSDALE: That may go in without objection.

THE COURT: It may be admitted.

MR. LANSDALE: Sir?

THE COURT: It may be admitted.

{End of bench conference.}

- - - - -

THE COURT: Plaintiff's Exhibit 3106 may be admitted.

BY MR. NORRIS:

Q Mr. Lindseth, my question is -- do you have my question in mind?

A Which is 1306?

Q It's your working papers.

Let me ask -- I'll put the question again.

I'm addressing your attention to 5-23, and I address your attention to the third paragraph on that page and when you say "free street lighting, for example, might have been the answer."

My question is, answer to what?

A I will have to read it in context.

May I have a moment to read?

Q Absolutely.

1 Lindseth - cross

2 {The witness reading silently.}

3 A This is a philosophical discussion of what would have
4 happened had the City approached CEI and said, "No,
5 we don't quite feel we have an equalized rate, but we
6 will do so and so."

7 What might so and so have been, and this is the
8 realm of conjecture, and "free street lighting" for
9 example says the text might have been such an answer.

10 Q And that free street lighting would also have been a
11 non-revenue-producing load for Muny Light, wouldn't it?

12 A It would have offset in part the increasing revenue
13 that Muny received from the equalized rates.

14 Q Those equalized rates on the theory that that would
15 have created more revenue for Muny Light; is that
16 correct?

17 A More than the amount of free street lighting, yes.

18 Q And the free street lighting would then have siphoned
19 off some of those increased revenues; is that correct?

20 A Muny would have been better off and the City of
21 Cleveland would have been better off.

22 Q But the free street lighting would have siphoned off
23 some of the increased revenue that Muny would have
24 gotten from rate equalization, wouldn't it?

25 A Yes.

Lindseth - cross

Q On page 5-24 you state at the top of the page, "MELP in the early 1960's was in reasonably healthy financial shape."

How far into the 1960's is it your opinion that Muny Light was in a reasonably healthy financial shape?

A Well, I don't have specific dollars in mind. But this was shortly after the rate increase of 1957, which Muny put into effect in improving their revenue position. I don't have an answer on how far into the '60's that reasonably healthy financial shape would apply.

Q It wouldn't have gone to the middle of the decade; it would have stopped somewhere short?

A Without seeing the figures, I don't think I have a judgment.

Q Turn back to page 4-8, please.

Addressing your attention to the second paragraph on that page, you state "Additionally, during the period --"

Now, the period, if I understand your use of "the period," we are still in Chapter 4, which is headed on page 4-1, "CEI efforts to meet MELP renewed aggression."

Lindseth - cross

So would you agree that we are talking about the 1959 to 1963-64 period?

A Well, this subsection relates to CEI's efforts to retain its existing customers.

Q Am I correct that it is during the same period that we are talking about, then?

A Well, CEI's efforts in 1959 had not yet been crystallized with an intensive program to do a better job saleswise of retaining its existing customers. That evolved from experience in those early years.

Q Mr. Lindseth, turn back to the preceding page, if you will. In the heading, the beginning of the section where you say, "CEI efforts to retain its existing customers," you say, "Companion to the solicitation of MELP customers by CEI.:

Now, does that indicate that what you are here talking about is during the same period of time?

A Well, I would repeat a comment I made once before, that there was no specific day as of which a certain activity began. These are efforts that grow as a consequence of experience, and in general, during this period of renewed aggression, CEI did the three things you have pointed out, which is to give increased attention to retaining the customers it had, solicit

Lindseth - cross

1 Muny's because Muny was soliciting CEI customers, and
2 give increased attention to getting new customers that
3 Muny was more successful than CEI in obtaining during
4 that period.

5 Q Yes. I'm not trying to tie you down to a specific
6 month or a specific year. But on page 4-8, where
7 you say, "Additionally, during the period," are we
8 talking about this same period where CEI is responding
9 to the Muny Light renewed aggression?

10 A In general, yes.

11 Q Then you go on to say, "Additionally, during the period,
12 CEI analyzed the reasons why former customers had
13 shifted to MELP. These analyses provided useful
14 information to CEI on methods to improve its own
15 customer relations and service, not only in the MELP
16 area, but also system-wide."

17 Could you tell us how it was that the information
18 that you gathered from analyzing why former CEI
19 customers had shifted to Muny Light was of help to
20 the company in analyzing and improving its customer
21 relations and service in the entire 1700 square mile
22 service area?

23 A Well, in the problems of administering a very large
24 sales organization -- and Muny was 60,000 customers
25

Lindseth - cross

and CEI had 600,000 customers -- a constant effort is made by the managers of sales departments to insure that good service is rendered to existing customers, because the best customers a company has are its existing customers. The customer across the street looks good, but the best customers are the ones that the company then has.

This was a reminder that good sales practice requires good attention to existing customers.

Q On the next session, Mr. Lindseth, which is two pages further into your work papers, page 4-10 under the heading "CEI System-Wide Assistance Program," you describe several CEI system-wide practices that were helpful in acquiring and retaining Muny Light customers and in meeting Muny Light's competition. Is that correct?

A This describes the fact that the CEI system-wide programs for ranges and water heaters also applied to the territory that was jointly served by CEI and Muny.

Q As well as the wiring modernization program, the bank loan program, correct?

A Yes.

Q In the fourth line up from the bottom of the page you specifically state that these programs were aimed at

Lindseth - cross

increasing the use of electricity and were not specifically designed to meet MELP competition, but they helped to meet MELP competition, right?

A Yes, they did.

Q Turn back to Chapter 1 page A, if you would, please.

Here you are talking about April, 1920. I address your attention to the last sentence on the page.

In the very year of CEI's rate reduction, MELP added 2,400 new customers, increasing the total number then served by 10 percent, illustrating the sensitivity of the market to even narrow differences in price.

Was that a two-cent per KVH difference in price you had reference to there?

A No.

Q What was the difference in price that you had reference to in that sentence?

A Well, I don't know what the rate blocks were following the 5 cent per kilowatt hour maximum rate in 1920. You will recall I stated this morning that at a time when the maximum rate was 10 cents a kilowatt hour the average rate was 5-1/2 cents a kilowatt hour, half of the top rate.

I do not know the average rate in 1920, but it would have been a block type of rate of some kind

Lindseth - cross

1 where 5 cents was the maximum.

2
3 Q Mr. Lindseth, in preparing for your testimony today, as
4 part of the study that you performed, did you review
5 CEI records on sales efforts and CEI promotional
6 practices?

7 A Well, not intensively, but I can speak from
8 recollection having been part of it.

9 Q My notes indicate that you had -- that CEI had no
10 concern about the number of customers it had in
11 Cleveland from 1910 through the 1950's. Is that
12 accurate, are my notes correct?

13 A Will you restate that?

14 Q What concern did CEI have from the time Muny Light was
15 first launched up to the period of renewed aggression,
16 what concern did CEI have with respect to acquiring
17 new customers of its own in the City of Cleveland?

18 A Well, the record shows, and I must base this entirely
19 on history because no one is living who was part of
20 that period, that CEI was growing at a very rapid
21 rate. I don't have the statistics with me, but CEI
22 was expanding both in Cleveland and in the suburbs and
23 in the area jointly served by Muny, but was very much
24 concerned over the fact that Muny was transferring
25 CEI customers to the Muny system in the area, the

Lindseth - cross

commonly served area.

MR. LANSDALE: May I approach the bench, if your Honor please?

THE COURT: Yes, you may.

- - - - -

{Bench conference ensued on the record as follows:}

MR. LANSDALE: I have come up, your Honor, because it appears that the witness and Mr. Norris are passing in the night. You first direct his attention to 1920, having directed his attention to that, which is the question of concern, you then shifted to 1957, and the witness is answering with respect to 1920.

MR. NORRIS: No, I am sorry. I asked him a question with respect to April, 1920, how big a price difference was he having reference to in that paragraph.

MR. LANSDALE: Not on that one.

THE COURT: Read it back.

{Record read.}

MR. LANSDALE: I perceived what you did. I object to the question asking him the general question over a span of 40 years when he

Lindseth - cross

clearly testified to several different periods of time.

THE COURT: Go ahead. You can go into that on redirect, Mr. Lansdale.

{End of bench conference.}

- - - - -

BY MR. NORRIS:

Q Mr. Lindseth, during the period covered by the study which you performed, how many other utilities were there serving Cleveland, electric utilities serving Cleveland?

A From 1910 until 1967?

Q That was the period of your study, wasn't it?

A Yes, it was.

Q How many other electric utilities were serving the area during that period of time?

A Well, during that period there would have been, in my recollection, Cleveland Light and Power. Bradley Light, Heat & Power, Euclid-Doan Power Company. The Muny System and CEI.

Q What happened to those other utility companies over the years?

A CEI acquired by purchase Cleveland Light and Power, Bradley and Euclid-Doan.

Lindseth - cross

1 Q Mr. Lindseth, the Muny Displacement Program that has
2 been discussed both in your prior testimony and to
3 some extent today was launched in late 1965 or early
4 1966, is that correct, during the time you were still
5 chief executive?

6 A Yes.

7 MR. NORRIS: Thank you. No further
8 questions.

9 MR. LANSDALE: No questions, if your
10 Honor please.

11 THE COURT: Thank you. You may
12 step down, Mr. Lindseth.

13 - - - - -
14 {Witness excused.}

15 - - - - -
16 THE COURT: Ladies and gentlemen,
17 supposing we take our afternoon recess, since this
18 would be an appropriate time and it is nice and warm
19 in here, maybe a little stretch would do us all well.

20 Please, during the recess, adhere to the
21 Court's admonition.

22 - - - - -
23 {Recess had.}

24 - - - - -
25

1 THE COURT: Please be seated.

2 MR. LANSDALE: Your Honor please, may
3 we approach the bench before the jury returns?

4 THE COURT: Please be seated.

5 - - - - -

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

8 THE COURT: Yes, Mr. Lansdale?

9 MR. LANSDALE: Both the witness and
10 I misunderstood the last question, and I would like
11 permission to ask one question on redirect.

12 THE COURT: No problem.

13 Is your next witness prepared?

14 MR. LANSDALE: Oh, yes, indeed.

15 THE COURT: Are you going to finish
16 with him today?

17 MR. LANSDALE: I'm going to finish with
18 him before the end of the day, yes.

19 THE COURT: Okay.

20 Let's move it along, gentlemen.

21 {End of bench conference.}

22 THE COURT: Bring in the jury,
23 please.

24 - - - - -

25 {The jury entered the courtroom and the

1 following proceedings were had in their hearing
2 and presence.}

3 THE COURT: Mr. Lansdale, I understand
4 you have a question.

5 - - - - -

6
7 REDIRECT EXAMINATION OF ELMER LINDSETH

8
9 BY MR. LANSDALE:

10 Q Mr. Lindseth, directing your attention to the very last
11 question and answer before you left the stand before the
12 recess, did you intend to indicate that the Muny
13 wiring displacement program which began during your
14 career as chief executive did not begin until 1965
15 or '66?

16 A No, that would not be correct.

17 The question was, was it during my period as
18 chief executive?

19 Q When, in fact, did it begin, if you recall?

20 A About 1959, when we responded to the aggression.

21 MR. LANSDALE: Thank you.

22 I have no further questions.

23 THE COURT: Mr. Norris?

24 MR. NORRIS: Recross, your Honor.

25 Would you hand the witness 144, PTX 144?

{Mr. Leo complies.}

- - - - -

RECROSS-EXAMINATION OF ELMER LINDSETH

BY MR. NORRIS:

Q Mr. Lindseth, would it be a fair statement that the Muny Displacement Program increased in its intensity following late 1965 or early 1966?

{The witness reading silently.}

A Well, this was a very amorphous program which began by meeting Muny competition; then in 19 -- oh, about 1960 increased with the half annual earned revenue allowance or combined service entrance, and it grew as the need grew to meet the increased temp of Muny's aggressive competitive efforts.

Q And more money was spent in the latter half of the 1960 decade on this program than the first half; is that correct?

A I don't have the figures.

Q Addressing your attention to Plaintiff's Exhibit 144, to the fifth paragraph describing 1965 and 1966, when you were still the chief executive officer, follow me, please, as I read.

"For most of 1965, the net gain and losses

Lindseth - recross

remained steady. And in late 1965, both CEI and Muny changed their policies. Muny reduced their soliciting and CEI increased their efforts towards Muny conversions."

Would you have any reason to disagree with that statement?

A Well, now, this is a staff man's interpretation of what he thought, and I don't have a specific recollection of whether those gradations of intensity did or did not take place.

Q That was while you were still chief executive, wasn't it?

A Yes, it was.

Q Do you have any recollection that what he has stated is incorrect?

A I have no recollections with regard to the statement.

MR. NORRIS: Thank you.

THE COURT: Mr. Lansdale?

MR. LANSDALE: No further questions
of Mr. Lindseth.

THE COURT: Thank you.

You may step down.

{Witness excused.}

MR. LANSDALE: We call Mr. Williams.

- - - - -

1 H A R O L D L. W I L L I A M S,

2 called as a witness by the defendant, being previously
3 duly sworn, was examined and testified as follows:
4

5 MR. LANSDALE: Mr. Williams has been
6 previously sworn, if your Honor please.

7 THE COURT: Yes, I recollect.

8 Mr. Williams, you will be testifying under the
9 oath heretofore administered. Do you understand
10 that, sir?

11 THE WITNESS: Yes, sir.

12 THE COURT: Proceed.
13 - - - - -
14

15 DIRECT EXAMINATION OF HAROLD L. WILLIAMS
16

17 BY MR. LANSDALE:

18 Q Mr. Williams, to refresh our recollections, you were
19 vice president - engineering of CEI during the period
20 1971 through 1973, were you not?

21 A Yes. I was vice president from 1962 till '74.

22 Q All right. During this period of time to which I have
23 directed your attention, 1971, '72, '73, did your
24 responsibilities include responsibility for the
25 construction and operation of any interconnections that

1 Williams - direct

2 CEI might have or built?

3 A Yes, for construction and for planning the operation.

4 Q Now, directing your attention to about July, 1971,
5 what was the status of any engineering respecting an
6 interconnection between CEI and Muny Light?

7 A Well, prior to that time we had done some general work
8 on our own and with Muny Light. The City had shown
9 relatively little interest in interconnection prior to
10 that time.

11 But early in 1971, when Warren Hinchee became
12 Commissioner of Light and Power, there was a significant
13 increase in interest. Mr. Hinchee was particularly
14 interested in pursuing the studies on the interconnection.

15 Q Did Mr. Hinchee make any requests to CEI with respect to
16 work on that interconnection?

17 A I believe that he did.

18 Q The evidence shows that prior to that time CEI had
19 agreed to work on the question of a permanent
20 interconnection with Muny Light.

21 Tell me, if you recall, why it was at this
22 particular time in 1971 when Mr. Hinchee made his
23 request of you that CEI did not proceed with the detailed
24 engineering for an interconnection?

25 A Well, earlier we had developed the load transfer points,

Williams - direct

which I think have been discussed considerably in this case, our ability to get the City to pay for the power over the load transfer points was not very good. They owed us money in the middle of 1971 and we were reticent to spend substantial engineering dollars on a project for which we really had no basis of knowing whether we would be paid or not.

Q Well, had the City paid its bills up to date was CEI prepared to go forward with a 138 KV interconnection --

A Yes, it was.

Q -- at this time?

A Yes, it was.

Q If the City had paid its bills during this period of time, and I am referring to the period when Mr. Hinchee became commissioner and first made these requests of you, had the City paid its bills when Mr. Hinchee said the City wanted to proceed, when in your judgment would the City have had a 138 KV synchronous interconnection?

A My judgment is it certainly could have been within two years or about July of 1973. There had been some thought expressed by some of the City people that it could even be less time than 24 months, but 24 months was my judgment.

Williams - direct

Q Now, when in fact did CEI start any detailed engineering on the interconnection with the municipal plant?

A About March of 1972.

Q How did this come about?

A The City went to the Federal Power Commission, the forerunner of the present Federal Energy Regulatory Commission, the City went to the Federal Power Commission and specifically asked the Power Commission to order an interconnection.

The Federal Power Commission convened hearings -- actually they convened some informal discussions before that in which I was involved along with several from our company to try to work out the details of such an arrangement.

Q These informal meetings at the Federal Power Commission were recorded, were they not?

A Yes.

Q You have, at my request, reviewed at least some of these transcripts --

A Some of the transcripts.

Q -- to refresh your recollection?

A Yes, I did.

Q I believe that one of these meetings was February 15, 1972, was it not?

Williams - direct

A Yes.

Q Referring to that meeting, can you outline for us what Mr. Hinchee, speaking on behalf of the City of Cleveland and Muny Light, what his basic position was at that meeting?

A His position was that basically he was looking for an emergency interconnection, that he recognized that -- that is, to provide emergency power.

He recognized that 138 KV, or kilovolts, was the best voltage, but he was looking for something that could be put in faster than that. So he advocated an interconnection with our 69 KV facilities near the Lake Shore plant.

Q What was his position as to how this 69 KV thing he proposed should be operated?

A Mr. Hinchee wanted to have that plant in synchronous.

Q Were these proposals agreeable to CEI?

A No.

Q Well, what about them, did you disagree with them?

A First of all, his proposal for an emergency interconnection was acceptable to us.

His proposal that it be at a 138 KV ultimately was acceptable to us, and we stated this on the record at that time.

Williams - direct

His proposal that it be -- there also be a temporary 69 KV synchronous interconnection was not acceptable to us, we felt it was unsound from an engineering point of view, and we said so and explained our position that way.

Q Did it make any difference to you whether if you had a 69 KV it was operated synchronously or non-synchronously?

A Yes, it did make a difference.

Q And were you able to operate such an interconnection in a synchronous manner?

A No, we were not.

Q And can you explain briefly why CEI was unwilling to operate it synchronously?

A Well, this specific interconnection that he was proposing was to take one of the 69 KV cables that connects to our Lake Shore plant, disconnect it in the plant and connect it to the Muny Light plant instead.

Now, this was bad from our point of view because, first of all, we needed all the cables into the Lake Shore plant to provide for certain contingencies.

We felt that the operation which they described would be unsafe because the capacity was limited to 40 NVA or 4,000 -- 40,000 KVA. Their larger generator which they clearly wanted to operate was 85 NVA.

Williams - direct

If we operated in synchronism and that unit was lost for any reason, there would be an immediate overload on our cable, which would either damage the cable or, if all the relays operated properly, immediately tripped the cable and the whole Muny system would be down.

We saw this as no real solution to their problem, and advocated that we move expeditiously on the 138 KV interconnection which was large enough that it could handle those contingencies.

Q Well, did you and Mr. Hinchee thereafter in written communication reiterate your respective positions to the Commission and the Commission's staff respecting the operation of this interconnection synchronously as opposed to non-synchronously?

A Yes, we did, in some detail.

MR. LANSDALE: I think I have already asked you to get out, Mr. Leo, Plaintiff's Exhibit 1537 and 1538.

Would you hand those to the witness?

{Mr. Leo complies.}

Q The question I want to ask you, Mr. Williams, is this: Referring to Plaintiff's Exhibit 1537, this is a letter from Mr. Hinchee to the Chairman of the

Williams - direct

Federal Power Commission, but sent to the attention of its counsel.

Does that outline in effect Mr. Hinchee's position as a reiteration of his position at the conference to which you referred previously?

A Yes, it does.

Q And referring to Plaintiff's Exhibit 1538, what is that?

A That's an engineering memorandum that I prepared in response to Mr. Hinchee's, and stating our position on the same issues.

Q All right. Now, it's in evidence that shortly thereafter, to be exact on March 8th, 1972, the Federal Power Commission issued an order requiring the construction of a non-synchronous 69 KV tie to be maintained with open switches, did it not?

A That's correct.

Q And what is the fact as to what, at this time, so far as the arguments preceding this order was concerned, what the sole difference was between CEI and Muny Light?

A The question of whether the temporary interconnection at 69 KV should be operated in synchronism or not in synchronism.

Q Now, after the March 8th, 1972 order requiring the construction of the non-synchronous 69 KV

Williams - direct

interconnection came down, what did you do respecting that interconnection?

A I gave instructions to our engineering people to proceed full speed on the design, construction, and installation of that interconnection as ordered.

Q And what did you tell them to do, to go slow or fast, or --

A I told them to go full speed. That I thought we should have this in operation as promptly as possible.

Q Why did you issue such an order?

A Because I felt that once a decision had been made and we knew what we were going to do, that any delay on our part could only work to the disadvantage of the people in Cleveland and to the Illuminating Company; and that if we had more outages, -- we had had a lot of outages prior to that of the Muny Light system -- if we had any further outages, when it was within CEI's power to prevent it, that it would be judged by the public adversely.

So I felt, and the company felt, that there was every reason to proceed and do the job once the decision was made as to what should be done; and, of course, that decision also included how we were going to be paid for the cost of the work we did.

Williams - direct

Q And how soon was the CEI engineering completed?

A Well, the basic engineering was completed within about a month, by the end of March of '72, because much of it had been done in advance in preparation.

MR. LANSDALE: I ask that the witness be shown CEI Exhibit 72.

Q Will you state what CEI Exhibit 72 is.

A This is the letter which I wrote to Mr. Warren Hinchee, the Commissioner of Light and Power, on March 30, 1972.

Q What is the purpose of that letter? What is the purpose of it? I don't want you to read it. But what is it?

A Well, it makes several basic points. It tells them the detailed engineering as part of the interconnection is essentially complete. It points out that some of the equipment must be ordered immediately if we are going to meet the City's schedule. It gives our estimated cost, which under the order was to be paid by the City, and asks him to confirm the understanding of the work that they were going to do as a part of this project.

MR. LANSDALE: I ask that the witness be shown CEI Exhibits 622 and 623.

Q What are these memoranda, Mr. Williams?

A These are two memoranda from our System Planning

Williams - direct

Engineering Department to several people in various engineering and operating activities describing the basic work that is to be done.

Number 622 has to do with the 138 KV synchronous interconnection and No. 623 has to do with the 69 KV non-synchronous interconnection. Both are dated March 30, 1972.

Q What was the purpose of these? What function did they serve?

These are internal memoranda?

A Yes, that is right.

Q What function did they serve?

A Basically it is to inform all the people in the company that need to know what the basic engineering design is and asking them to proceed with the detailed engineering, construction, installation work.

Q To whom did you delegate the responsibility of the active supervision of this interconnection and work on it?

A Fred Senter.

Q However, were you kept generally advised of its progress?

A Yes, indeed.

Q And did you do anything other than giving this full speed ahead order that you talked about to your own

Williams - direct

people to try to push the completion of the
interconnection?

A Yes. I followed it up -- well, yes is the answer to
your question.

Q All right. What did you do?

A I followed up with regular reviews from how the work was
coming along. When I found that it was dragging, I
called attention to this to whomever, and in several
cases I called the attention of Warren Hinchee to the
fact that progress was dragging on the work that the City
was responsible for.

MR. LANSDALE: All right. I ask that

the witness be shown Plaintiff's Exhibit 1548,

CEI Exhibits 570 through 574.

Q If you will just look at these generally, Mr. Williams.
I think you have seen these before.

Before we look at them individually, are these
the letters or communications you referred to as
calling attention of the City to the fact that the
work was dragging or not proceeding as rapidly as
possible?

A Yes, yes.

Q Look at Plaintiff's Exhibit 1548. That is already in
evidence, I believe. It is signed by Mr. Howley,

Williams - direct

1 general counsel of CEI.

2 Did you have anything to do with that letter?

3 A Actually, yes. In this folder I have two different
4 letters.

5 The one dated April 11 from Mr. Howley is the one
6 you are referring to?

7 Q Yes.

8 A Yes. I was involved in the discussions that led to the
9 generation of this letter.

10 Q Speaking with reference to the interconnection only,
11 what were you calling attention to there?

12 A Basically we were calling attention to that earlier
13 March 30th letter. As a matter of fact, now that I
14 look at the second letter, that is what the attachment
15 is, is the letter I already mentioned to you on March
16 30th, calling attention to that and re-emphasizing the
17 importance of that.

18 It also calls attention to the cost figure in there,
19 asks them to confirm that they will pay the costs, asks
20 them -- well, it has to do with legislation necessary
21 to authorize this work.

22 Q Sir, now look at CEI Exhibit 570. That's dated when?

23 A That's April 17th, 1972.

24 Q Is this one of your letters?

25

Williams - direct

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A This is a letter I wrote to Warren Hinchee.

Q What is the burden of that letter?

A That's giving him -- it is transmitting some additional information on the cost breakdown. Also it speaks about the right of way costs involved where they are putting their line on our property.

Q Please look at Defendant's Exhibit 571.

That, again, is a letter from you to Warren Hinchee, is it not?

A Yes, it is.

Q What is the date?

A April 19th, 1972.

Q Directing your attention particularly to the last paragraph of that letter. What is the burden of that letter?

A The key thing there, it says "It is imperative to have this contract finalized if we are going to make the schedule. "

It also -- I say, "I reiterate that equipment orders have not been placed." I was trying to get across to Mr. Hinchee we have got this agreement settled, we have to get the equipment ordered, he has to get his equipment ordered.

Q When you talk about equipment orders, who are you

Williams - direct

1 talking about getting it?

2
3 A I am talking about the City ordering the equipment they
4 need to provide for the termination of their end of this
5 line.

6 Q All right, sir, now look at CEI Exhibit 572.

7 This is dated when?

8 A This is dated August 1, 1972.

9 Q It is from who to who?

10 A It is, again, from me to Warren Hinchee.

11 Q What is the burden of this letter?

12 A Again, it ends, "Our primary concern is to insure
13 compliance with the FPC order can be obtained prior
14 to any crisis that could have been precluded."

15 It is again urging him to get on top of getting
16 the work done, get the equipment ordered, get the
17 installations made, getting his detailed engineering
18 worked out for the installation at the City end of the
19 line.

20 Q Please refer to CEI Exhibit 573.

21 A Yes.

22 Q Tell me what that is.

23 A That is a letter from Warren Hinchee to me dated
24 August 11, 1972.

25 Q What was he asking you to do there?

Williams - direct

A Well, this one really startled me when it happened. He is telling me that Mr. Harold Ackerman has taken over as chief electrical engineer and he says, "Since Ackerman is new with us and doesn't really have the background and didn't have an opportunity to talk with Mr. Erickson before Mr. Erickson's retirement, it will be helpful to have Mr. Senter and other qualified members bring Mr. Ackerman up to date on what is happening."

Q Who was Mr. Erickson?

A Mr. Erickson was Mr. Ackerman's predecessor as the chief electrical engineer of the Muny Light Plant.

Q Weren't these people in charge of the work on the interconnection?

A Yes.

Q Mr. Erickson is the man that CEI had been dealing with on the technical engineering level, wasn't it?

A Yes. I designated Mr. Senter to be our representative. My understanding was that Mr. Erickson was theirs.

Q Please refer to CEI Exhibit 574.

The date of that is what?

A August 17, 1972.

Q Is this, again, a letter from you --

A To Mr. Hinchee.

Williams - direct

Q -- to Mr. Hinchee, is it not?

A Right.

Q In there you tell him that you have arranged to give Mr. Ackerman an education.

What else does this point out?

A Yes. In addition to that --

MR. HJELMFELT: Objection.

THE COURT: Sustained. Rephrase

the question.

Q What did you state to Mr. Hinchee in that letter that you arranged to do with respect to Mr. Ackerman?

A The letter starts out, I say, I have received this letter, that I just referred to, and will be glad to have Mr. Ackerman and Mr. Sener get together to talk about this.

Q All right, sir.

A It goes --

Q Excuse me. I didn't mean to interrupt you.

A I thought you were asking me the whole sense of the letter. That's only the first paragraph.

It goes on and it says that our construction people have completed the 69 KV substation and line work. It talks to him about telemetering necessary, the protective relaying, the tests that is required.

Williams - direct

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2 It talks a little about the cost. In general it
3 is an attempt to update Mr. Hinchee and presumably Mr.
4 Ackerman as to the status of where things stood at
5 that time and the urgency of continuing to move
6 forward.

7 Q Was there any further thing that CEI could do at that
8 point until Muny Light did further work?

9 A No, at this point there was not.

10 MR. LANSDALE: I have no further
11 questions.

12 THE COURT: Questions anyone?

13 - - - - -
14

15 CROSS-EXAMINATION OF HAROLD L. WILLIAMS
16

17 BY MR. HJELMFELT:

18 Q Mr. Williams, is it your testimony that CEI took --
19 did absolutely nothing to delay construction of the
20 69 KV intertie?

21 A Did absolutely nothing, I can't verify that, no.

22 Q Well, did it take any action to delay, that you are
23 aware of?

24 A I am not aware of any conscious effort to delay the
25 69 KV interconnection once it was ordered by the Federal

Williams - cross

Power Commission and once it was determined that the City was going to pay the cost.

Q You say once it was ordered by the Federal Power Commission. Are you referring to the March order?

A Yes.

Q 1972?

A That's right.

Q You know of nothing that CEI did directly or indirectly to slow down or delay or interfere with the City's construction of the 69 KV line?

A That's correct.

MR. HJELMFELT: May I approach the bench, your Honor?

THE COURT: Sure.

- - - - -

{Bench conference ensued on the record as follows:}

MR. HJELMFELT: Your Honor, I would renew the request that Stipulation 226 and 241 be read. That's the Charlie Miller suit. I am just aghast at this kind of testimony.

THE COURT: I don't know why you should be aghast, Mr. Hjelmfelt. We have been over this testimony not once, but I wrote a written

Williams - cross

memorandum on it, the entire situation.

Now, let's get on with it.

Overruled.

{End of bench conference.}

- - - - -

THE COURT: You may proceed, Mr.
Hjelmfelt.

BY MR. HJELMFELT:

Q CEI had made a number of studies with respect to
interconnecting with the City of Cleveland's electric
system, isn't that correct?

A Yes.

Q Some of those studies were made in the period late
1967, 1968 and '69, isn't that correct?

A I believe they started that early, yes.

Q Isn't it true that many of those studies were premised
upon the proposition that CEI might acquire the City's
system; isn't that correct?

A There were some studies along those lines, yes.

Q Those studies envisioned a variety of ways of
interconnecting parallel with the City, isn't that
correct?

A Yes.

Q Some of those parallel interconnections were 69 KV,

Williams - cross

isn't that correct?

A I don't believe so. I believe that all of the studies that were made, all of the alternatives that were considered involved 138 KV interconnections.

There might have been one study which had in mind installing an auto transfer at the Lake Shore Plant stepping down to 69 KV and tying into the 69 KV Muny cable that goes past the Lake Shore Plant. That would have been substantially the same as the auto transfer that is used in the 138 KV interconnection at the Muny end.

But none of them involved tapping our existing 69 KV cables, I am quite sure of that.

Q The 69 KV cables capacity, you state, would have been -- was limited to 40 megavolts, is that correct, or MVA?

A 40 MVA.

Q And that was -- that limitation was based on a double contingency outage, isn't that correct?

A No. 40 MVA is the capacity of the cable.

Underground cable is able to carry just so much power, and if you put more than that through, you will burn up the cable. So 40 MVA was the limit of one cable.

Q But CEI's concern with transferring more than 40 MVA

Williams - cross

1
2 or 40 megawatts was based on the concern of the double
3 contingency outage at CEI's Lake Shore plant, isn't
4 that correct?

5 A No, that's not quite accurate.

6 Q It was strictly a question of the amount of the cable
7 capacity?

8 A I'm not sure I understand. Was what, strictly --

9 Q Was the limitation of a 69 KV line, the 40 megawatts
10 or 40 MVA limitation strictly a function of the cable
11 capacity?

12 A No, it wasn't.

13 Q What else was involved?

14 A There were basically two kinds of problems involved
15 here.

16 By way of explanation, we have five 69 KV cables
17 that connect our basic transmission system which is
18 south of Cleveland into the Lake Shore plant.

19 Our two concerns were, first, that we needed all
20 five cables under certain circumstances, and that if we
21 made one of them as an interconnection, then we would
22 only have four. We built five because we needed five.
23 That is one problem.

24 The other problem was, even during the time we
25 don't need five, all five, you need them for certain

Williams - cross

contingencies, certain outages, and so on; and we could make it available to supply Muny load.

Then there was still -- there was the limit of 40 MVA or 40 megawatts, substantially the same thing, over that one cable.

You see, there was these two different factors.

Am I making myself clear? I'm trying to.

Q Yes. Thank you.

MR. HJELMFELT: I would ask that the witness be handed PTX 547, please.

{Mr. Leo complies.}

Q I invite your attention to the third paragraph, and particularly the last line of that paragraph.

{The witness reading silently.}

A Yes.

Q That's a memorandum from Mr. Sener, whom you stated that you had placed in charge of preparing the plans and engineering for the 69 KV interconnection after it was ordered by the Federal Power Commission, is that correct?

A Yes.

Q And in the sentence or sentences that I asked you to pay particular attention to, it speaks of the 69 KV would pull a line from the Lake Shore station to MELP's

Williams - cross

69 KV buss, and he says that 40 to 80 megawatts were
to be transferred over this line, isn't that correct?

A This memorandum has to do -- the title is "MELP's
catastrophe plan", and it has to do with what could be
done in the event of a catastrophe on the MELP system.

And it states that, "Depending on CEI's load
level and generation availability, as many as 80
MVA might be available if perfect balance is
obtained."

A I think that's -- that's what it said.

MR. HJELMFELT: I have no further
questions.

MR. LANSDALE: No questions.

THE COURT: Thank you, Mr. Williams.
Please step down.

THE COURT: Call your next witness.

MR. LANSDALE: Mr. Sener.

F R E D S E N E R ,

of lawful age, called as a witness on behalf
of the defendant, being first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION OF FRED SENER

BY MR. LANSDALE:

Q Will you state your name and your address, please?

A My name is Fred Sener, 7012 Chapel Hill.

Q By whom are you employed?

A CEI.

Q And how long have you been in the employ of CEI?

A Since 1955.

Q And what is your education, please, Mr. Sener?

A I have a Bachelor's degree in electrical engineering
from Michigan College of Mining and Technology; and I
have a Master's degree in engineering administration
from Case Western Reserve.

Q When did you graduate from Case?

A I graduated from Case in 1959.

Q Tell us your employment history with CEI.

A I was employed at CEI in 1955 in the System Planning
Engineering Department. I worked in the transmission
planning area until about 1969, when I became in charge

Sener - direct

1 of the System Development Section there, which has the
2 responsibility for subtransmission planning, for
3 authorization and scheduling of major capital projects.
4

5 In the mid or late summer of 1973, I transferred
6 to the Contract Construction Department, and by 1976,
7 late 1976, I returned to the System Planning Engineering
8 Department.

9 Q You have had some responsibility, have you not, in
10 connection with interconnections between CEI and Muny
11 Light?

12 A Yes, I have.

13 Q When did you first have any responsibility in connection
14 with any such proposal for CEI to supply electric
15 energy to the City system?

16 A We began in the middle of 1969 to work on some load
17 transfer alternates that would provide power to the
18 City of Cleveland in order for them to do some
19 construction work at the plant. I think it was the
20 precipitative work or environmental work associated
21 with improving the plant facilities.

22 MR. LANSDALE: May I approach the
23 bench, if your Honor please.

24 THE COURT: Yes.
25 - - - - -

1 Sener - direct

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

4 MR. LANSDALE: I would like the
5 Court's permission to tell the witness to look at
6 me in place of the jury. Does your Honor have any
7 objection to me --

8 THE COURT: To look at you?

9 MR. LANSDALE: Sir?

10 THE COURT: To look at you?

11 MR. LANSDALE: Yes. The witness is
12 talking to the jury.

13 THE COURT: That is who he is
14 supposed to talk to. He is not supposed to talk
15 to you. Let him look at whomever he desires to
16 look at. He is not supposed to be looking at
17 you anyway, Mr. Lansdale.

18 MR. LANSDALE: Yes, he is.

19 THE COURT: Let's go. I'm not
20 going to tell him that, nor are you. Let's
21 proceed.

22 {End of bench conference.}

23 - - - - -

24 THE COURT: You may proceed, Mr.
25 Lansdale.

Sener - direct

BY MR. LANSDALE:

Q Mr. Sener, over approximately what period of time did you work on the load transfer arrangements?

A The load transfer studies were going on from about the middle of 1969 through December, 1969. I believe it was more of a hurry-up-and-wait type operation where there was some question in the minds of some of the people of the City as to just exactly how much power they wanted over what time period and whether they wanted it at all. So it dragged on through to December, '69.

But it did form the basis of being prepared to help the City when there was a significant shutdown in December of '69.

Q Why did these discussions start in the first place?

A The discussions in the first place were strictly for the supply of power during a construction program at the municipal plant.

Q What kind of a program are we talking about? What kind of a construction program at Muny Light?

A As I recall, it was the building of the precipitators
on the older boilers.

Q What was the next significant activity you had with respect to an intertie with Muny Light after these

1 Sener - direct

2 load transfer discussions?

3 A Well, after the load transfer operations continued,
4 the next significant discussions were related to a
5 parallel operation in the middle of 1970, I believe.

6 MR. LANSDALE: Will you show the
7 witness Plaintiff's Exhibits 551 and 554, please.

8 THE COURT: When were those
9 discussions undertaken?

10 THE WITNESS: In the middle of 1970,
11 I believe.

12 THE COURT: All right.

13 Q What are these documents, Exhibits 551 and 554, Mr.
14 Sener?

15 A Both of these are intercompany memoranda that
16 describe some of the alternates that were considered
17 for what we call Phase III interconnected parallel
18 operation.

19 Q Why were they made? What were the purpose of them?

20 A Well, the purpose of performing these studies were
21 to provide the background to answer the question that
22 had been asked referencing how to develop a parallel
23 interconnection. I believe the questions were by
24 Mr. Bergman posing to CEI and Mr. Howley.

25 Q Were you interested in attempting to develop

1 Sener - direct

2 approximate costs?

3 A That's right. These were conceptual studies to give us
4 an idea of the ball park costs that might be involved
5 for the various alternates.

6 MR. LANSDALE: Will you show the
7 witness CEI Exhibit 53, please.

8 BY MR. LANSDALE:

9 Q 53, I believe, is already in evidence. This is a
10 letter from Mr. Howley to Commissioner Bergman,
11 Commissioner of Light and Power Bergman dated
12 September 30, 1970. The price information for which at
13 least in part Plaintiff's Exhibits 551 and 554 were
14 developed?

15 A Yes.

16 MR. LANSDALE: Now, would you show
17 the witness CEI Exhibits 534 and 535.

18 Q Were these two documents written by you, Mr. Sener?

19 A Yes, they were.

20 Q Tell us what they are.

21 A Both these documents are highlights that we prepare on
22 a weekly basis to keep our management informed as to
23 what is going on on the projects that we happen to be
24 working on at the various times.

25 Q These two things are simply excerpts from these highlights.

1 Sener - direct

2 as you have referred to them?

3 A That's right. This would be my submission to the
4 Department Manager for his review and including in the
5 highlights.

6 Q Looking first at Exhibit 534. That refers to what?

7 A Exhibit 534 refers to July 30, 1970 meeting between
8 Messrs. Lester, Meister, Sener and Messrs. Bergman,
9 Erickson and Mathews of MELP to discuss Phase III
10 interconnection.

11 Q Let's stop right there.

12 Lester, Meister and Sener. Sener, of course, is
13 you.

14 The other two are CEI employees?

15 A Yes, at this time.

16 Q They are engineering employees?

17 A No, they are not engineering employees. Mr. Lester
18 was in our finance rate department and Mr. Meister was
19 in the operating department at that time.

20 Q All right, sir. And the MELP representatives were
21 Bergman, the Commissioner?

22 A That's correct.

23 Q Who was Mr. Erickson?

24 A Mr. Erickson was their chief engineer at that time
25 and Mr. Mathews was their chief operating, electrical

Sener - direct

1 system operating man at that time.

2
3 Q When you refer to the discussion, the subject of the
4 discussion as being Phase III, that Roman Numeral III
5 interconnection, what are you referring to?

6 A We are referring to the parallel interconnection.

7 Q That is at 138 KV?

8 A At 138 KV, yes, sir.

9 Q All right, sir.

10 Now, what was the purpose of that meeting?

11 A Well, the purpose, as I recall, of this meeting was
12 to discuss with Mr. Bergman the various alternates
13 that we had conceptually put together and explained to
14 him what we thought were ballpark costs for those
15 alternates, and to get some indication which of the
16 alternates might be appropriate.

17 Q What was Mr. Bergman's express view as to the interest
18 of CEI -- pardon me -- of Muny Light and a 138 KV
19 parallel interconnection?

20 A I think Mr. Bergman felt that the 138 KV parallel
21 interconnection was too expensive, they couldn't afford
22 it, and that's why he asked the --

23 Q Then he asked you to do something else, didn't he?

24 A That's right.

25 That's why he asked us to identify the costs for

Sener - direct

non-parallel or load transfer type interconnections.

Q Now, refer, please, to Exhibit 535.

What is that? What meeting does that note record?

A Exhibit 535 reports the highlights of the meeting on August 20th, 1970 with Mr. Lester, Meister, Sener and Tischler.

Q Who is Mr. Tischler, that's a new --

A Mr. Tischler is a CEI engineer.

Q Who were the MELP representatives present?

A The MELP representatives were Mr. Bergman, Mr. Erickson, Mr. Mathews and some other unnamed MELP people who were in attendance.

THE COURT: What exhibit is this,

I'm sorry.

THE WITNESS: This is 535.

Q What did Mr. Bergman request CEI to do at that meeting?

A Mr. Bergman asked us to develop a proposal for Phase III that would provide standby power to the municipal system in the same way that we had been providing it previously, that is, by use of the MELP substations at Clinton, Denison and Western, Eglandale, East 79th Street, plus a 20 megawatt standby facility at Collinwood.

MR. LANSDALE: Would you please hand

the witness CEI 434.

Sener - direct

Q This exhibit, Mr. Sener, is a report from Mr. Berkman, Commissioner of Light and Power, to Mr. Gaskill, Director of Public Utilities dated December 14, 1970.

I wish you would turn to the page which is -- we seem to have so many unnumbered documents -- which is the tenth sheet of the attachment to Mr. Bergman's letter which is entitled "Summary" and it is a part of something which Mr. Bergman calls Attachment 5.

This attachment is described at the top of page 6 of the letter.

A I am having trouble finding it.

Q Well, if you will see, the letter has six pages. Then if you will count ten pages beyond that.

A Ten. "Summary." Yes, sir.

Q He has an attachment of the things which he expresses as the amount needed to restore Muny to efficient operation, and included in that summary is the following: "Additional CEI permanent ties, \$200,000."

Based upon your discussions and advice to Mr. Bergman, what does this figure represent as the kind of tie which could be installed between Muny Light and CEI?

A Well, that number is in the ball park of the 150,000

1 Sener - direct

2 that we had quoted that would provide a standby
3 interconnection.

4 Q Could this sum of money have gone anywhere towards
5 buying a 138 KV synchronous interconnection?

6 A No. We had estimated that that ball park number was
7 more like \$3 million to \$5 million.

8 Q Now, Mr. Sener, after these meetings in mid-1970
9 that you have just referred to, mid and latter part
10 of 1970, what was your next significant contact with
11 the matter of an interite between CEI and the City?

12 THE COURT: This seems to be a new
13 area you are going into, Mr. Lansdale.

14 MR. LANSDALE: Yes, it is.

15 THE COURT: It is 4:00 o'clock.
16 Supposing we adjourn for the day and we permit
17 the jury to review the exhibits of the day.

18 After that, ladies and gentlemen, keeping
19 in mind my admonition concerning your conduct
20 during adjournments of court, you will be free to
21 retire to your homes to return here tomorrow
22 morning at 8:45. Hopefully we will proceed at
23 that time.

24 Good night. You are free to go.

1 {The Court and Mr. Leo conferred off the
2 record.}

3 THE COURT: I understand, gentlemen,
4 that the charts to the rear of the room have
5 complied with the Court's order and they are
6 available to the jury, is that correct?

7 MR. MURPHY: Yes, your Honor.

8 THE COURT: Very well. And they
9 may go to the jury.

10 The Court will be talking -- I'm considering
11 the following exhibits:

12 CEI 30, previously admitted.

13 CEI 1037, 1050, 1051, 1042, 246, 1040 and
14 1044, are there any objections to those?

15 MR. WEINER: Does the Court want to
16 go over this now or in the morning? In the past,
17 you have been doing this in the morning following
18 the testimony.

19 THE COURT: All right, that's no
20 problem.

21 We can do that tomorrow morning.

22 MR. WEINER: Thank you.

23 THE COURT: Plaintiff Exhibit 3106
24 has been admitted today.

25 Plaintiff's Exhibit 3054 has been previously

1 admitted.

2 Plaintiff's Exhibit 603 has been previously
3 admitted.

4 Plaintiff's Exhibit 144 has been previously
5 admitted.

6 Plaintiff's Exhibits 1537 and 1538 have been
7 previously admitted.

8 CEI's Exhibit 72, 622 and 623 have been --
9 wait a minute.

10 CEI Exhibit 72 has been previously admitted.

11 I think the rest, gentlemen, you can discuss
12 this evening and advise me as to your concerns in
13 the morning, if any.

14 Is there anything further, gentlemen?

15 {No response.}

16 THE COURT: Thank you very much.

17 I have another matter pending, so if you
18 would be good enough to, at your convenience,
19 vacate the trial area here until such time as I
20 can dispose of another matter.

21 You will be free to return and do whatever
22 you have to do, and I will advise the participants
23 in the next matter not to disturb your papers.

24 MR. NORRIS: Your Honor, we did
25 mark that Proffer Summary PTX 3108 that was

1 discussed at the break this noon.

2 THE COURT: All right. Very well.

3 {After an interval.}

4 THE COURT: I haven't reviewed 103
5 yet.

6 MR. NORRIS: Pardon me?

7 THE COURT: I haven't reviewed 103
8 yet, so we may just incorporate it with the rest of
9 the documents.

10 {Thereupon court was adjourned until
11 Tuesday, October 21, 1980, at 8:45 o'clock a.m.}

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Transcript

Tuesday, October 21, 1980

Sener, Kemper, Bingham

KF
228
.C43
1980

1 TUESDAY, OCTOBER 21, 1980; 9:00 A.M.

2
3 {The following proceedings were had in the
4 absence of the jury.}

5 THE COURT: Gentlemen, I got a call
6 from Mr. Alheit's wife, who is the second alternate
7 juror, indicating that he is very ill and won't be
8 in today or possibly tomorrow, as I understand it.

9 Rather than recess the trial for the
10 alternate, since we still have five alternates
11 available, if there are no objections, the Court
12 will dismiss him as an alternate.

13 Do you have any objection, Mr. Norris?

14 MR. NORRIS: I have no objection.

15 MR. LANSDALE: We have no objection,
16 your Honor.

17 THE COURT: The Court will accordingly
18 discharge him as a juror.

19 Any exhibits to address this morning?

20 MR. WEINER: We have just objection
21 to one document, your Honor, on the list from
22 yesterday.

23 LAW CLERK LEO: Is that what you are
24 referring to?

25 MR. WEINER: The list from yesterday.

1 It's entitled "Lindseth" --

2 THE COURT: Well, are these the
3 exhibits that I read off yesterday, CEI 30,
4 1037, 1051, 1041, and so forth?

5 MR. WEINER: Yes, sir. They don't
6 seem to be in the same order I have. But that is
7 the list we are talking about. The only one on
8 that list we are objecting to is 246.

9 THE COURT: Well, so that there is
10 no error, supposing that at one of the recesses
11 counsel get together and give me a list of all
12 of the documents to which there is objection and
13 we will address them.

14 In the meantime, bring in the jury and we
15 will proceed.

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

18 - - - - -

19 THE COURT: Ladies and gentlemen
20 of the jury, the Court received a call from Mr.
21 Alheit's wife, and apparently he has picked up a
22 bug and he is quite ill. She doesn't know if he
23 would be in tomorrow.

24 So rather than recess the trial for an
25 indefinite period of time, the Court, with the

1 consent of counsel, has decided to discharge
2 Mr. Alheit as a juror. So we will proceed with
3 five alternates, and we can move down one seat,
4 ladies, if you will do that.

5 With that, we are prepared to proceed.

6 - - - - -

7
8 DIRECT EXAMINATION OF FRED P. SENER {Cont'd}

9
10 BY MR. LANSDALE:

11 Q Mr. Sener, at the close of the session yesterday, you
12 had been dealing with your contact on the
13 interconnection in the summer, late summer of 1970.

14 What was your next significant contact with the
15 matter of interconnection between CEI and Muny Light?

16 A I believe the next significant contact involving the
17 parallel interconnection was in early '71 or the spring
18 of '71, when Mr. Hinchee arrived.

19 MR. LANSDALE: Will you show the
20 witness, please, CEI Exhibit 1066.

21 Q What is CEI Exhibit 1066, Mr. Sener?

22 A Well, CEI Exhibit 1066 is an internal memorandum from
23 Mr. Meister to Mr. Perry which records the meeting
24 with Mr. Hinchee on April 23, 1971.

25 Q Who is Mr. Perry?

Sener - direct

1 A Mr. Perry was the CEI Vice President of Operations.

2 Q I see. And who was present at that meeting besides
3 Mr. Meister and Mr. Hinchee?
4

5 A I was present at that meeting and I believe Mr.
6 Erickson and Mr. Mathews were also present.

7 Q Where did the meeting take place?

8 A As I recall, this meeting was in Mr. Hinchee's office.

9 Q What was the purpose of the meeting, if you recall?

10 A Well, Mr. Hinchee was just a new arrival on the
11 scene, and the purpose of the meeting was to bring him
12 up to date as to what had been going on between CEI
13 and the City.

14 Q Did this bringing of Mr. Hinchee up to date, what is
15 the effect as to whether it included making Mr.
16 Hinchee familiar with the matters to which you
17 testified yesterday that took place in the late summer
18 of 1970?

19 A Yes. I believe that we identified the conceptual
20 studies that had taken place, but didn't go into them
21 because Messrs. Erickson and Mathews had been in that
22 discussion, previous discussion with Mr. Bergman.

23 Q Now, did Mr. Hinchee request that you do further work
24 on the interconnection at that time?

25 A Yes, he did.

Sener - direct

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Q What did you tell him?

A I told him that we had not done any detailed engineering on the interconnection and that we would not do any or start any detailed engineering until the bill was brought up to date.

Q What did Mr. Hinchee indicate with respect to the ability of the City to pay the bill, or rather Muny Light?

A My recollection is that he felt that he could do that.

Q Now, what was your next activity in connection --

A I think the next major activity on the interconnection parallel 138 operation was relating to the planning and construction activities involved with the March 8th, 1972 FPC order.

Q So there was no significant activity that took place, as far as you know, between this meeting that you had with Mr. Hinchee just related in late April, 1971 and the time of the activity surrounding the issuing of the Federal Power Commission order in March of 1972?

A We did not do any significant engineering, no.

Q Now, what was your responsibility in connection with the work on the interconnection when you resumed activity in March of 1972?

A Well, in March of 1972 it was my job to get this activity underway and constructed as soon as possible.

Sener - direct

that is, the activity indicated by the FPC order.

MR. LANSDALE: Would you show the
witness CEI Exhibit 1174, please.

Q What is Exhibit 1174, Mr. Sener?

A The top pages of Exhibit 1174 are apparently my notes 91
from a meeting with Mr. Erickson, Mathews, Gillis,
Wetzel, Titus and Philips on March 2, 1972.

Q This is in your handwriting?

A Yes, sir.

Q Were each of those gentlemen employees of the Municipal
Light Plant?

A Yes, sir.

Q I invite your attention to the fact that toward the
end of that packet of material -- at the one, two,
three, fourth page from the end is a typewritten
memorandum which appears to record a separate item.

Will you state what that is?

A Well, toward the end this is a standard CEI
memorandum that is addressed to Mr. Davidson from Mr. 1ch
Schuster and Mr. Sener.

Q Are you the Mr. Sener referred to?

A Yes, sir.

Q Who was Mr. Davidson? ed

A Mr. Davidson was the Manager of the System Planning

Sener - direct

Q All right. Now I want you to explain to us, first, why it is that apparently you supply the City plenty of energy at a voltage of 38 KV but had difficulty supplying what they needed, in your view, from the 69 KV and both connections being to approximately the same point.

Why could you supply to one voltage and not the other? Does this all come from the same place or different places?

A Well, I think we have to remember that the Lake Shore Switchhouse is a major load area of the CEI system. It supplies significant energy to the downtown Cleveland area and many times we have to import large amounts of power into the area from other generating plants via the transmission grid.

Essentially what we have connecting the Lake Shore Switchhouse to the rest of the system is two transmission systems operating in parallel. One is the newer 138 KV high-capacity system with some reserve capacity available in it, and the other is a much older, smaller capacity, limited system, 69 KV system.

Q All right, sir. Now, will you then, directing your attention to the 69 KV system, explain what the

Sener - direct

limitations were on that system which prevented you, in CEI's view, from providing any sort of continuous service over it to Muny Light?

You can use that board over there, that blank pad, if you need to.

A Well, perhaps it would be advantageous to have a small sketch.

{Drawing on pad.}

I am using this block with the LSSH inside it to represent the Lake Shore Switchhouse.

The Lake Shore Switchhouse is supplied with a 69 KV system that includes five cables.

Q Are those cables connected together in any way?

A No, not at this location.

Q All right.

A They are connected inside the switchhouse through transformers that step the voltage down to the 11 KV that is the voltage inside the switchhouse.

Q I see. Go ahead.

A In addition to the 69 KV, we have 138 KV transformers that I have simplified that are also connected into the Lake Shore Switchhouse to supply power to this load area.

The problem is that the 69 KV transmission

Sener - direct

circuits are needed for the reliability and continuity of service to the customers supplied out of the Lake Shore Switchhouse and, therefore, this cable must be kept in service supplying the CEI facilities.

The request was to take this circuit out of service at this location.

Q You are indicating the line or cable on the left.

A I'm indicating the cable on the left, which was called N-5.

The concept that was being promoted for the 69 KV was to disconnect this cable from the transformer at this point and extend a single circuit over to the City of Cleveland Lake Road plant.

Q You have indicated that proposed extension with a dotted line.

A That is correct.

Therefore, when this cable was used to supply the municipal customers, it was not available to maintain service reliability and supply customers on the CEI system. That was the reason why we didn't want it operated in a synchronous mode to this load. Should we have problems in supplying the customers in this area when this was operating in a synchronous mode out here, we could have shut the whole area down

1 Sener - direct

2 before we could have gotten this circuit back to its
3 original condition to supply the CEI customers.

4 Q That is because that system operated synchronously,
5 any deficiency in the municipal operation is
6 instantaneously made up by drawing on CEI in the
7 synchronous mode?

8 A That is correct. When you are operating in the
9 synchronous mode here, the flow on this line is
10 entirely under the control of the municipal system.

11 Q By "this line," you mean the dotted line?

12 A The dotted line.

13 MR. LANSDALE: All right. Thank you.

14 I ask that that be marked whatever our next
15 number is.

16 CEI 1178.

17 Now, would you please hand the witness
18 CEI Exhibits 1165, 1163, and we have a roll of
19 drawings called 1164.

20 Q Mr. Sener, please refer to CEI Exhibit 1165 and state
21 what that is, if you please.

22 A Exhibit 1165 is a letter from me to Mr. Erickson.
23 It says, "Attached please find three CEI drawings
24 illustrating the 138, 69 KV and 11 KV Lake Shore
25 facilities plus a description of the CEI extension

Sener - direct

load protection that Mr. Hinchee requested."

So this is a letter of transmittal.

Q Directing your attention to that essential load protection program, what is that?

A Well, the CEI essential load protection program is a program that is set up to automatically shed load should the frequency on the whole interconnection system decline. And this is one of the requirements that is set up for interconnected system operation.

Q You have told me, Mr. Sener, that you had certain basic problems in working with Muny Light on this interconnection. Will you tell me what they were.

A Well, I think the basic problem in working with them was that they didn't understand the requirement for operating in synchronism, nor for constructing transmission facilities. They seemed to have had experience in distribution facilities, but just didn't understand this.

Once we discussed the concept and the plans and left the detailed design for them to their part of the system, it usually required that we step in and help them and do part of it for them.

Q Now, please refer to Defendant's Exhibit 1163. This appears to be a letter from you to Mr. Erickson

Sener - direct

transmitting certain drawings, and I believe you have also -- what is the date of it?

A This Exhibit 1163 is dated April 12, 1972.

Q That refers, does it not, to the transmission of certain drawings?

A Yes, it does.

Q Will you look at the roll of drawings which is designated 1164. I think you have looked at those before.

Will you please verify that those are the drawings referred to in Defendant's 1163.

I particularly want to direct your attention to the one which I believe is there which includes a designation of the underground facilities at the Lake Shore Switchhouse yard.

A Well, without checking each one, it looks like this is the packet of drawings that are identified on the drawing list here.

Q Do you find the underground, the drawing disclosing CEI's underground facilities in that packet?

A Yes, they are included.

Q This was transmitted by you to the City at or about the date of that letter?

A That's correct.

Sener - direct

MR. LANSDALE: Now, please give the
witness CEI Exhibit 625.

BY MR. LANSDALE:

Q What is Exhibit 625, Mr. Sener?

A Exhibit 625 is a letter to Mr. Davidson from myself
dated June 30th, 1972.

Q What did it concern?

A Well, this concerned an article that had been published
in the newspaper that was allegedly a quote by Mr.
Hinchee relating to the problems that he saw in
getting the line constructed.

Q He said in that newspaper article or was purported to
have said that CEI had refused to give Muny Light
drawings of the underground facilities at Lake Shore,
did it not?

A Yes, sir.

Q This memorandum did what? What did you inform Mr.
Davidson of in this memo?

A Well, this memorandum endeavored to describe to Mr.
Davidson our entire activity on the line survey,
indicating that we had given them the drawings and
indicating that we had required some hand digging
of certain post holes, and the complete story, as I
saw it, that related to this article.

Sener - direct

Q This was dated June 30th, this memorandum, CEI Exhibit 625? -

A Yes, sir.

Q You mentioned hand digging. What is the fact as to whether or not the City in fact encountered some underground obstructions in their digging to set their posts?

A That's correct, that one of the post holes that had to be dug by hand digging ended up opening a hole right on top of a 20-inch City water line. Mr. Erickson and Mr. Wetzel after that indicated they were quite happy that we had hand dug a few of the holes in the areas of highest risk.

Q Was this water main a part of CEI facilities?

A No, sir. This is a City of Cleveland water main.

MR. LANSDALE: Will you please hand the witness, Mr. Leo, CEI Exhibits 626, 575 and 576.

Q Mr. Sener, will you tell me if each of these letters or documents are letters from you to Mr. Harold H. Ackerman, are they not?

I used bad English, I said "each are." I meant "each one is."

A Yes, each one is.

Sener - direct

Q Who was Mr. Ackerman?

A Mr. Ackerman was the Chief Engineer at the Muny System after Mr. Erickson retired.

Q And what was the general purpose of each of these letters, Mr. Sener?

A Well, the general purpose of each of these letters was to bring Mr. Ackerman up to date with what had gone on in the past and what was needed to get the interconnection facilities completed since, apparently, Mr. Erickson retired without providing any benefit of cross discussion or colonization of what was going on.

Q I see. Now, please refer specifically to Exhibit 626, which is a letter from you to Mr. Ackerman dated August 18, 1972, the earliest of these three, and directing your attention particularly to the last paragraph, I don't want you to read that, particularly, but tell me what this last paragraph dealt with.

A Well, the last paragraph dealt with the need to get the MELP terminal facilities done and testing that was required in order to get them done.

Q And what are terminal facilities?

A Well, in this case the MELP terminal facilities that we are talking about included not only the termination of the light at the Lake Road plant but also the work

1 Sener - direct

2 on the circuit breaker at that termination plus the
3 building metering equipment that was required plus
4 the protective relaying, the communication equipment
5 and the supervisory control was all part of this type
6 of a facility.

7 Q And please refer specifically to CEI 575, and what is
8 the fact as to whether in that letter you reminded
9 Mr. Ackerman again of the need to provide terminal
10 facilities?

11 MR. HJELMFELT: Objection, your Honor.

12 THE COURT: Sustained. Leading.

13 Q Tell me what you advised Mr. Ackerman on the occasion
14 of CEI's Exhibit 575, Mr. Sener?

15 A Regarding the 69 KV plan I advised him that it seemed
16 prudent to complete this effort as soon as practical
17 to minimize any near-term customer interruptions on
18 the MELP system while working toward early completion
19 of the 138 KV facilities.

20 Q All right. Now, please refer to CEI Exhibit 576,
21 and this is dated in October of 1972.

22 What were you advising Mr. Ackerman at this time,
23 referring particularly to the problem of the terminal
24 facilities?

25 A At this time I advised Mr. Ackerman that we had given

Sener - direct

1
2 them some detailed information on the MELP end of the
3 terminal facilities and that it was imperative to get
4 things going and ordering equipment on their end since
5 some of their equipment had to be compatible with ours
6 at our end, and we couldn't order it until they had
7 ordered theirs.

8 Q Okay, sir. Now, it's already been established, Mr.
9 Sener, that the 69 KV intertie was first energized
10 or at least tested in December of 1972.

11 Had these terminal facilities been provided by
12 this time?

13 A No, sir.

14 Q How was the situation with lack of terminal facilities
15 solved for this operation, if it was?

16 A Well, this operation was again a case where there was
17 a crisis impending and the CEI people had to provide a
18 standard customer billing metering equipment to put the
19 69 KV facilities in service.

20 Q And what is the fact about this? Was this equipment
21 part of the equipment that should have been supplied
22 by CEI or by Muny Light?

23 A No, this billing metering equipment was one of the
24 items that was on the Muny Light installation
25 requirement.

Sener - direct

Q All right, sir.

MR. LANSDALE: Now, please give the witness CEI Exhibit 89, if you please. And you might get out 1166 at the same time.

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

Q Exhibit 89, Mr. Sener, is already in evidence in this case. That's a letter from Mr. Pofok, then Chief Electrical Engineer of Muny Light, to Mr. Davidson.

Mr. Pofok, I take it, has succeeded Mr.

Ackerman as Chief Electrical Engineer of Muny Light?

A Apparently.

Q Did this letter come to your attention at the time?

A No.

Q It did not.

Mr. Sener, could the City have had the appropriate terminal facilities for the 69 KV installation in place by December, 1972, had it acted when CEI first recommended that it act in accordance with these returns we have just been examining?

A Yes.

Q Mr. Hinchee testified, Mr. Sener, that the reason for the City's delay disclosed by the end of 1974 for these terminal facilities, disclosed by CEI Exhibit 89,

1 Sener - direct

2 was that CEI kept changing the specifications for such
3 terminal equipment.

4 What is the fact in this regard?

5 A I think the facts in this regard are that we did not
6 change the specifications. Rather, the City refused to
7 purchase some of the communication terminal equipment
8 that we understood they had agreed to in the original
9 discussions and, therefore, had to make some
10 significant changes in the communication circuitry in
11 order to put the facilities into service eventually.

12 MR. LANSDALE:

Please give the witness

13 CEI 1166.

14 Q Do you have 1166?

15 A Yes.

16 Q What is that, Mr. Sener?

17 A 1166 is a transmittal letter to me from Mr. Gillis
18 wherein he is transferring some drawings and a set of
19 specifications prepared by Westinghouse for the 69 KV
20 line connection at the City of Cleveland.

21 Q Who is Mr. Gillis?

22 A Mr. Gillis was one of the engineers in the City's
23 Electrical Engineering Department.

24 Q And the date of this was January 23, 1973?

25 A Yes, sir.

Sener - direct

Q Does this refer to the terminal facilities that we have been discussing?

A Yes, sir.

Q Had you received any written information prior to this concerning the City's plans respecting the terminal facilities?

A We had not seen a set of specifications for those facilities. We did provide some information and comments on sketches that were available during the summer.

Q You mean CEI provided or you provided?

A CEI provided.

Q When was the last time previous to this that you had any direct discussions with the City engineers respecting these specifications?

A I believe the last discussions regarded the communication equipment, that it was not going to be purchased, and, therefore, we had to change that plan and that was sometime in the summer of '72.

MR. LANSDALE: All right. Now, would

you hand the witness CEI Exhibit 81.

Q Do you have that in front of you? Do you have Exhibit 81?

81 is what, Mr. Sener?

Sener - direct

1 A 81 is a letter from me to Mr. Ackerman dated February
2 5, 1973.

3 Q What does this letter do? What does it concern?

4 A This letter concerns the material we received on
5 January 23, 1973, and it provides some specific
6 comments regarding those facilities.

7 Q All right. Do you have CEI 627 before you? I think it
8 is in one of those books.

9 A Yes.

10 Q What is Exhibit 627, Mr. Sener?

11 A Exhibit 627 is an internal memorandum from me to Mr.
12 Davidson regarding a visit by Mr. Fowlkes on February 8th,
13 1973.

14 Q Who is Mr. Fowlkes?

15 A Mr. Fowlkes was the engineer in the Federal Power
16 Commission that had been working on this project.

17 Q Please refer to the last paragraph on page 2.

18 What does that paragraph concern, Mr. Sener?

19 A The last paragraph on page 2 concerns the 132 KV
20 interconnection status.

21 Q You say "132."

22 A We use the terms 132 and 138 more or less
23 interchangeably.

24 Q You are not changing the rules on us?

25

Sener - direct

1
2 A No.

3 Q Okay, go ahead.

4 A This paragraph indicates Mr. Fowlkes' understanding of
5 the schedule that might be appropriate.

6 Q What did you determine then and advise as to the notice
7 recorded by CEI to complete the 138 KV interconnection?

8 A I told Mr. Fowlkes that we needed 12 months to design
9 and construction to complete the CEI work on the 138 KV
10 interconnection.

11 Q Had CEI received the necessary go-ahead from the City
12 as indicated in this memorandum, could the 138 KV
13 synchronous interconnection have been in operation by
14 mid-1974, Mr. Sener?

15 A Yes, sir.

16 MR. LANSDALE:

You may examine.

17 - - - - -

18
19 CROSS-EXAMINATION OF FRED P. SENER

20
21 BY MR. HJELMFELT:

22 Q Morning, Mr. Sener.

23 A Morning.

24 Q In designing an interconnection, there is no unique
25 solution to the engineering problem, is there?

Sener - cross

1 There is no single discreet solution?

2
3 A Not any more than there is to any engineering problem,
4 but there are certain standards and rules that are
5 generally used.

6 Q But within the framework of these engineering rules or
7 good engineering practice, engineers may differ on
8 certain factors on how to design an interconnection;
9 isn't that correct?

10 A I would say only in the very -- minor details of it,
11 not in the major concepts, and those items that have
12 been pretty much agreed to by the coordinating
13 agencies like ECAR and NAPSEC.

14 Q That's right. That's the framework of the rules that
15 you play?

16 A That's right.

17 Q Now, with reference to what has been now designated
18 as CEI 1178, that's the picture that you drew, are
19 all of those transmission lines that you show coming
20 into the Lake Shore station switchhouse underground?

21 A All the lines into the Lake Shore area, CEI lines,
22 69 KV and 138 KV are underground.

23 Q Is that how many lines there were in 1971?

24 A Yes, I believe so.

25 Q Have there been any additional CEI lines brought into

Sener - cross

1 that station since then?

2
3 A Other than the Lake Road MELP interconnection, not to
4 my knowledge.

5 Q But that's not a CEI line?

6 A That's correct.

7 Q Now, while you were discussing the operation of the 69
8 KV as being a problem for the synchronous, am I
9 correct you were talking about a continuously
10 synchronous operation, that is, a closed switch
11 interconnection?

12 A I was referring to any time the facility would be used
13 in the synchronous mode.

14 Q Now, as I understand, your problem was that if that
15 line were, in effect, dedicated synchronously to MELP
16 service, that would reduce the back up for the Lake
17 Shore station; isn't that correct?

18 A That's correct. It would take facilities out of
19 service that are normally required to supply that area.

20 Q Now, if you were operating closed switch, that would
21 cause that problem, if you always had the switch over
22 to the City service?

23 A Yes.

24 Q Is that correct?

25 A Yes.

Sener - cross

Q Now, if an open switch, the benefit to CEI of an open switch is that except when the switch was closed to deliver power to the City that line was available for backup support to Lake Shore; is that correct?

A It was available to supply the customer needs in the Lake Shore area, that's correct.

Q And the only time you would agree to close that switch to serve Muny Light would be on occasions when CEI had no need for that backup?

A I think the original plan was the only time that switch would be closed would be when the lights were out in the Municipal System and we did not have a need for that capacity.

Q Now, on the times when you did not have a need for that capacity, then that line could be switched over to serve the City's system; is that correct?

A It could be switched over, but since it was taken away from the supply of the Lake Shore area, we pick up the risk of service interruptions to our customers.

Q And that is based upon a double contingency outage; isn't that correct?

A Not a double contingency, no, sir.

Q Isn't that the planning criteria that was used?

A Not a double contingency.

Sener - cross

1 Q What contingency was used?

2 A The contingency was that we would have adequate
3 facilities to supply that area when maintenance
4 requirements dictated shutdown of larger units, and
5 then we are subject to a forced outage of some other
6 piece of equipment.

7 Q Or the loss of --

8 A Or the loss of it.

9 Q -- of the cable?

10 A Or the loss of the cable. Whatever was being used to
11 supply the area.

12 Q When you lost two factors of supply; is that correct?

13 A When two major items were out of service.

14 And I would like to differentiate this because
15 when you said a double contingency, to me that applies
16 a significant taking at one low two major facilities
17 out of service, and it is not designed for that and we
18 run the risk of that today.

19 Q CEI's system was designed, was it not, so that if
20 there was a fault on the line or an overload on the
21 lines of Muny Light, that line would automatically
22 trip off?

23 A Under what condition are you referring?

24 Q If the line were operating synchronously on the 69 KV,
25

Sener - cross

1 as it did on occasion when you were transferring the
2 load back, if there had been a fault on the City's
3 system, the line would have tripped, is that correct?

4
5 A The line should have tripped if the MELP terminal
6 facilities had been installed.

7 Q Didn't CEI have relaying that would trip out that line?

8 A There has to be protective relaying on both ends of
9 any kind of an interconnection or any kind of
10 transmission circuit that is in a grid. The only way
11 you keep from damaging the facilities used in the
12 interconnection mode or the transmission circuit mode
13 is to open both ends.

14 So although CEI had protective relays and
15 circuit breakers on their part of the system, it was
16 also essential, to minimize any possible damage to this
17 seven or eight-mile cable system, to have the circuit
18 breakers trip at the MELP end immediately.

19 Q Wasn't the protection on MELP and basically for the
20 City's protection?

21 A Well, I just said it was for the protection of the
22 circuits involved in making up the interconnection,
23 which is a mile and a half or so of CEI constructed
24 overhead line and seven or eight miles of underground
25 cables.

Sener - cross

Q That was the City's constructed overhead line?

A That was the City's constructed overhead line and CEI's significant cable.

MR. HJELMFELT: Would you please hand the witness CEI Exhibit 53?

{A document was handed to the witness by the Clerk.}

Q You referred to that yesterday, did you not, Mr. Sener? That is the letter from Mr. Howley to Mr. Bergman stating that the Illuminating Company's out-of-pocket cost for an interconnection would be \$3 to \$5 million?

A Yes, sir.

Q And Mr. Bergman thought the City couldn't afford that amount; is that correct?

A That's what I recall, sir.

Q And Mr. Bergman had some critics in the City Council that were urging him to get on with the interconnection; isn't that correct?

A That's what I remember, yes.

MR. LANSDALE: I object, unless the witness knows.

THE COURT: Approach the bench.

{Bench conference ensued on the record as

Sener - cross

follows:}

MR. LANSDALE: I'm going to object to asking this witness what City Council was urging.

MR. HJELMFELT: The letter is the one you offered yesterday that Bergman needed the cost data for --

MR. LANSDALE: What Bergman told him. You asked him the fact.

You want to ask him whether Bergman told him that, that's fine and dandy with me.

THE COURT: Sustained as to form.

{End of bench conference.}

- - - - -

THE COURT: Rephrase the question, please.

BY MR. HJELMFELT:

Q Mr. Bergman told you that his critics in City Council were urging him to get on with constructing an interconnection; isn't that correct?

A I believe that was discussed.

Q And so he was interested in getting some information from CEI as to the ballpark cost of the interconnection; is that correct?

Sener - cross

A That's what he asked.

MR. HJELMFELT: I would ask that the

witness be handed PTX 554 and PTX 551, please.

{Documents were handed to the witness by
the clerk.}

Q These are the documents that you testified were the
engineering studies that were the basis of Lee
Howley's \$3 million to \$5 million ball park figure;
is that correct?

A I believe I said these were the conceptual studies
that led up to the preparation of the letter.

Q And these conceptual studies contain price figures,
don't they?

A Yes, they do.

Q Now, they are sort of ball park estimates, aren't
they? They are not final cost figures?

A That is right.

Q Now, the costs in 554 relate to costs that would be
incurred by CEI if it had to do certain other work
earlier than planned to provide service to Muny Light
on a parallel interconnection; isn't that correct?

A Yes, I believe that is correct.

Q And these costs are based on the proposition that CEI
would be supplying MELP firm power; isn't that correct?

Sener - cross

A Yes, I believe that is correct.

Q For example, the first cost shown is a four-year advancement of two Lake Shore to Inland 138 KV cables, which would be advanced from the construction plant from 1977 to 1973, and that would have cost \$5 million; is that correct?

A Yes, that was the estimate.

Q And that would have been two new 138 KV cables coming into the Lake Shore Switchhouse you have shown there; is that correct?

A Yes, that was the plan.

Q And those cables still haven't been installed, have they?

A Not to my knowledge, no.

Q Yet CEI is supplying firm power to the City, is it not?

A I guess it is. I'm not -- when we were dealing with it, we weren't. But I think we are now.

Q Now, let's invite your attention to PTX 551, which is the other study that you indicated was one of the conceptual plans that was the basis for Mr. Howley's letter. That shows five alternative interconnections for parallel operation; isn't that correct?

Sener - cross

1

2 A Yes.

3 Q And one of them is for 80 MVA and the other four are
4 for 100 MVA?

5 A Yes.

6 Q Loosely speaking, those might be sometimes referred to
7 as 80 megawatts or a hundred megawatts, even though
8 the outcome is not the same; isn't that correct?

9 A Well, if you do the proper control of the reactive.

10 Q Now, of the four alternative methods of providing
11 a hundred megawatts or a hundred MVA service to the
12 city, three of those were priced out at \$2 million or
13 less; isn't that correct?

14 A Yes.

15 Q And the 80 MVA or 80 megawatt interconnection was
16 priced out at a million dollars; isn't that correct?

17 A Yes.

18 Q You and Mr. Lester had a meeting with City engineers
19 in May of 1969, didn't you?

20 A Yes, I believe that was the start of the construction.

21 Q And at that meeting, the City was represented by
22 Mr. Fakult, Mr. Meehan, Mr. Mathews and Mr. Erickson;
23 isn't that correct?

24 A I don't remember all those names. But it sounds like
25 the people that may have been involved.

Sener - cross

Q It is the people that you would expect to be involved in that sort of thing; is that correct?

A Yes.

Q And the City's people at that meeting indicated that they were desirous of a permanent interconnection, that they thought that was the only thing that would help them; isn't that correct?

A No, I don't think that is correct at all. I think there was disagreement among the people as to what they needed, and some of them thought they might do it without any help.

MR. HJELMFELT: I would ask that the witness be shown PTX 539, please.

Q That's a memorandum that Mr. Lester wrote to Mr. Bingham describing that meeting; isn't that correct?

A Yes, I believe it is.

Q You received a copy of that memorandum, did you not?

A Yes.

Q Did you ever write a memorandum stating that you disagreed with what Mr. Lester stated in that?

A I don't recall writing a memorandum to that effect. However, you should remember in this write-up there were also people that suggested "Don't hurry, there might be other things we would like to do," is my

Sener - cross

understanding of that.

Q What did he say "Don't hurry" about? What was that with regard to?

A That was with regard to getting some good estimates of what would -- what it would take to do some of the transfers.

Q Load transfers?

A Right.

Q Mr. Fakult wasn't very interested in getting load transfers, was he?

A I think that's correct. I think there was a feeling they could do the job without it.

Q What they really preferred was a permanent interconnection, isn't that correct?

A I have said my recollection is that some of the people there preferred to.

Q The ones that didn't were the CEI people?

A That's not what I said.

Q Is that correct?

A No, it is not that.

Q When you met with Mr. Hinchee in April of 1971, you didn't provide him with any engineering conceptual studies that CEI performed, did you?

A No.

Sener - cross

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Q You simply sketched out a couple of ideas on a piece of paper, isn't that correct?

A No, I think I sketched out what was included in the letter from Mr. Howley to Mr. Bergman.

Q Were there any sketches in that letter?

A To my recollection there were no sketches in that letter, but there was a description. My sketches were made to make it vividly clear what was included in that letter.

Q So in April you didn't provide Mr. Hinchee with any information the City didn't already have?

A I think that's correct.

Q Incidentally, didn't you prepare, do some preparation prior to that meeting with Mr. Hinchee?

For example, didn't you spend some time preparing data and questions that needed to be answered if MELP was to attempt a return-in-kind operation?

A Possible.

Q What do you mean by "return-in-kind operation"?

A A return-in-kind operation is usually that associated with an interconnected operation where one party supplies energy to another party and the other party, instead of paying in dollars for that, returns energy in kind quote-unquote, to the supplying party.

Sener - cross

"In kind" means at some time in the load shape or the same time in the cost differentials that occur between the systems.

Q None of that data, none of those questions were raised or discussed at the April meeting with Mr. Hinchee, were they?

A I don't recall.

Q Who instructed you that no more engineering would be done on the 138 KV line until the City brought its bills up to date?

A That was a management decision.

Q Who advised you of that management decision?

A I don't remember now whether it was Mr. Davidson or Mr. Hauser.

Q Do you report to Mr. Hauser?

A I do not.

MR. HJELMFELT: I have no further questions.

MR. LANSDALE: No questions.

THE COURT: Thank you, Mr. Sener.

You may step down.

- - - - -
{Witness excused.}

1 THE COURT: Ladies and gentlemen,

2 before we start another witness perhaps this would
3 be an opportune time for us to take our morning
4 break.

5 Please, during the break, keep in mind the
6 Court's admonition. Thank you.

7 {Recess taken.}

8 THE COURT: Call your next
9 witness, please.

10 MR. LANSDALE: Mr. Kemper.

11 - - - - -

12
13 R O B E R T M. K E M P E R,

14 a witness called on behalf of the defendant,
15 being first duly sworn, was examined and
16 testified as follows:

17
18 DIRECT EXAMINATION OF ROBERT M. KEMPER

19
20 BY MR. LANSDALE:

21 Q Will you state your name and your address, please?

22 A My name is Robert Kemper. My business address is 55
23 Public Square, Cleveland, Ohio.

24 Q What is your residence?

25 A My residence is 3410 Wooster Road, Apartment 214,

Kemper - direct

Rocky River.

Q By whom are you employed, sir?

A I am employed by the Cleveland Electric Illuminating Company.

Q Tell us what your education was.

A I graduated from Case School of Applied Sciences, which is now Case Institute of Technology, part of Case Western Reserve University, in 1942. I received a degree of Bachelor of Science in Civil Engineering.

In 1962 I received a degree as Master of Science in operations research.

In addition, I have taken several home study courses or correspondence courses from LaSalle Extension University, one in accounting and another in American Law and Procedure, and have had a number of courses at Ohio State while I was in the service.

Q How long have you worked for the Illuminating Company?

A I joined the Illuminating Company in 1947.

Q And will you outline for us the history of your employment with the company to the present day?

A I was hired as a Cost Engineer, or Cost Estimator, I should say, in 1947. In 1951 I was recalled into the Navy for two years as Public Works Officer in Port Columbus, Ohio.

Kemper - direct

1 I then returned to the company as a Cost
2 Engineer in 1953. I was promoted to Supervisor of
3 the Project Property Unit in 1956 and made General
4 Supervisor of the Evaluation Section in 1958, I think.

5 In 1960 I was transferred to the Systems Procedures
6 Department and I was Senior Project Cost Engineer where
7 I supervised programmers and also later was
8 responsible for long-range planning.

9 In 1960 I returned to the department which I
10 initially started with, which is now called the Cost
11 and Record Department. I was Manager.

12 In 1968 there was a change in the organization
13 which had me report to a manager, and a manager
14 couldn't report to a manager so I was given a new
15 title of Principal Evaluation Engineer, but I had the
16 same responsibilities as I did as Manager since 1968.

17 Q And this is the position you hold at the present time?

18 A Yes, sir, it is.

19 Q What are your responsibilities in this position?

20 A My responsibilities are in four areas.

21 The first we call mapping. This concerns mapping
22 of the overhead and underground facilities throughout
23 our system.

24 The second part is physical record keeping. This
25

1 Kemper - direct

2 is the records of the poles, transformers, et al.,
3 their age, history, where they have been installed and
4 so forth.

5 The third part of our responsibility is cost
6 estimating. We estimate all the company work and
7 contract work, including check bidding on the
8 contractors for work that they are going to do for the
9 company.

10 And finally, we do the plant accounting for the
11 company.

12 Q You are responsible, in essence, for the company's
13 property records, are you not?

14 A Yes, sir, as part of the plant accounting, right.

15 Q And in connection with your estimating for the purpose
16 of checking on contractor bids and the like, do you
17 maintain unit costs relating to the company's property?

18 A Yes, sir, we have unit costs for company property.

19 Q Tell me what this consists of. What do you mean by
20 "unit costs"?

21 A Well, we define -- in the plant accounting sense, the
22 unit cost includes all direct labor, all direct
23 material, either coming from our own storerooms or that
24 we buy outside the activity, any equipment costs, plus
25 certain overheads. In other words, it is all-inclusive.

Kemper - direct

It is an installed cost.

Q Give me an illustration of a unit. I mean, would a pole installed in the ground be a unit?

A A pole would be a unit of property, yes, sir.

Q A unit of property.

And then the costs embraced in that unit embrace all of the costs involved in the actual installation and putting into service of that particular unit?

A That is correct.

Q All right, sir. Now, I show you on the screen what has been identified as CEI Exhibit 1177. I will ask you whether or not that was prepared by you or under your supervision.

A Yes, sir, it was.

Q What does it show?

A Well, it shows the Muny service area and the percentage of municipal light customers in their own service area in relation to all customers, and it also shows throughout the system the various weighting within the Municipal Light service area, the weighting of the customers from 100 percent down to 0 percent.

Q The Muny Service area is represented by the total colored area; that is, although it has many colors, in totality, that is the Muny service area?

Kemper - direct

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2 A Yes, sir, that is the Muny service area.

3 Q All right, sir. Now, tell me as of what time that
4 map speaks.

5 A The data for that map comes from the year 1976.

6 Q The significant period in this case is July 1, 1971
7 through July 1, 1975.

8 Have you done anything to assure yourself of its
9 applicability to the period I just mentioned?

10 A Yes, sir, I have satisfied myself. I have gone back
11 and made some studies which say that the method that
12 was used and the data used is applicable to the
13 mid-'71-'75 period.

14 Q Why was it based on 1976 in the first place?

15 A The reason we used 1976 is it was the only year in
16 which we had data about where the Muny customers were,
17 specific data of where the Muny customers were.

18 Q What information did you have about the Muny customers
19 in the year 1976?

20 A Late in 1976, we got a computer tape from --

21 MS. COLEMAN: Objection, your Honor.

22 THE COURT: Approach the bench.

23 - - - - -

24 {Bench conference ensued on the record as
25 follows:}

1 Kemper - direct

2 MS. COLEMAN: I'm going to object to
3 this on two grounds.

4 One of them is that the work papers I was
5 given don't relate to this map at all. It has
6 been testified that it is 1976. I was given papers
7 relating to 1979 studies.

8 The second is that the specific matter that
9 the witness has been asked to get into relates to
10 material coming out of settlement discussions. I
11 don't think it is a proper subject of the trial.

12 MR. LANSDALE: May I have her last
13 statement read?

14 {The record was read by the reporter.}

15 MR. LANSDALE: I don't intend to
16 mention the fact that there were settlement
17 discussions. But I don't see anything wrong with
18 using the data that discloses the addresses of the
19 Muny Light customers.

20 What has that got to do with it?

21 I don't intend to get into any settlement
22 discussions at all.

23 MS. COLEMAN: Well, I will ask you
24 for the data and calculations that that chart is
25 based on, sir.

1 Kemper - direct

2 MR. LANSDALE: Ask me for what?

3 MS. COLEMAN: I would ask you for the
4 data and calculations that that chart is based on.

5 MR. LANSDALE: I think you have them.
6 But give me a chance to get the testimony in and we
7 will give you whatever we have.

8 THE COURT: Yes. Turn over the
9 documents for this chart if Ms. Coleman doesn't
10 already have them.

11 But as far as the second branch of the
12 objection is concerned, that is overruled.

13 MR. LANSDALE: My belief is that all of
14 the documents have been turned over. We will check
15 on it.

16 THE COURT: You will have a lot of
17 time during the lunch hour.

18 {End of bench conference.}

19 - - - - -

20 BY MR. LANSDALE:

21 Q What kind of data did you have about the Muny Light
22 customers for the year 1976?

23 A We had the Muny customer records which showed the
24 addresses of all Municipal customers in 1976.

25 Q How did you go about developing the data shown on that

Kemper - direct

exhibit, Mr. Kemper?

A We obtained a City Planning Commission map which outlined the Municipal Light Plant service area. We then superimposed our grid upon that map so that we could identify specific areas in relation to our grid.

There, of course, would be a lot of, a number of grids that would be on the perimeter of the service area and would be partially in the service area and outside the service area. Here we took those grids and broke them down into a hundred rectangles which were about 400 feet by 500 feet in dimensions.

We then took the Muny tape of customers and wrote a program to draw up the customers, the numbers by each grid.

Q When you say "wrote a program," are you referring to the use of computers?

A Yes, sir, we wrote a computer program.

Q Go ahead.

A This gave us the Municipal customers, Muny Light customers by our grid numbers.

We then, from the data we had on our own customers, we came up with a number of customers per grid. Those partial grids that were on the perimeter were partially in the system and partially -- we had data that we

Kemper - direct

could assign the customer back to the individual subgrid, the little 400 by 500 foot area. So we knew which CEI customers were within that, that grid, were within the service area. So we could then determine how many CEI customers were in the service area, Municipal Light service area and, of course, we knew from the --

Q I notice that the colored areas, the different colored areas on the map are square. I take it that they are made in accordance with the boundaries of the grids that you have mentioned?

A Yes, sir. Those are the boundaries of the grids.

You will note that a number of areas there are more than one grid comprised. For example, the green area there in the lower, there would be more than one grid in that area.

Q So remind us, how large is a grid, a CEI grid that you refer to?

A Our grid system is a rectangle 4,000 feet by 5,000 feet.

Q Therefore, the subgrid would be a hundred feet?

A Would be 400 feet by 500 feet. There would be 100 of them in the --

Q Now, did you, at my request, compare the Muny system, the lines of the Muny Light service area shown on that exhibit, 1077, with the yellow map in this case, 2064,

Kemper - direct

to verify whether or not you were using the same boundaries as it appears on that exhibit 2064?

A Yes, sir, I did.

Q What is the fact?

A I found them to be identical.

Q To be identical.

Now, what did you do to verify that the data upon which you based 1177 is reasonably applicable to the 1971-1975 period?

A We went back and took off the number of shifts from Muny Light to Cleveland Electric Illuminating Company starting from 1971. We used the beginning of '71 because we didn't have mid-year data.

We then took the shifts, took them off by grid, and if you would then take the -- considering shifts only, take the number of customers that are in the common service area and add the shifts back to Muny and subtract them from CEI -- I am talking about the net shifts.

Q Yes.

A -- so we come back to the beginning of 1971 and we actually plotted these on a grid map and found that they were scattered throughout the service area. There was no uniform, pretty well uniform through the

Kemper - direct

1 system.

2 So we then come up with a percentage of municipal
3 customers as of that date by putting the shifts, the
4 net shifts back to Muny.

5 Q Now, you show 42 percent, of the customers here as
6 being served by Muny as of 1976.

7 What would the figure have been in 1971?

8 A Considering the shifts only, it works out to be 44
9 percent.

10 Q You said "shifts only."

11 In the process, what did you discover about the
12 growth or decline of total customers for both Muny and
13 CEI during that period, directing your attention first
14 to Muny Light?

15 A We found that Muny Light in that period of time, from
16 the beginning of 1971 through 1976, lost 7,300
17 customers, approximately.

18 Q How many did it lose directly to CEI?

19 A There were about 2,200 shifts, 2,250 shifts from --
20 net shifts from MELP to CEI in that period.

21 Q So the shifts, the customers loss to CEI was then less
22 than half of those that were lost in total for other
23 reasons?

24 A The loss for other reasons were around 5,000, which is
25

Kemper - direct

more than two times the amount that shifted to CEI.

Q Are you able to tell what the change the total customers of CEI was in the Muny service area during that period?

A No, sir, we were not able to tell, able to tell that.

Q Can you give those figures for Cleveland City, overall, however, during this period?

A Yes, we do have the figure for Cleveland City overall, and during that same period, 1971 to 1976, CEI lost 12,900 customers in the City of Cleveland.

Q Now, passing to another subject, Mr. Kemper, did you at my request make an estimate of the excess cost of the duplication of electric distribution lines in Cleveland?

MS. COLEMAN: Objection.

A Yes, sir, I did.

- - - - -

{Bench conference ensued on the record as follows:}

THE COURT: Read that question back.

{The question was read by the reporter.}

THE COURT: State the reason for your objection.

MS. COLEMAN: I object to the relevance of this line of inquiry. This issue deals with the

Kemper - direct

realm of fantasy, that there aren't two systems
of --

MR. LANSDALE: Deals with what?

MS. COLEMAN: The realm of fantasy,
what if there were one system, and the question of
whether there ought to be competition here has
already been decided as a matter of policy.

I object to the relevancy of this line.

MR. LANSDALE: I am not going into
the question of whether there ought to be
competition or not. I am going into the question
of whether we have conditions which create a
natural monopoly situation, and I am entitled to
show that.

THE COURT: Do you have anything
else?

MS. COLEMAN: It's the same point,
your Honor. Mr. Lansdale says he is not going
into whether there ought to be competition, he's
arguing because maybe in a hypothetical world
there ought not to be competition.

THE COURT: Well, it goes to his
natural monopoly depends which, at this juncture,
is a question for the jury. So I will overrule the

Kemper - direct

jury.

{End of bench conference.}

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MR. LANSDALE: May I have the last question read?

THE COURT: Read the question back.

{The question was read by the reporter as follows:

"Q Now, passing to another subject, Mr. Kemper, did you at my request make an estimate of the excess cost of the duplication of electric distribution lines in Cleveland?"}

A Yes, I do.

Q What kind of study did you make?

A We selected several areas in the common area for determining -- First, we made an inventory of both the Cleveland Electric Illuminating Company's facilities, overhead facilities, and the Municipal Electric Light Plant's facilities in that area. We then estimated then as their cost would have been if it had been installed in 1971.

I then went to our feeder engineering unit, which is part of our system in planning engineering department and asked if a single engineering company

Kemper - direct

1 was in these designated areas, what would be required
2 to meet the company standards for these overhead
3 facilities.
4

5 They went through the information that we had
6 and determined that certain parts of this was excess,
7 and we then determined the cost of the excess that
8 our engineering people had told us.

9 Q Did you do this, sir, on customers, on residential
10 customers or commercial customers?

11 A This was for residential customers only.

12 Q Residential customers.

13 And what did you determine to be the excess
14 investment per residential customer?

15 A The excess per residential customer was \$95 per customer.

16 Q And based upon the number of customers involved, what
17 would this indicate the total excess investment to be?

18 A There are something over 100,000 customers within the
19 common area, so it would be something around \$10 million
20 excess duplicated facilities in the -- or overhead.

21 Q Now, does this amount that you have indicated represent
22 the total excess investment as a result of duplication
23 increase?

24 A No, sir, it would not. There is quite a bit of --
25 considerable underground by both Muny Light and

Kemper - direct

Cleveland Electric Illuminating Company in that common area. Some of it on the same streets. In fact, quite a bit of it on the same streets. I did not try to come up with a cost for that. But underground runs about ten times the cost of overhead. So it should be somewhat substantial, I would think.

MS. COLEMAN: Objection.

THE COURT: Approach the bench.

- - - - -

{Bench conference ensued on the record as follows:}

MS. COLEMAN: Your Honor, I'm going to have to ask that about the last three answers be stricken because this testimony about excess is apparently attributed to the opinions of someone else.

Now, I was under the impression that Mr. Kemper was the one who had the opinions, but his own testimony says somebody else made that judgment.

I don't think he is qualified to come up here and tell us hearsay testimony about what somebody else's opinion is as to excess.

MR. LANSDALE: You are talking about his reliance on the other departments of the company?

1 Kemper - direct

2 Well, any expert is entitled to rely on
3 others, as you and your associates have so
4 eloquently argued.

5 If there is any question about it, we will be
6 glad to bring on additional people. But it seems
7 to me an undue inflation of what is, in essence,
8 a rather simple engineering problem.

9 THE COURT: Overrule the objection.

10 You may cross-examine him on the subject.

11 {End of bench conference.}

12 - - - - -

13 THE COURT: Proceed.

14 BY MR. LANSDALE:

15 Q Did you make any study of the question of duplicate
16 facilities in distribution substations, Mr. Kemper?

17 A Yes, sir, I did. There are some 26 distribution
18 substations that Muny has in the common area, and the
19 study that I made showed that with the substations
20 that CEI presently has in the common area, we could
21 pick up the load from 23 of the 26 substations
22 without expanding our facilities.

23 Q Did you make any attempt to quantify the excess money
24 involved in this situation?

25 A No, sir, I did not.

Kemper - direct

1 Q Now, directing your attention to another matter, Mr.
2 Kemper, did you at my request make a determination of
3 the extra cost to CEI per additional customer were it
4 to take over all of the Municipal Electric customers
5 in the common areas that you studied but without
6 taking over the Municipal Electric system's facilities?

7 A Yes, sir. We took the areas which I had mentioned in
8 our duplication study and said, "Okay. Supposing CEI
9 would pick up that, all that area. What would we have
10 to add to our present facilities, overhead facilities in
11 that area?"

12 And we came up with the fact that we would have
13 to add about \$28 worth of overhead lines plus about
14 \$60 for loops and meters which would have to be
15 installed, or a total of \$88 per customer in this area.

16 Q Mr. Kemper, absent such a situation but with reference
17 to the number of customers CEI served in that area
18 during the relevant period we are talking about, what
19 was the Illuminating Company's investment in these
20 kinds of facilities per customer?

21 A This was \$259 per customer.

22 Q If you add to the customer list the total number of
23 Muny customers that it would acquire, if it acquired
24 all the Muny customers at the cost you just mentioned,
25

Kemper - direct

1 what would have been its average cost or investment
2 per customer?

3 A Our average investment per customer would have been
4 \$197.

5 Q As compared to the \$259 you mentioned?

6 A Yes, that's correct.

7 Q For the existing investment per customer?

8 A Yes, sir.

9 Q Now, one more item, Mr. Kemper.

10 Did you, at my request, examine the Illuminating
11 Company's actual cost during the year 1971 for
12 adding new customers in new residential allotments
13 or new residences in its service area?

14 A Yes, sir, I did.

15 Q Looking to allotments or places where the facilities
16 were installed overhead, what did you find to be CEI's
17 average actual investment per customer?

18 MS. COLEMAN: Objection.

19 THE COURT: Approach the bench.

20 - - - - -

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

23 MS. COLEMAN: Relevance objection,
24 your Honor. I don't see what this has to do with
25