

9-22-1981

## Volume 27 (Part 1)

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

Follow this and additional works at: <https://scholarlycommons.law.case.edu/clevelandcei>

 Part of the [Antitrust and Trade Regulation Commons](#), and the [Litigation Commons](#)

---

### Recommended Citation

District Court of the United States for the Northern District of Ohio, Eastern Division, "Volume 27 (Part 1)" (1981). *City of Cleveland v. The Cleveland Illuminating Company, 1980*. 111.  
<https://scholarlycommons.law.case.edu/clevelandcei/111>

This Book is brought to you for free and open access by the Transcripts at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in City of Cleveland v. The Cleveland Illuminating Company, 1980 by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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

TRANSCRIPT

Tuesday, September 22, 1981



C 60215

KF  
228  
.C43  
1980

TUESDAY, SEPTEMBER 22, 1981; 9:20 O'CLOCK A.M.

THE CLERK: Your Honor, Civil  
Action No. C75-560, the City of Cleveland,  
plaintiff, versus the Cleveland Electric  
Illuminating Company, defendant.

THE COURT: I understand, Nick,  
you are going to have the comments of Mr. Norris  
concerning the A. D. Little report?

COURT REPORTER CZOMPOLY: I gave them to  
Steve.

THE COURT: Okay.

Plaintiff's Exhibit 3276, net income, MELP  
Water and Sewer, there is an objection to that  
on the basis that the numbers were not authenticated.  
I will sustain the objection.

The Wein definition of the damages chart,  
sustain the objection. It is repetitious.

Plaintiff's Exhibit 2073, the index of  
commercial industrial sales chart, overrule the  
objection. It may be admitted.

Plaintiff's Exhibit 3105, and those are the  
charts that were predicated upon the 8 percent  
discount rate, and I understand that the  
plaintiffs are desirous of proffering that; is

1 that correct?

2 MR. NORRIS: Yes, your Honor.

3 THE COURT: Very well. It may  
4 stand as a proffer.

5 Plaintiff's Exhibit 3097, sustained on the  
6 basis that it is a demonstrative exhibit.

7 Where are yesterday's?

8 CEI Exhibit 1296 is the Gaffin study.  
9 I'm still reviewing that.

10 CEI-1318, Gaffin survey data.

11 Sustain that objection since he testified  
12 to that.

13 Plaintiff's Exhibit 3103, that was admitted  
14 on 8/11/81.

15 Has CEI-1203, the Jackman memo re SIFCO  
16 outages of 1977 been offered?

17 MR. MURPHY: No, not yet, your  
18 Honor. We do so now.

19 THE COURT: That may be admitted.

20 Plaintiff's Exhibits 292 and 293.

21 292 was admitted on 8/14; and 293 was  
22 admitted on 8/25.

23 All right. Bring in the jury.

24 MR. WEINER: Your Honor, could I  
25 just ask one question about the Wein report?



1 THE COURT: Which Wein exhibit,  
2 the Wein demonstrative exhibit?

3 MR. WEINER: Was the Court's  
4 ruling in any way based upon the fact that  
5 they're a large --

6 THE COURT: No.

7 It's just another one of those demonstrative  
8 exhibits.

9 You can use them for demonstration purposes;  
0 they're overly repetitious.

1 Let's proceed.

2 Bring in the jury.

3 MR. MURPHY: While the jury is  
4 coming in, may we approach the bench, please?

5 THE COURT: Yes.

6 {While the jury entered the courtroom, the  
7 following proceedings were had at the bench.}

8 - - - - -

9 MR. MURPHY: Your Honor, at the  
10 close yesterday, Mr. Weiner had asked a question  
11 that I think your Honor and I also thought had  
12 been answered, but the transcript shows it has  
13 not.

14 {The copy of the transcript was handed to  
15 the Court by Mr. Murphy.}

MR. MURPHY: Line 16, I believe.

{The Court reading silently.}

MR. WEINER: I think the witness had answered "Yes" before the objection was made, isn't that right, Jim?

MR. MURPHY: No, I don't think he ever answered the question.

MR. WEINER: I thought that's what --

THE COURT: I had it read back yesterday.

MR. MURPHY: I think, your Honor, Roy inadvertently read the preceding question and answer, it was a "Yes."

MR. WEINER: No; he answered --

THE COURT: I asked him to read the question back and read the answer back.

He read the question back, and the question was:

"And would not the new line have to obtain the permission of the existing easement holder?"

"Objection."

And his answer was: "Yes."

"Objection."

"Approach the bench."

1 MR. MURPHY: Your Honor, I spoke  
2 with Mr. Markos, and he told me he didn't think  
3 he answered the question.

4 THE COURT: All right. Let him  
5 answer.

6 With respect to the question, though,  
7 overrule the objection.

8 Let's proceed.

9 {End of bench conference.}

10 - - - - -

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

13 Read the last question back, please, Nick.

14 THE REPORTER: I don't have the  
15 transcript, your Honor.

16 THE COURT: Give me that  
17 transcript from yesterday.

18 MR. WEINER: I have it.

19 {The copy of the transcript was handed to  
20 the Court by Mr. Weiner.}

21 - - - - -  
22  
23  
24  
25

C H R I S      M A R K O S,

resumed the stand and testified further  
as follows:

CROSS-EXAMINATION OF CHRIS MARKOS {Resumed}

THE COURT:                      The last question,  
Mr. Markos, was:

"And would not the new line have to obtain  
the permission of the existing easement holder?"

THE WITNESS:                      I have no knowledge  
regarding that, whether they have to or not.

THE COURT:                      All right.

BY MR. WEINER:

Q      Mr. Markos, --

THE COURT:                      Proceed.

MR. WEINER:                      Thank you.

Q      Mr. Markos, as I understand it, you estimated these  
values in 1973, and then you used a document from  
the Department of Agriculture to get figures from  
1970 and 1963?

A      That's correct.

Q      Did that document show there had been a change in  
land values between 1963 and 1970?

Markos - cross

A Yes.

The documents run ---from the Department of Agriculture are published every five years, and you have to trend between those figures.

We used the document for 19 -- the period that would cover what you're talking about, and then we trended from there.

The document does not show specifically the middle years during the five-year period, and we have to interpolate that, because the Department of Agriculture is the only Federal department that publishes changes in land values on a county-by-county basis.

Q And those values, am I not correct, Mr. Markos, are for agricultural and farm land?

A That's correct.

Q And they did not include industrial or commercial or residential land?

A That is true. That is true.

Q And would I be correct that what those reports have shown you is that the prices rose from the period of 1963 to 1973?

A That is true.

Q Are you familiar with whether or not prices for lands

Markos - cross

1  
2 in this general area rose from the period of 1973 to  
3 1975?

4 A They have risen, yes.

5 Q And would you know approximately how much they have  
6 risen between 1973 and 1974?

7 A Yes; which county?

8 Q Take Cuyahoga County.

9 A Could we use Ashtabula County? I would have to do  
10 all kinds of figures for Cuyahoga County, because I  
11 have the figures set forth for Ashtabula County and  
12 it uses the same mathematical procedure.

13 Q What do you do?

14 A I have the 1969 value of Ashtabula and the 1974  
15 value of Ashtabula, and then I could probably give  
16 you on a percentage basis the 1973 value for  
17 Ashtabula.

18 But we did not trend to the value of the land --  
19 please understand that.

20 If we are heading in that direction, that is not  
21 what we did. We only trended for an inflation factor,  
22 which is not land value, and that is applicable then  
23 to all lands in my opinion within that county area  
24 for the given period, but I can give you --

25 Q Let me ask you:

Markos - cross

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

Do you have, based on your experience as a real estate appraiser, do you have an estimate how much land values have risen, if any, between 1973 and 1974?

A Yes, I had done it, and it is in lock step with the Department of Agriculture's figures, within a strictly narrow band.

Q Do you have in mind, without doing the actual calculations? --

A Offhand, no, I can't do it.

I can give you an opinion of what the market was in 1974, because I have a very vivid recollection of it, and in relationship to 1973, just what my recollection would be.

Q Would 8 percent be fair?

A It may be and it may be high.

Q How about between 1974 and 1975?

A That is why we have to go into the trending tables. I just can't recall.

Q Mr. Markos, am I correct that for the purposes of your estimate, you did all your work on the basis of an August, 1973 evaluation?

A Yes, but it would be applicable, you could say, to the whole area, within a reasonable narrow band, yes.

Q Would I be correct that when this right-of-way,

Markos - cross

whichever one or more of the right-of-ways might have been purchased at some time, that there would be additional steps that would have to be taken before the purchase could be done?

A Yes.

Q Am I not correct that one of the steps would be to identify the specific right-of-way?

A Of course, yes.

Q And you would have to determine the ownership of the property that was affected by that right-of-way?

A Yes.

Q And then you would have to either obtain permission to go on to survey or somehow get on the land to survey the land in question?

A That is correct.

Q And then you have to actually do a survey?

A That is correct.

Q And then you would have to come up with the legal description of the easement in question?

A That is correct.

Q And then I would assume that someone would have to make an approximate value of that easement?

A That is correct.

Q You would have to negotiate with the owner of that



Markos - cross

particular easement as to the price?

A That is correct.

Q And if you were successful in that negotiation, then you would have to close the deal, and that would mean drawing up the appropriate -- is it a deed in this case?

A Yes, it would be.

Q And you would have to file that deed?

A Yes.

Q And you would have to, I assume, get a title report?

A That is correct.

Q To make sure the property was not already subject to some other easement, or to prevent the easement from being used for what it was wanted for?

A Yes.

Q I assume that, Mr. Markos, if you were not successful in negotiations with the property owner, then you would have to either find a different route for that particular stretch of right-of-way, or would have to litigate with the property owner over the price that you were offering for that right-of-way?

A That is correct.

Q And then, as I understand from your testimony yesterday, you stated that it would be important

Markos - cross

and necessary at that point to go into a full-blown appraisal process that you described in detail for us yesterday?

A It is a combination action, yes.

Q And that goes through the Court?

A Yes.

Q And would I be correct that the very steps that I outlined would have to be done in connection with all the appraisals in the right-of-way?

A No. That is not correct.

Q You would not have to identify the right-of-way for each parcel?

A That is correct.

MR. MURPHY:                      Objection, your Honor.

THE COURT:                      Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. MURPHY:                      I object to Mr. Weiner's suggestion to the witness that you must take all these steps for each parcel involved while Mr. Weiner's questions themselves preclude that possibility.

Markos - cross

THE COURT: Overruled. He may answer.

{End of bench conference.}

- - - - -

THE COURT: Read the question.  
{Pending question read by the reporter  
as follows:

"Q You would not have to identify the  
right-of-way for each parcel?"}

A I said that that is correct.

Q You are saying that what you have identified, when  
you have identified one, that whatever route you are  
going to select, I thought you told me earlier that  
the first thing you do is identify the right-of-way?

A I said that that is correct.

Q You say you don't have to do it for each parcel?

A No, sir. I didn't say that.

You said all the steps that you outlined, which  
I said were correct, that you have to do, and then  
you said to me that each and every parcel requires  
that you are not going to condemn every parcel, and  
those people will settle, and that is my experience.

Q I am sorry that I confused you, Mr. Markos.

The steps up to the point of whether you are

Markos - cross

successful with the owner in negotiating for the right-of-way question would have to be done for each parcel?

A Yes; that is correct.

Q And only then, if you are unsuccessful in negotiating, only then do you go through the litigation which requires a full appraisal?

A Yes.

Q Now, with respect to all these additional first steps, do you have to do them with each parcel?

A Yes.

Q And they take some time to do?

A They do.

Q Now, Mr. Markos, am I not correct that you elected not to make any studies of comparable sales or purchases of utilities, utility rights-of-way when doing your studies?

A That is not the proper procedure in the appraisal of real estate, because comparable sales under the threat of condemnation or condemnation sales cannot be used in the evaluation study to fair market value.

The definition of fair market value means that the sales must be at arms length with no threat or pressure to make the sale on either side, so it is

Markos - cross

1  
2 an improper procedure to use those sales in the  
3 evaluation study of any kind.

4 Q Now, but in practice that is what takes place?

5 A No, sir. I have never used the condemnation sale as  
6 a comparable sale.

7 Q Well, in actual practice, if you know those lines  
8 were going to be built, the owner would be subject to  
9 the threat of condemnation?

10 A That is right.

11 Q Just as the owner may show condemnation with respect  
12 to actual lines that were built in this area?

13 A I don't understand the question.

14 Q Okay.

15 During this period of time, 1973, the CEI  
16 company built transmission lines in this area?

17 A That is true.

18 Q And they had some experience with respect to costs  
19 of these transmission lines?

20 A That is true.

21 Q And those transmission lines were built with, as you  
22 put it, the threat of condemnation?

23 A That is true.

24 Q But you did not elect to use their experience as a  
25 guide to you as to how much these proposed lines may

Markos - cross

have cost?

A Oh, no.

Q Now, do you have in front of you your route map, 1036?

A Yes, sir.

Q And do you have with you the pictures that you took of Route 1?

A Yes. I have Route 1.

Q Do you have all your pictures with you, Mr. Markos?

A I think so. I am not sure. I think I do -- yes. I think I do.

Q I would ask you to turn to the first page of your pictures of Route 1, and that is 1-C-3, the third picture.

A Yes, sir.

Q What does that picture -- let me ask you -- let me strike that, Mr. Markos.

Are you the person that took the pictures?

A : No.

Q Did you see the actual sites?

A I have seen the route. I have driven on the ground for most of the route, Route No. 1, and I did not take these pictures, but I have flown the route at a relatively low elevation, and I am familiar with what it does, and I have my route map which shows building

Markos - cross

locations.

Q Were these pictures taken under your direction?

A Yes.

Q And the pictures from Route 1 were put together under your direction?

A Yes.

Q And were they reviewed by you?

A Yes.

Q And do you think they are accurate?

A Yes; as much as possible.

Q Am I not correct that Picture No. 1-C-3 shows the proposed line, and the legend here -- does that depict what it is supposed to show?

A Yes.

Q And that is looking easterly along the Pennsylvania Railroad from Marquette Road?

A Yes.

Q And there is a note that says there are two antennas and "RW."

That is right-of-way?

A Yes.

Q That is the map to indicate that the proposed right-of-way that you were studying, in the area where you were looking, there were two aerials?

Markos - cross

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

A Yes.

Q And at times those aerials would have to be moved  
or something else would have to be done?

A Something else would have to be done.

Q Okay.

Now, let me ask you, if you have your route map  
there, and just look at page 1 thereof.

{The witness complies.}

Q Am I correct that the proposed lines that you have  
cited would run north of the Pennsylvania Railroad  
track right-of-way until approximately the area  
where the CEI property starts?

A Yes, that is correct, at Addison Road.

Q And then it swings south of the railroad right-of-way?

A That is correct.

Q And then it stays south of that right-of-way until  
it gets to Gordon Park?

A That is correct.

Q And at that time it switches north of the railroad  
right-of-way to Gordon Park?

A That is correct.

Q And would 1-C-5 of your photos, Mr. Markos -- do you  
have that?

A Yes.



Markos - cross

Q Would that indicate the area in Gordon Park where this proposed right-of-way would run through?

A Yes, sir.

Q And, as I believe is depicted on your estimate, you took into consideration in estimating this the need to cut down these trees and give some value to that?

A Cut down or trim, either one.

Q Okay.

Now, let me ask you to turn to page 2 of your route map, and this is an area that we were in a little bit yesterday, and this is the right-of-way that runs south of Collinwood Yard?

A Yes.

Q As I understand from your testimony, in this area it runs on private property, and not on railroad right-of-way?

A In all instances I valued the property, except where it was going across city land or park land, as if it were on private property, for the entire study.

Q All right. Fine.

You indicated that as far as you were concerned the right-of-way did not include any private residents in that area?

A Not in the area of Collinwood Yard.

Markos - cross

Q All right.

Now, let's turn if we could to your picture,

1-C-10.

A {The witness complies.}

Q Do you have that?

A Yes.

Q Would that admit that the right-of-way in that area is south of the existing railroad right-of-way?

A Yes.

Q And it also is south of the CEI line that is in existence?

A Yes.

Q And that is the area, whatever is south of the CEI easement, is where you put the easement for this proposed line?

A Not where I would put it -- where it was set that it is going to be put.

Q That is the area?

A Yes.

Q All right.

Turn to 1-L-20, and the "L" stands for Lake County?

A Yes.

Q As I understand it, the area that you evaluated in

Markos - cross

this instance was the area to the right of the CEI line, and I believe it is shown by trees in your picture?

A Yes.

Q Would Picture 1-L-20 all the way through to 1-L-26, would those pictures show additional right-of-way all to the right of the railroad right-of-way and all to the right of the existing CEI line? It is on page 3 of your map.

A Yes, but I am trying to find Wardon Road in order to orient myself.

Q It is hard to see on this map?

A Yes, it is.

Yes; from Wardon Road, heading east, it is on the south side of the railroad right-of-way, and if the CEI line is there, it is on the south side of the CEI line.

Q And it goes up to Vine Street?

A Would you say that again?

Q That condition would remain all the way to Vine Street; is that correct, and it is still on page 3 of your route map?

A From Wardon Road east, and it is on the south side, and it runs off of the map.

Markos - cross

1

2 Q On page 3?

3 A Yes, sir.

4 Q It looks to me that you are saying it stays that way  
5 all the way through to the end of the map?

6 A Yes, from Warden Road it is on the south side of the  
7 right-of-way off to the end of the page, and then  
8 it continues on page 4, and it still remains on the  
9 south side of the right-of-way, and on page 5, in  
10 the middle, it crosses over to the north.

11 Q Where is that cross-over, Mr. Markos?

12 A The cross-over is on Mentor Avenue in Painesville,  
13 on the outskirts of Painesville.

14 Q Okay.

15 Let's turn, if we can, to your picture of  
16 1-11-27, and that is in the same area, and that is  
17 before the cross-over?

18 A This is in Willoughby, and this is before that  
19 section, yes.

20 Q And that is south of the right-of-way, the railroad  
21 right-of-way, and south of the CEI right-of-way?

22 A That is correct.

23 Q And do you know how wide the CEI right-of-way was  
24 in that area?

25 A No.

Markos - cross

1

2 Q Do you know the distance between the CEI poles and  
3 the buildings that are there?

4 A I do not know exactly.

5 Q How were you able to make a determination whether or  
6 not the buildings that were depicted in 1-L-27 were  
7 or were not in the right-of-way that was supposed to  
8 be built?

9 A I will have to check what we said at this particular  
10 segment.

11 Q Okay.

12 {After an interval.}

13 Q Now, would you repeat your question, please.

14 {Pending question read.}

15 A The line as given to us by the engineering firm of  
16 Black & Veatch shows the buildings on the route map,  
17 and those buildings, the building locations in  
18 reference to the route map, and then that is what we  
19 relied on.

20 Q You are looking at the route map for that?

21 A Yes, the route map has the buildings projected right  
22 on the route map, and if a line is passing over a  
23 building, it is depicted, it depicts that, and it  
24 showed that to us.

25 Q So, you are saying that in this instance, you did not

Markos - cross

feel that it was going to affect that building in any way because the route map doesn't show any effect on it?

A That is correct.

Q And that is the only reason?

A No. This was the back end of the property, and these are old industrial buildings, and the utility of that particular yard area, which is just a driveway, would not be affected in any way, and would not affect the function or the utility of the property, and that was the determination that was made.

Q You are saying that the right-of-way affected the building or did not?

A It did not in this instance.

Q You are saying that even if the wires overhung the building, you wouldn't consider it affecting the building?

A In some instances, yes, and in some instances, no.

Q In this you feel confident the land owner wouldn't want damages?

A The land owner would want plenty of damages, but I am not testifying to that.

Q And you didn't include any damages?

A That is correct.

Markos - cross

Q Turn to 1-L-30, the picture that you have, Mr.

Markos.

Let me ask you this:

Is 1-L-30 in the Mentor area?

A I would have to find where Reynolds Road is. I don't have a photographic mind regarding every geographical section of this map.

Q Let me ask you this:

Is Mentor, am I correct, that the proposed right-of-way would go through the Mentor recreational park?

A I don't show a recreational park, but there may be a park there. The lines are up against the tracks, it is not depicted as a recreational area -- oh, here it is -- yes. It goes through the north border of the recreational park.

Q After it leaves the park area in Mentor, it goes into the Painesville area?

A It goes through Mentor and then hooks into the outskirts of Painesville, and then it goes off to the south edge of Painesville, sort of around, and then heads east.

Q Up until that point, and including through the suburbs of Painesville, am I correct we have gone

Markos - cross

through an urban and a suburban area?

A We have, adjacent to the railroad tracks.

Q Let's look at Route 2 a minute.

That is the line, as I understand it, that goes through south straight through the heart of Cleveland toward Canton?

A Yes.

Q How far was that again, Mr. Markos?

A That runs from Cleveland to Canton.

Q How many miles?

A Miles -- excuse me while I find it. I want to give you the exact figure.

{After an interval.}

A I have it right here -- 64.92 miles.

Q Did you walk this or drive it or fly it?

How did you --

A Flew it, and I drove a good portion of it.

You cannot go across private property, you are trespassing, so you have to go from road to road, and it's very difficult to tell exactly where the line is because it's all farm land and there are no reference points or crossover points; but I drove along it laterally.

Q Did you take pictures of that line as well?



Markos - cross

A I had taken pictures, but I do not find all the pictures that I had taken of this particular area, they had been misplaced.

Q The only ones you were able to find were six pictures taken down in the Canton area?

A Yes.

The rest of it was farmland, with the exception of the Sandy Lake area, which is Route 4.

Q The pictures you don't have are farmland?

A Primarily.

Q Mr. Markos, doesn't this line go south through the heart of Cleveland?

A But the line -- line 2 is the same as Route 4.

Q And you have pictures of those -- of that area?

A The only ones I have are the Sandy Lake area.

Q That's rural country, again?

A No, no.

I said coming from Canton north, we go through the City of Cleveland and through other suburbs of Cleveland.

I was talking about the other end, and then you started talking about Cleveland.

Q Did you take air pictures of any of the line -- area going through the heart of Cleveland?

Markos - cross

1  
2 A I don't have them with me.

3 Q Do you have any through Maple Heights or Bedford or  
4 Garfield Heights?

5 A I don't have them with me.

6 Q Sir?

7 A I don't have them. They have been misplaced, and I  
8 just don't have them; but I know the areas very well.

9 Q Mr. Markos, when you took pictures of the first line,  
10 you used those as reference points on your Exhibit  
11 1022, do you not?

12 A That's correct; well, reference points, to show the  
13 general character of the neighborhood.

14 Q You have a column for those called "reference points"?

15 A They are not reference points per se. There is  
16 nowhere on the map that 1-L-15 is located.

17 Q I understand.

18 But I thought you said yesterday you took the  
19 pictures and you identified the general --

20 A Immediately after the photograph, yes.

21 Q And you put down 1-C-1, for instance, and called  
22 that a reference point on your exhibit?

23 A It's a reference point as far as the photograph is  
24 concerned, but there's no way to cross-check into  
25 the map because it was just merely an area or a

Markos - cross

character of neighborhood view.

It's a reference point as far as the photograph is concerned, but there's no way that I can quickly find where that is located on the map because I don't have -- it's not indexed that way.

Q With respect to Route 2, you have no reference points, do you?

A I do or not?

Q You do not?

A I do not.

Q You do not.

Would I be correct that the only way that we can tell the right-of-way on the Route 2 would be to look at your route map that was given to you by Black & Veatch in your Exhibit 1022?

A Yes.

Q And, again, the right-of-way that you estimated did not include any railroad right-of-way?

A Everything was valued as if it were on private property though it runs adjacent to the railroad.

Q Even without taking -- having your pictures, Mr. Markos, you are aware of the fact, are you not, that the right-of-way in the heart of Cleveland the first couple of miles crosses over various

1 Markos - cross

2 streets at different places?

3 A Yes, sure, I'm aware of that.

4 Q Crosses over Payne, is that right?

5 A Yes.

6 Q Chester and Euclid?

7 A Yes.

8 Q Again, Central and Quincy?

9 A Yes.

10 Q Okay. Let's go, if we could, to page 15 of your  
11 route map.

12 {The witness complies.}

13 Q For orientation purposes, we've come out now through  
14 Cleveland and through Garfield Heights, we're in  
15 Maple Heights, is that correct?

16 A Yes.

17 Q Is the right-of-way that you were estimating  
18 north of the railroad tracks and north of the  
19 existing CEI right-of-way?

20 A That's correct.

21 Q And does it run parallel with Girard Avenue in that  
22 instance?

23 {After an interval.}

24 MR. MURPHY: Your Honor, may we  
25 approach the bench, please?

1 Markos - cross

2 THE COURT: Yes.

3 - - - - -

4 {The following proceedings were had at the  
5 bench:}

6 MR. MURPHY: Your Honor, I would  
7 like to object to the questions as being  
8 irrelevant.

9 Mr. Markos testified that he was given the  
10 route by Black & Veatch, they laid it out, the  
11 route map prepared by Black & Veatch.

12 Mr. Markos' task was to value -- make a  
13 cost estimate of the value of the right-of-way  
14 as part of Black & Veatch's economic feasibility  
15 study.

16 These questions during the past 10 or 15  
17 minutes have gone way beyond the direct  
18 examination and are irrelevant.

19 MR. WEINER: The only way to test  
20 Mr. Markos' estimates on possible land values is  
21 to know what areas he studied, and that's what  
22 we're trying to pin down, find out what areas  
23 he studied so we can make an evaluation as to  
24 whether his estimates are proper or not proper.

25 We can't tell it without asking him to

Markos - cross

identify where it is; that's all we're doing.

I don't know how else to do it with a witness like this.

THE COURT: I take it from your questioning that you are going to bring in evidence of the fact that his estimates are not valid, or are we just floundering around?

MR. WEINER: Certainly, -- well, it depends on what the answers are; and once we have identified the lines, we have to make a study to determine whether his estimates are proper or not.

We can't do it on the basis of what he has done without asking him some questions where it is not clear.

THE COURT: I have difficulty in following the relevancy of this line of questioning, Mr. Weiner, and it certainly is beyond the direct examination.

But I suppose -- it's cross-examination, and I'll permit you to proceed and see where we are going.

I would suggest that you take a look at the jury.

Markos - cross

MR. WEINER: I understand; but  
we have to deal with it somehow.

I appreciate what you're saying.

{The end of the bench conference.}

- - - - -

MR. WEINER: Nick, we have a  
pending question?

THE REPORTER: Yes.

{Question read by the reporter as follows:

"Q And does it run parallel with

Girard Avenue in that instance?"}

A The answer to that is no; that it is meant to say  
"Broadway Avenue," Broadway.

Q What's meant to say "Broadway," Mr. Markos?

A The word in my report is a misprint, and the word is  
supposed to be "Broadway Avenue."

Q Where is that, just so I can correct it?

A We're talking about Maple Heights, the fifth page,  
where the line is "in Maple Heights."

Q All right.

It should be "Broadway," you say, rather than  
"Girard"?

A Yes.

Broadway is just to the north there; and the

Markos - cross

line roughly parallels Broadway Avenue on the north side of the tracks in that area.

Q Do you know where Girard Avenue is on that map?

A I don't.

{After an interval.}

A {Continuing} The word is meant to be "Broadway."

Q On that same page, Mr. Markos, where your letters

D and E are together --

A Yes.

Q -- that's where the line would turn east?

A Correct.

Q And that would follow Taylor Street at that point?

A Correct.

Q Let's turn to page 18.

{After an interval.}

Q By the way, just before you turn, Mr. Markos, do you know if that's on the south or north side of Taylor Street?

{After an interval.}

A It's on the south side of Taylor; it's on the roadway.

Q Thank you.

Let's turn to page 18, if you would.

{The witness complies.}



Markos - cross

1

2 Q And the line depicted on that reflects that -- it  
3 ends at Weaver Street?

4 A Yes; but part of the page was folded over here and  
5 did not print, and we did -- we did evaluate the  
6 unprinted portion.

7 Q I see.

8 I don't have a copy of that.

9 A If you will look at the segment map on page 8 for  
10 Section 18, which is a micro of this, it shows that  
11 part of the print did not show here, must have been  
12 folded over, but this is the master route map for  
13 Section 18, and it just did not print.

14 We had no control -- we didn't print this, but  
15 it just didn't print.

16 Q Where would I find that?

17 A If you will -- it's in the pocket in the back of the  
18 route map.

19 Q I don't think I have one.

20 Okay, Mr. Markos.

21 MR. MURPHY: Excuse me.

22 THE COURT: Approach the bench.

23 - - - - -

24 {The following proceedings were had at the  
25 bench:}

Markos - cross

MR. MURPHY: You were given a copy of that; it was in the back pocket of that route map, it was in all the copies.

MR. WEINER: Okay.

MR. MURPHY: I resent the suggestion that he didn't get one.

MR. WEINER: Okay.

{End of bench conference.}

- - - - -

BY MR. WEINER:

Q We'll check that, Mr. Markos.

-- Am I correct that the line then has gone -- then goes through Twinsburg, Aurora, Bedford, Streetsboro, Ravenna, and several other communities before it gets down to Canton?

A Yes.

Q Let's take, if we could, a look at Route 3.

{The witness complies.}

Q That's the one that runs west --

A Yes.

Q -- of the city, is that right?

A That's correct.

Q That goes through the City of Cleveland, Brook Park, Berea, Olmstead Falls and Township,

Markos - cross

North Ridgeville, and then into Elyria?

A That's correct; Avon Lake.

Q Avon Lake also?

A Yes.

Q And if you'll look at page 26 of your Route map, am I correct that the proposed right-of-way that you estimated would run from West 58th Street at the Westinghouse curve all the way out to Interstate 71?

A On page 26?

Q Yes.

Do I have the right page?

A I have page 26.

Q At the Westinghouse curve on the West Shoreway, I think that's where your letters E and F are?

A Okay.

Q It runs from there, parallels the existing right-of-way?

A It parallels the railroad right-of-way.

Q Does it parallel the CEI right-of-way?

A Yes.

Q And it goes on the same side?

A It crosses back and forth; I don't really know that at this point.

Q You can't tell which side?

Markos - cross

1  
2 A The CEI right-of-way is not on this map.

3 Q Does it follow the railroad right-of-way all along  
4 there?

5 A Yes, it follows.

6 Q Do you know whether or not it crosses over the same  
7 places that the CEI right-of-way does?

8 A I don't know that. The CEI right-of-way was not my  
9 concern in this particular instance.

10 Q How would we determine where --

11 A You'd have to go to each little section of this  
12 particular map and actually go on site and determine  
13 at that point or look at an aerial study which would  
14 show -- or may show, depending on the altitude, where  
15 the CEI line was.

16 Q Okay.

17 Then, Mr. Markos, if you would turn just to page  
18 30 of your map -- or the Black & Veatch map,  
19 rather.

20 {The witness complies.}

21 Q And this area comes in contact with the Ohio  
22 Turnpike?

23 A That's correct.

24 Q And as I understand it, your proposed right-of-way  
25 would run outside the confines of the Turnpike?

Markos - cross

1  
2 A I don't know whether it would or not. I evaluated  
3 it as if it was on private property.

4 Q Not Turnpike property?

5 A Not Turnpike property, no.

6 Q Mr. Markos, did I understand, in doing your  
7 estimates, you took into consideration these  
8 factors:

9 The easement itself?

10 A The area of the easement, yes.

11 Q The moving or destruction of the structures that would  
12 be in the path of that easement?

13 A Those that were obvious, yes.

14 Q And the residue damage to the property not on the  
15 easement but near by the easement?

16 A As a general rules, yes.

17 Q Okay.

18 And, as I understand it also, in doing this,  
19 there is -- in actually doing such an estimate, there  
20 would be a fourth element of cost, and that would be  
21 the expense of doing the -- preparing the legal  
22 descriptions and title costs and other related costs  
23 to acquire the right-of-way?

24 A That's correct.

25 Q And do I understand you did not include those

Markos - cross

costs in your study?

A I did not, no.

Q And those costs would normally include the appraiser cost?

A Well, the extra cost, you mean, outside of the actual value of the market -- the market value of the property? Yes.

Q And the negotiator costs?

A Yes.

Q And the deed preparing and the title company?

A That's correct.

Q Surveyor?

A That's correct.

Q Escrow agent?

A That's correct.

Q And you didn't include anything for any possible lawsuits that might develop?

A No; I evaluated right-of-way based on the market value.

Q Do you have -- would you find the percentage of 25 percent of the right-of-way cost the appropriate percentage for the cost of the various items in the fourth element, the right-of-way costs?

A I have no way of knowing, but I would say it would

Markos - cross

be very, very high.

Q 25 percent would be high?

A Yes.

Q If that were used by the CEI company as a rough guess, you would guess that would be high?

A I would guess it should be high, yes.

MR. WEINER: No further questions.

Mr. Markos.

THE COURT: Redirect.

MR. MURPHY: No further questions.

your Honor.

THE COURT: Thank you. You

may step down.

Please call your next witness.

MR. LANSDALE: Mr. Chaney.

THE COURT: Watch the microphone.

Mr. Markos.

THE WITNESS: Yes, your Honor.

I'm sorry.

THE COURT: Thank you.

THE WITNESS: Thank you, your

Honor.

- - - - -

1           W I L L I A M   R.   C H A N E Y,

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

5  
6           DIRECT EXAMINATION OF WILLIAM R. CHANEY  
7

8   BY MR. LANSDALE:

9   Q   State your name and your address, please.

10   A   W. R. Chaney, 1500 Meadow Lake Parkway, Kansas City,  
11       Missouri.

12   Q   What is your business or profession, Mr. Chaney?

13   A   I'm a partner in the firm of Black & Veatch  
14       Consulting Engineers of Kansas City.

15   Q   Tell me what Black & Veatch does?

16   A   Black & Veatch is a consulting firm that provides  
17       engineering services to utilities and customers of  
18       utilities, as well as regulatory agencies in  
19       connection with various matters pertaining to the  
20       electric, gas, water, waste water and telephone  
21       industries.

22   Q   And what is your position with Black & Veatch?

23   A   I'm a partner in the firm.

24           We have 2,700 employees.

25   Q   And what is your particular area of responsibility



Chaney - direct

and expertise?

A I am a member of the Management Services Division.

This division is engaged in matters involving financial, economic, rates, feasibility studies, value studies, reports of this nature.

I have spent my entire professional career in the area of utility economics.

Q And do you frequently provide expert testimony regarding the areas of your expertise?

A Yes, I do.

I have appeared in over 100 separate engagements in 19 different states and the District of Columbia.

Q Will you give us your formal education?

A Yes. I graduated from the University of Kansas with a Bachelor of Science degree in engineering in 1949.

Q And you have been with Black & Veatch ever since?

A Yes.

I originally started with Black & Veatch in May, 1950.

Q Mr. Chaney, what, if any, experience do you have with respect to the engineering -- withdraw that -- with a determination of the economic feasibility of electric transmission?

Chaney - direct

A I've had considerable experience in connection with determining feasibility analyses for electric utilities as well as gas and water utilities.

Some of my clients where I have conducted feasibility analyses include the City of Escanaba, Michigan; Kansas-Nebraska Natural Gas Company; the City of Memphis; Oklahoma and Illinois Pipeline Company; the City of Plattsburg, Missouri; City of Richmond, Missouri; a lumber company in Texas; the City of Fayetteville, North Carolina; City of Grandhaven, Michigan; a single engagement involving all of the investor-owned utilities in the State of Kansas; City of Kawkawlin, Michigan; Northern States Power Company in Minnesota; the Department of Justice; the Bay County area of Michigan; Coastal Plains Paper Company, which was an organization in the Arkansas-Mississippi area; Dow Chemical Company; Picle Construction Company, which involved feasibility of a gas system; Greenwood, South Carolina; Ballantine, Nebraska, among others.

Q Mr. Chaney, what were you asked to do in this case?

A I was asked to determine whether or not it would have been economically feasible for Muny Light to

Chaney - direct

connect its system with other utility systems outside of the Cleveland area.

Q What time period did you use?

A I looked at my analysis using three separate periods.

The first was the 1962-63 area; the second was the 1969-1970 period; and the third one was mid-1973.

Q Tell me how you went about doing this?

A Well, for an economic feasibility analysis of this sort, there basically are five steps that one must consider.

The first step is to determine the logical -- alternatives where power and energy could be purchased for ultimate transmission into the City of Cleveland.

The second step is to establish the amount of power and energy that one would endeavor to purchase.

The third step would be to determine the rates and charges one must pay if they were to acquire that level of electricity.

The fourth step would be to determine the amount of investment required in order to transport the energy from one source to the point of consumption.

And, finally, the last step is to put all of

Chaney - direct

these various factors into perspective and evaluate the reasonableness of the various alternatives.

And for this last step, it involves comparing the cost of one alternative against the cost of another alternative.

MR. LANSDALE: Will you produce,

Kathy, CEI Exhibits 1035 and 1036?

{Exhibits handed to the witness by Ms.

Doyle.}

BY MR. LANSDALE:

Q Mr. Chaney, please, tell us what Exhibit 1036 is?

A Exhibit 1036 is a multi-page exhibit containing the route selection maps that we developed for the economic feasibility study.

This particular exhibit identifies four separate routes that we considered as alternates in our economic feasibility analysis.

Q This exhibit was prepared by you or under your direction, Mr. Chaney?

A Yes, it was.

Q And, by the way, did you have any assistance in doing this work?

A Yes, I did.

I utilized -- as well as people that are in our

Chaney - direct

1 Management Services Division. I utilized people that  
2 are located in our Power Division that deal with the  
3 design and construction of transmission lines on a  
4 routine basis.  
5

6 Q Now, this Exhibit 103b in the forepart of it, the  
7 first 30 pages shows, I believe, on large scale  
8 maps the exact location of the various lines that you  
9 laid out?

10 A Yes, that is correct.

11 Q And in the back is a map, in the folder in the back,  
12 which depicts on a larger scale map the various routes?

13 A Yes, that is correct.

14 MR. LANSDALE: Will you show, Jim,  
15 the slide of the 103b map?

16 {Mr. Murphy complies.}

17 BY MR. LANSDALE:

18 Q And that slide on the screen is a reproduction of the  
19 map in the pocket in the back of Exhibit 103b, is it  
20 not?

21 A Yes; it's not a direct reproduction, but it's a  
22 pictorial reproduction of the map in the back.

23 Q All right, sir.

Will you please, using this map, first  
describe the various lines shown on there, the four

Chaney - direct

of them?

A Yes.

Q Go ahead.

A Yes.

We identified four logical alternatives for the purchase of power in connection with the feasibility analysis.

The first point appears in the upper right-hand picture, of the picture. It's entitled "Penelec-Erie-West Substation. That's the Penelectric -- Pennsylvania Electric Company - Erie - West Substation.

And the green line extending from the -- somewhat towards the center of the picture which is titled "MELP Lake Road Power Plant" represents the first route that we selected.

The second route that was selected goes to the bottom of the map where it's entitled "Ohio Power - Canton Central Substation" and is depicted on the map in red.

The third route was the route that went to the west, to the Ohio Edison - Johnson Substation.

And the fourth route is the route towards the middle of the picture entitled "Ohio Edison - Hanna Substation".

Chaney - direct

For the -- a large portion of that route, it's identical to the route that was selected for attaching to the Ohio Power - Canton Central Substation.

The takeoff point to the Hanna Substation is along Sandy Lake Road.

Q How did you go about selecting these several routes?

A Well, to begin with, there are two things that one must consider.

The first is the ability to purchase power and energy from the points depicted at the various substations. These are generally known in the industry, in all instances the utility company had a filed tariff with the Government that permitted the purchase of power and energy under certain terms and conditions, and they formed logical alternatives to consider.

Insofar as the routes themselves are concerned, the question involves identifying logical corridors that one can use in order to string poles and wires to connect the substations to the various -- to the power plant area of the city.

Q How did you go about laying out the various routes?

A This is a process that utilizes maps such as those

Chaney - direct

that are set forth in Exhibit 1036.

Also, we had our people on the ground traveling the routes, identifying the logical corridor areas.

A corridor consists of railroad rights of way, existing power line rights of way, pipe line rights of way, natural routes that one takes when laying out a transmission line.

Q Now, tell us, Mr. Chaney -- withdraw that.

You relied, as I understand it, in making your feasibility study on Mr. Markos for the valuation or the probable cost of the acquiring of the various rights-of-way, is that correct?

A Yes, that is correct.

Q Now, tell me what is -- describe, please, Defendant's Exhibit 1035.

A Exhibit 1035 is the calculation exhibit setting forth the results that we found after analyzing the four separate routes for the three different time periods.

Q How did you go about getting the investment in these lines --

A The total --

Q -- other than the real estate?

A The total investment consists of three factors:



Chaney - direct

The real estate or the right-of-way values that Mr. Markos supplied to us; the investment in poles and wires necessary to construct the transmission line; and, finally, the investment required at both ends of the lines in order to connect the facilities to the adjoining utility and also to connect the facilities to the municipal system.

Q Now, Mr. Chaney, what did you find to be the total estimated cost of the four different lines for each of the three periods?

Let's take the year 1962, for each of the four lines?

A In 1962, the total investment for line No. 1 to Erie West was \$6,731,000.

Q This includes, of course, the right-of-way value given by Mr. Markos?

A Yes, it does.

Q All right.

How about line 2?

A Line No. 2 to Canton Central, we found the investment cost to be \$6,291,000.

For Line No. 3 to the Johnson Substation, we found the investment cost to be \$6,146,000.

Chaney - direct

And, finally, for the line to the Hanna Substation, we found the investment cost to be \$5,514,000.

Q All right.

Now, will you give us these corresponding values for 1969?

A Yes.

In 1969, Line No. 1 shows the investment cost to be \$10,466,000.

For Line No. 2, the investment cost was \$9,795,000.

1969, the investment cost of the Johnson substation was \$9,636,000.

And, finally, for Line No. 4, the investment was found to be \$8,653,000.

Q Finally, give us 1973.

A Yes.

For Line No. 1, the investment is \$13,155,000.

For Line No. 2, the investment is \$12,297,000.

For Line No. 3, the investment is \$11,880,000.

And, finally, for Line No. 4, the investment is \$10,834,000.

MR. LANSDALE:

Mr. Murphy, would you show us the next slide, which is the first

Chaney - direct

page of Exhibit 1035?

{Mr. Murphy complies.}

BY MR. LANSDALE:

Q I show you on the slide the first page of your Exhibit 1035.

Will you tell us what that shows, Mr. Chaney?

A Yes.

The first page of Exhibit 1035 is really the summary page of my analysis.

In the first column of figures, which depicts the results for the period 1962 to 1963, I compare, under Items A, B, and C, alternatives that were available or facilities that were available to the City at that time with what the results would be if a transmission line were extended to the various points as set forth in the D section of the column.

In other words, in 1962 and 1963, -- which, incidentally, corresponds with the period in time when the City had received its Beiswenger report from their own consultant, -- they were looking at a new proposed steam unit at that time in the magnitude of 75 megawatts that would have an average cost of about 8.11 mills per kilowatt hour.

Chaney - direct

If, at the same point in time, they had looked at what the average cost of extending a transmission line would be, they would have found it varied from as low as 10.8 to as high as 11.66. But I should point out that the high figure there is not for total service but, rather, for partial service, but in a range of 8.8 to a little over 10 mills per kilowatt hour.

This is significant, because the alternative available to them suggests that a transmission line extension only costs a couple mills more than the alternative that they were looking at at the period in time.

The third column -- the second column, the middle column, I guess you'd say, the 1969 to 1970 period, corresponds with the time frame when the City found that CEI would only permit a non-synchronous dead transfer connection.

At this particular point in time, the City was faced with its own generation costing in the order of 13.32 mills per kilowatt hour.

And, by comparison, had they investigated the alternatives of going to a transmission line extension, they would have found that their cost

Chaney - direct

of power and energy could have been under 10 mills per kilowatt hour.

I consider this comparison to be significant in that when they were first reviewing the proposed new steam unit, they should have been aware that for roughly 2 mills differential, it would be cheaper to extend the transmission line than to build a steam unit.

I should also point out that the 8-mill figure in Column 1 on Item B is an estimate at that particular time.

It's based on the consultant's studies provided to them; whereas, the figures under D are, for all practical purposes, actual figures, because perhaps over 90 percent of the total is related to a known filed tariff that's on file in Washington, D.C. as it affects the cost.

So one should have realized that if their estimate in 1962 or '63 increased by 2 or 3 mills going to actual, that they'd be better off extending the transmission line than to continue to generate their own steam unit.

The right-hand two columns, one relates to 1973 and one to 1974.

Chaney - direct

As I mentioned, I chose the mid-1973 period, so one should look at a combination of these two columns. This is the period in time when CEI advised the City that they would not wheel power and energy.

You will notice now that the cost of their own steam generation had greatly escalated. It had doubled between '73 and '74; it was three or four mills higher in '73 than it was in '69-1970; and, yet, a comparison of the transmission line extension shows that considerable savings would result by extending the transmission line rather than generating the supply and energy -- supply of power and energy for the City.

MR. LANSDALE: Now, will you please give Mr. Chaney CEI Exhibits 1169 through 1172?

{Exhibits handed to the witness by Ms. Doyle.}

THE WITNESS: Before we --

MR. LANSDALE: Yes?

THE WITNESS: Before we change to another subject matter, could I add one further thing?

Chaney - direct

MR. LANSDALE: Yes.

THE WITNESS: -- with regard to this page on the screen?

At the very bottom of the D section, in two columns you will notice pay-out periods that are expressed in years.

A pay-out period is a usual basis to judge the reasonableness of an economic alternative.

Perhaps we're all familiar with the adds that we read or see on TV that say something to the effect that:

"If you invest in this energy-saving device, it will pay for itself in a couple of years."

Well, this is the same sort of concept.

A pay-out period is determined by dividing the investment cost by the annual savings that will result from making that investment and expressing the answer in years.

You'll notice in the 1969-1970 period the pay-out period is in the order of four to five years; and for the mid-1973 period, the pay-out period is slightly under two years for

Chaney - direct

two of the comparisons, and slightly over for one.

This is significant to me because the investment in a transmission line is a long-life -- long-life property. It has an economic life of 35 years or more.

And if one can make an investment for a piece of equipment that will last for 35 years and you can pay that investment off in two or three or four years, it's a highly economically feasible alternative to consider.



Chaney - direct

Q Thank you.

I noticed in that exhibit it describes that -- you did not say anything about Paragraph C, which is the Tri-city interconnection.

Tell us what that relationship is.

A In connection with the work that the city consultants did in 1961, they analyzed a possibility of connecting the cities of Orville, Painesville and Cleveland. This was referred to as the Tri-city interconnection.

Consultants for the City found that it would be practical and feasible and should be done, and it would provide reliability of service that the City did not have at that time and still does not have, I guess, but in any event, according to the consultants' own exhibit or own presentation to the City, the cost to Muny Light from the interconnection would be on the order of 8.02 mills per kilowatt hour.

Q Turning now to another matter, Mr. Chaney, I think we have furnished you with CEI Exhibits 1169 through 1172.

These are documents that were furnished to us by the city in response to our request for

Chaney - direct

certain identifications of the cost of constructing the transmission line by the City.

Have you previously examined these documents?

A Yes, I have.

MR. NORRIS: Excuse me.

Jim, is it possible to get Exhibit 2064 and the overlay, 3234?

{After an interval.}

Q Those exhibits that you have looked at, I believe, cover the possibility of constructing transmission lines through the so-called, then, the proposed Southerly Sewage Plant?

A The Waste Water Treatment Plant.

Q Yes, and that is -- the testimony shows on the overlay, which is Exhibit 3234 on the map, on the map that is now on the easel, the map being Exhibit 2064, is the blue dots in the center just to the right of the center on the southerly part of the map, and do you see that?

A Yes.

The blue dots located down in the lower right-hand corner of the map.

Q Right, sir, and my question to you, Mr. Chaney, is, how does the route for those calculations by the City

Chaney - direct

compare with the two of your selected routes which go in the same general direction?

A The calculation set forth in those exhibits relate to a 6-1/2 mile line that connected the West 51st Street substation -- correction, West 41st Street substation where I am pointing down to the Southerly Waste Water Treatment Plant.

The route selection that we provided and showed on the prior map, Route No. 2, commenced at the Muny Light Lake Road station and came west to East 40th Street, and then down East 40th Street until it interconnected the railroad, and then followed the railroad right-of-way outside of the downtown area.

Q Now, were you able to compare the estimated costs as shown on this exhibit, on these exhibits, one, two, three, four exhibits, that we have just identified with the cost estimated by you?

A Yes, I was.

Q How did they compare?

A I found in going through these exhibits, 169 to 172, that basically they reflect a line investment of \$75,000 a mile, and a terminal investment of \$750,000.

If one were to use those unit figures and apply

Chaney - direct

them to the 65-mile line, No. 2 extension to the Canton substation, you would find that the indicated investment cost, exclusive of right-of-way, because right-of-way is not included in these exhibits, 169 to 172, you would find a total investment cost of \$5,625,000.

Q Will you turn to Exhibits 1811 and 1812.

Before you get to those exhibits, Mr. Chaney, Mr. Murphy reminded me of another question which we should go into: -

Are you able to compare the kind of poles that were envisioned for your construction as compared to the poles used by Mr. Pofok in those city exhibits that you looked at.

Were these steel lattice construction or wood poles?

A The price level suggests that they are wood poles, basically.

The price levels do not indicate any significant underground facilities.

Let's see if I can find a specific reference to an item here.

{After an interval.}

A {Continuing} I notice here that in Exhibit 1170 a

Chaney - direct

reference to wood pole construction.

Q And that is a type of construction that you used in your calculations?

A Yes, with the exception of those areas where it was necessary to use steel because of the span length or distance between structures, in order to have strength at corners and various places where steel is required and wood would not be as acceptable.

Q Thank you.

Now, please refer to Plaintiff's Exhibits 1811 and 1812.

1811 is the Beiswenger report dated March 20, 1961, dealing with the so-called Tri-cities interconnection, and 1812 is the report at or about the same time, dealing with the additional generation facilities for Muny Light.

Mr. Chaney, have you at my request examined these reports with particular reference to the proposal relating to the so-called Tri-city interconnection?

A Yes, I have.

Q And are you able to express any view as to your concurrence with these recommendations?

A Yes, I am.

Chaney - direct

Q And what was your view -- what is your view?

A ~~I agree with the conclusions of the City's~~  
consultants in these reports insofar as it recommended  
interconnections as a means of providing reliability,  
and also as a means of offering an opportunity to  
reduce the cost of operations.

Q Thank you.

Now, Mr. Chaney, in making these feasibility  
studies which you have outlined here, is it  
necessary for you to give consideration to the  
construction period which would be involved in  
the actual construction of these lines?

A I guess the answer is yes and no, because one must  
view that answer with respect to first the  
perspective of conducting a feasibility study, and  
secondly, you must view it from the perspective of  
actual implementation of the study.

Q Let's look at it first as to the feasibility study.

A Insofar as the feasibility study is concerned, it  
is not important to look at the entire construction  
period.

What is important, however, is the time period  
during which construction will take place, and the  
reasons that this is important is that it affects

Chaney - direct

the level of investment cost that one will incur in order to construct a particular facility.

Insofar as the actual implementation is concerned, it is important to look at the entire period of time, start to finish. However, as I pointed out on the reference to the slide for Exhibit 1035, the Muny system had ample opportunity to look at the economic alternatives, and it is my view that prudent management would have considered all of its alternatives during this particular period of time, and would have conducted a considerable portion of the work necessary in order to implement a specific plan at a point in time when they had to make a go-no-go decision.

The economics show that the City could have saved something on the order of 6 or 7 million a year, and it would be only prudent for management to take advantage of those steps such as they could in order to insure obtaining that economic benefit as quickly as possible.

Q What has been --

THE COURT: Perhaps this would be a good point to take our morning break.

Please, ladies and gentlemen of the jury,

Chaney - direct

keep in mind the Court's admonition. We will take a short break.

{Recess taken.}

{The jury was reseated in the jury box and the trial continued as follows:}

THE COURT:                    -                    -                    You may proceed,

Mr. Lansdale.

BY MR. LANSDALE:

Q     Mr. Chaney, at the recess you had just concluded discussing the problems involved in the implementation of any plan for construction and transmission lines.

Now, what has been your experience with respect to whether or not the management of the public utilities ordinarily make long-range plans respecting transmission lines?

A     The management of any public utility makes long-range plans with respect to transmission system requirements.

In some instances the long-range plans will be 10 to 15 years in advance of actual needs.

Q     Mr. Chaney, you discussed the construction period problem.

In respect of your feasibility analysis, what if any consideration did you give to reliability of service?



Chaney - direct

A Yes.

The matter of reliability is a factor that must be considered in the feasibility analysis with respect to any of the alternatives.

Any electric utility must have a backup system or systems in order to insure continuity of service.

This is true whether we are looking at the transmission lines options or whether we are looking at the Muny Light System options.

Again, I should break this down to the feasibility analysis and the actual implementation.

Insofar as the feasibility analysis is concerned, most -- either one adds the cost of backup to both options.

Q What do you mean "both options"?

A To build a transmission line or to continue to operate the Muny System with principal reliance on the big 85-megawatt unit.

You either have the cost of backup to both sides of the equation, or you delete the cost of backup to both sides of the equation. I chose the latter, because it produces a more conservative result.

In other words, the cost of adding backup to the transmission option would be less than the cost

Chaney - direct

of adding backup for reliability to the isolated system concept with debt transfers that were being utilized by Muny Light at the time.

Now, insofar as the actual implementation is concerned, however -- and perhaps I should cover that, too.

Under the transmission option, added reliability could be acquired by reliance upon the debt transfer that was in existence at the time, the existing peaking units that the City had at that particular time, and rehabilitating the 85-megawatt machine, and placing it in cold standby, and also constructing a second transmission line, perhaps, if one line went to the east, and a second line could go to the west.

But these would be the options insofar as the transmission options are concerned.

Insofar as Muny Light, insofar as their isolated operation was concerned, I think the most logical alternative would have been to extend the transmission line to one of the four points that I selected.

Q Mr. Chaney, one thing I forgot to ask you earlier:

Mr. Markos was interrogated concerning the

Chaney - direct

extra cost which might be associated with acquisition of right-of-way such as closing costs and drawing maps and lawsuits respecting appropriations and the like, and he stated that he made no allowances for those things.

What if any allowance did you make in your estimate of total costs for these items?

A I included an allowance of 15 percent of the direct investment cost in lines and facilities to cover the nature of items that Mr. Markos was discussing in his cross-examination earlier.

Q This is 15 percent of your total costs, real estate as well as --

A No, sir. It is 15 percent of the direct investment cost in lines and facilities.

It is not an adder to the investment figure that Mr. Markos provided to me, and the reason for that is that our determination of a reasonable allowance had been computed in that particular manner.

Q Okay, sir.

MR. LANSDALE:

I have no further

questions. You may examine.

- - - - -

## CROSS-EXAMINATION OF WILLIAM R. CHANEY

BY MR. WEINER:

Q Hi, Mr. Chaney.

A Hello.

Q You listed off a list of various clients that you worked for in the past before coming to work here for CEI in this project.

Of those, which ones did you do a feasibility study of building new transmission lines for electric facilities?

A The lumber mill that I mentioned in Texas, the study --

Q Maybe it would be easier for me if you told me where you are looking.

A I am looking at the same notes I had before me when I listed the various locations where I had done feasibility studies.

Q Is that in your work papers?

A No.

Q Okay.

A The study for the City of Fayetteville, North Carolina, and that involved transmission; and Grandhaven, Michigan, involved transmission, and the study for all of the investor-owned utilities in the

Chaney - cross

state of Kansas involved transmission.

And there was a city in Wisconsin, Kakanau, and then for the Northern States Power Study, and that involved transmission, and that was tangentially. It was not a key item.

There was the Department of Justice study that I did; the Dow Chemical, and that involved transmission, but it was very, very short.

Q Would any of those studies -- were they done in the period of 1973?

A Yes, and prior to that.

Q Any one in particular that you can point out in that six or seven that you have enumerated just off the top of your head?

A Not from the top of my head. If I may look at my notes -- it is difficult for me to remember back specific periods.

Q Tell me what you do -- you described yourself as an economist in the utility business.

What do you do in doing an economic feasibility study of constructing new transmission lines?

A What do you do?

Q Yes.

A You make analysis down into the various steps that I

Chaney - cross

have identified before, but basically it is to identify the points of beginning and points of ending, and identify the amount of power and energy that could flow between the two points, and the cost that you would have to pay at one end to acquire or purchase electricity, and the investment costs necessary to transmit that electricity from the various sources to the points of distribution, and of course you have to put the study together in such a way that you can draw logical conclusions based upon the data that you have developed.

Q And is the purpose of those studies that you had for other people, was it to determine whether or not it makes sense to build a new transmission line?

A Yes, or take some other steps in other options.

Q You were comparing building a transmission line with some other options for energy needs?

A Yes.

Q And when you do this, in the normal course, is it not true that you have to make some projections of the rates that you would have to pay for the energy on the other end of this transmission line?

A Generally not, because most utilities that I have dealt with have on file with the Government, the

Chaney - cross

Federal Government, rates that apply for the purchase at wholesale by other entities, municipals, for example, or perhaps a cooperative, or what have you; but these are filed tariffs that have certain applicability clauses which means that if you can conform with the terms and conditions of the tariff, then the tariff is available to you, and the next step would be to negotiate or work out the contract that would set forth the peculiarities with respect to each individual transaction, but these are known filed tariffs that are available.

Q Are the tariffs in existence for a set period of time, or do they change from time to time?

A They are in existence all the time, but they do change.

The rates in the tariffs will change.

Q So you can't be sure by looking at a particular tariff file today in Washington as to whether that tariff will be on file a month from now?

A That is correct.

By the same token, you can't tell what the price of coal will be next week, if it will differ from this week, as well, but this is not the problem.

Q Part of the job of doing an economic feasibility

Chaney - cross

study would be to project what the cost in the future might be as opposed to just looking at the current filed tariff?

A Yes; and I did that here in this case as well.

Q Am I not correct, Mr. Chaney, that one of the things you do normally is you look at the costs that the system is then incurring from their own generation, and you assume they are in the generation business?

A Yes. You look at what they are then incurring, and you are also trying to evaluate how that cost that they now are incurring will change in the future.

Q That is right.

Now, in this situation you have the advantage of hindsight, do you not?

A I suppose I did, but I tried to avoid using hindsight to reach any conclusion.

Q But, in fact, you used the rates that were -- excuse me. Strike that.

In fact, you used the cost that Muny Light actually incurred in the given year up to 1976 when you stopped looking at this?

A Yes.

Q And you made no effort to try to put yourself in the frame of mind that you would have been as a utility



Chaney - cross

economist in any one of these given periods and looking toward making an economic feasibility study?

A That is not true.

Q You did try to do that?

A Yes.

Insofar as Muny Light is concerned, one of the big cost items relates to the level of charges that they would have to pay for coal if they are going to operate the 85-megawatt machine, and I put myself in the place of trying to determine whether or not the cost of coal for Muny Light would increase at a rate lower, about the same, or a higher rate than it would for any of the alternatives that I studied; and I concluded that because of, primarily transportation costs, and the size, that the cost of coal or the principal item in the cost of generation, would increase at a lower rate from one of the alternatives than it would from continued operation of the Muny Light Plant.

Q Do you have any work papers in which your study shows that?

A No. This is common knowledge, that transportation rates are increased, and if you can have an alternative that is generating closer to the source

Chaney - cross

of coal supply, the cost of coal will increase at a lower rate than if you have to rely upon transportation.

Q Did you look at any other factors that go into Muny Light's costs?

A Size.

I was also aware that Muny Light was experiencing difficulty in maintaining their facilities, as one would expect when they lack reliability, but I felt that whatever experience they had -- and I reflected -- it is reflected in their actual figures; and that was probably on the low side.

Q Mr. Chaney, did you study what Muny Light costs had been in the period of 1970 to 1973?

A Yes.

Q And are those reflected somewhere?

A In my work papers, yes.

Q Can you tell us where?

A Do you happen to have work paper C-3 in front of you?

Q I do.

A This particular work paper shows the actual Muny Light experience for the period 1970 to 1977.

Chaney - cross

Q Would I be correct that in 1970 Muny Light's total production cost was \$6.7 million, roughly?

A Yes.

Q And in 1971 it was 7.1 million?

A Yes.

Q And in 1972 7.8 million?

A Yes.

Q And in 1973, for the total year, 8.7 million?

A Yes.

Q Now, at that point in time, Mr. Chaney, when you were looking at the 1973 as one of the tree areas that you were looking at, did you try to make a projection as to what Muny Light's costs would be from 1973 out to 1977?

A No, I did not.

Q On the basis of your study you relied upon Muny Light's actual costs in that period?

A Yes.

Q And that is what you compared with the alternative of building these transmission lines?

A Yes.

Q So -- and the purpose of this comparison, for this purpose you have used 20/20 vision? You have used actual Muny Light's costs?

Chaney - cross

1  
2 A No. I used actual costs.

3 I guess, if "actual" means 20/20 vision, then,  
4 yes, the answer would be yes, but I used actual  
5 costs, but I used those with judgment related to  
6 key factors; in other words, size, reliability,  
7 and rates of change of various expense items.

8 Q Now, Mr. Chaney, am I correct that in 1973 the cost  
9 of Muny Light was \$8.7 million total?

10 A \$8,762,000.

11 Q By 1975 it had gone up to 18.7 million?

12 A \$18.8 million.

13 Q And you made no projection putting yourself in the  
14 framework of a 1973 economic feasibility study to  
15 show that Muny Light's costs would have risen over  
16 100 percent from the period of 1973 to 1975?

17 A I guess the answer is no.

18 What I am saying is that had they taken the  
19 transmission option in 1973, they would not have  
20 incurred the 18 million eight of costs in 1975,  
21 and that would have been avoided.

22 Q Well, we will get back to that, but the point is  
23 that you could not project in 1973, based on any  
24 information that you had, that Muny Light's costs  
25 would have jumped from 8.7 million to 18.7 million

Chaney - cross

in just a two-year period?

A I could not predict that, no, but it is not important for the feasibility analysis, and it is for this reason:

There is a history of constantly increasing costs.

Q At Muny Light?

A Yes.

You will notice in 1970 their average cost was around 6 million eight, and it has now gone up, by 1973, to 8 million eight, and there is a constant increase between 1970 and 1971, and between 1971 and 1972, and more importantly the unit cost of operation has been increasing.

It took a sizeable jump between 1971 and 1972.

Q What was it?

A In fact, the jump that was 1-1/2 or 2 million per kilowatt hour in just generation by system.

Q That was because they started to purchase power?

A No. That is the cost of system generation that has gone up; the cost of generating from their own facilities outside of purchasing anything.

Q What was Muny Light's cost in 1971, Mr. Chaney, the total production costs?

## Chaney - cross

A \$7,079,000.

Q And it went up to 7/10 of a million the next year?

A \$700,000, yes.

Q And it went down by that same amount in 1973?

A No. It went up by 1 million, 1 million more.

Q And the dramatic rises occurred after that point?

A Yes, they do.

Q Now, Mr. Chaney, as I understand it, one of the time periods that your study was concerned with was a time period in mid-1973?

A Yes.

Q And that was related, as I understood it from your testimony, to the time when CEI indicated to the City that it would not wheel PASNY power for Muny Light?

A Yes.

Q And do you know when that indication from CEI was given to the City?

A Yes, August of 1973.

Q And do you know that it was August 30th of 1973?

A I don't recall the 30th day of the month, but it was August.

Q I assure you that the letter was dated from CEI on August 30th, 1973.

Chaney - cross

Mr. Chaney, at that point in time, after the City would have received that message from CEI, the refusal to wheel PASNY power, did you make a study or comparison to show whether it would have been more economical for Muny Light to obtain PASNY power by wheeling from CEI than by building one of those transmission systems?

A No, I did not.

Q Now, as I understand it, Mr. Chaney, for the purposes of your comparison, you do not assume that Muny Light is in the generation business except for the gas turbine peaking units?

A Yes; that is correct.

I do assume, however, that in order to provide reliability, that they would rehabilitate their large unit, and they would leave it in cold standby, in which case they wouldn't generate, and the reason is that it costs more to produce energy from that unit than it does to purchase; however, from a reliability standpoint, it could be started up again, and the customers of Muny Light would not suffer by having interruptions in service.

Q You would have to start it up in the event that the transmission lines went down?

Chaney - cross

A Yes.

Q And that there was an outage on the transmission line, and you had to go out and repair the outages first? You had to find out where it was?

A Yes.

Q And then you had to repair it and try to get the transmission lines back in service?

A Yes, and you might find from that preliminary investigation that it would not be necessary to start the unit back up.

Q I think we know the unit would take 8 to 12 hours to get on line?

A Yes.

Q And if the transmission system was down for 8 to 12 hours, then all the customers would be out of power except for what the gas turbines would do; is that correct?

A And the dead transfer.

Q You are assuming that there would be a continuation of dead transfers from the CEI system?

A I see no reason why it would be stopped. The Muny light needed reliability, and while that is not as reliable as synchronous, it does provide for a certain degree of reliability.



Chaney - cross

Q So you are assuming some cooperation from CEI, even though they refused to wheel, and that is the reason you are looking for transmission alternatives?

A I don't know that I made an assumption that way or not.

I assumed that would be an option available to the City.

Q Do you know how much, in the event -- by the way, in your experience, you have found it true, is it not, that from time to time there were outages on transmission lines ?

A Oh, yes.

Q And there were a lot of different reasons for those?

A Yes.

Q And the system would have to maintain a transmission crew and the wherewithal and the equipment and the expertise to service that transmission line?

A Yes and no.

They would have to have a certain amount of crew experience available to handle the transmission line, but if worse came to worse, you could go to the outside contractor, and I am thinking of instances where a tornado might come in and take out a line.

It is not uncommon for utilities to either

Chaney - cross

acquire the assistance from outside contractors or the assistance from neighboring utilities.

Q Mr. Chaney, am I correct that in doing your cost comparisons you have taken into account no money for rehabilitating the No. 6 and 11 unit?

A That is correct, and I mentioned before that if I had, then I would have to take into consideration whatever it would take to provide a reliability backup for the isolated municipal system, and I didn't do that.

Q You are saying -- let me go back.

Are you comparing the Muny Light System as it actually existed with the proposed transmission line?

A Yes.

Q And until the big unit went out, that unit was functioning?

A Yes.

Q And that was part of the cost comparison?

A Yes.

Q And you took it into consideration to find out whether one of these transmissions had some kind of feasibility?

A Yes.

Chaney - cross

Q And there was no rehabilitation of that unit done as part of the system's normal work?

A That is correct, and by the same token, there was no allowance on the actual experience at Muny to reflect what it would take for that system to have a high degree of reliability as well.

Q You are talking about putting on some other kind of generation?

A No; for the economic feasibility study, you either have to include the figures on both sides of the equation, or delete them, and I chose the latter, because it would be a conservative analysis in that the cost of providing reliability for the transmission option would be less than the cost of providing reliability for the isolated system operation.

Q But in your study you assumed the 6 and 11 was in operation until it was no longer in operation; is that right?

A Yes.

Q Because that was part of Muny Light's cost?

A Yes.

Q And then you assumed for your comparison purposes that Muny Light's cost from purchasing power from

Chaney - cross

CEI and from gas turbines?

A Pardon me?

Q What is the big unit -- if the big unit went down, how was Muny Light's cost figures calculated?

A They had to purchase power and energy from CEI.

Q And some they were generating on their own?

A Yes.

Q But you did not add anything in or take anything out of Muny Light's actual cost for rehabilitating the 6 or 11 unit?

A I believe I answered you several times, I did not.

Q But in order for your transmission lines alternative to have reliability, you would have to have rehabilitated the 6 and 11 unit?

A Yes.

Q And this is an additional cost?

A Yes, but it is less than the cost of rehabilitating the isolated system option.

Q And it included within that -- included within that you would have to have some cost for putting scrubbers on the No. 6 and 11 unit?

A Yes.

Q -- to take care of the air pollution requirements?

A Yes.

Chaney - cross

Q And that was several million dollars?

A Yes.

Q And that factor is not put into your feasibility study?

A That is correct.

Q In doing a feasibility study as a utility economist, Mr. Chaney, am I correct that a system would normally look at more than just transmission as an alternative?

A Generally speaking, yes; that is correct.

Q And in a situation such as Muny Light found itself in in 1973, besides transmission, it would consider rehabilitating its own plant?

A I think in 1973 it had numerous options that it should have considered.

Q And one would have been rehabilitating the plant?

A Well, yes, if they would take the additional step of confronting the problem with rehabilitating.

There would be no sense to rehabilitating the plant if they would not solve the problems that caused the difficulty in rehabilitating the plant, and that is that they had no other alternative available to them for normal maintenance in the plant.

Chaney - cross

Q Okay; and the alternative that would have been available to Muny Light at that time in general would have been, besides transmission lines, the alternative that we discussed would have been no generation?

A Yes. That is an alternative.

Q Or obtaining power on a synchronous basis with CEI?

A I don't consider that that is a logical alternative, for this reason:

In light of the circumstances prevalent in that particular period of time, I think it would have been very unwise for Muny Light to hang its decision upon the success or failure of its competitor.

Q But you indicated, did you not, that the best source of supply for the utility is generally the closest source of supply?

A Generally speaking, that is correct.

Q And CEI was certainly the closest source of supply?

A But that is a different situation.

Q But that is in fact the alternative that Muny Light's system went out on?

A Yes, and with the long history of not being capable, for example, in 1969, in the 1969-70 period, I

Chaney - cross

think that prudent management would have been wise to say, "Look, what are all of our alternatives, and let's prepare for the eventuality that we cannot successfully get wheeling to CEI's facility," and I think that would have been the logical procedure that management should have taken in the 1969-1970 period.

Q Well, you just mentioned wheeling, Mr. Chaney, and that is one aspect, and the other aspect is reliability; is that right?

A Yes, the reliability aspect seemed to be missing, and insofar as the wheeling aspect is concerned, and it is one of the factors that I found in my study, and I felt that the consultants to the City were preoccupied with trying to accommodate the growth in load, whereas my study found that they should have been looking at accommodating the entire load.

For example, if you were to build a transmission line to Erie-West, for example, to only wheel a part of your load, the unit cost for that portion of your total load would be much higher than what the unit cost would be if you were to find some means to accommodate your entire load; and I believe

Chaney - cross

from my review of the reports back in the prior period that there was a concern by the consultants directed more towards growth in load rather than having the entire load.

Q Mr. Chaney, one of the alternatives in 1973 was the alternative of attempting to take such actions to force CEI to wheel after the denial; is that correct?

A Yes, I think I believe I heard that.

Q And am I correct, Mr. Chaney, that the other alternatives that were available, that you just discussed, the new generation, and the rehabilitating of the plant, and the taking steps to obtain a synchronous interconnection from CEI, and taking steps to get wheeling from CEI for PASNY power, those alternatives were not studied by you?

A Not by me in the manner that I made the analysis here.

Those alternatives were not studied by me.

Q Now, as I understand it, the five types, the five areas or categories of things that you have to do, or at least that you did in this study, as you call it, and one was to determine the logical alternative where there is power available?

A Yes.



Chaney - cross

Q And that means that you would have to look at other systems?

A Yes.

Q And that means in this case that you looked to the Ohio Edison Company and the Penelec over in Pennsylvania?

A Yes.

Q -- and to Ohio Power?

A Yes.

Q And in doing so, you set up in your own mind some assumptions about what Muny Light would do with its own generation; is that right?

A Yes.

The starting one is that if it is cheaper to buy, you ought to buy base load energy.

Q Okay; but you assumed for your study purposes that the coal standby, the 6 and 11, which was in operation in 1973, would be taken out of operation and just be left in cold standby?

A Not entirely. I think the management should have rehabilitated the unit because it was in need of repair.

Q But for the purposes of your study, that is what is assumed?

Chaney - cross

A Yes.

Q And you also assumed that the three gas turbines would be used for peaking power?

A Yes.

Q Is that correct?

A Just a moment -- you are referring to the three 25-megawatt units?

Q No; the gas turbines. I think the nameplate capacity was 16.

A 15.

Maybe -- let me find my notes on that.

{After an interval.}

A There are three 25-megawatt units at the Lake Road station that I felt would remain in service.

They also had at the Lake Road station a small topping unit, 12.5, and they also had two 16.2-megawatt gas turbines at the West 41st Street substation, and one 16.2-megawatt gas turbine at the Collinwood substation; so I assume that those facilities would still be available, but I was aware that some of those facilities are reaching the end of their economic life.

Q For your cost comparison purposes, Mr. Chaney, you assumed that after the transmission lines were

Chaney - cross

built, the system would buy all the power from one of those other utilities except for peaking power from the gas turbine; is that correct?

A Yes.

Q And you assumed for the purposes of your study that at this decision point, in the fall of 1973, these other utilities would have sold to Muny Light the power that you projected it would have purchased from these utilities?

A Yes.

Q And for the basis of that assumption you used the tariffs on file with the, I guess, the Federal Power Commission at that time, by these other utilities?

A Yes, I did.

Q And these tariffs indicated the type of service that was available under this particular tariff, and they are sort of detailed documents, aren't they?

A Yes, but if you have a familiarity with them, there is a pattern to them.

Q And they reflect the costs that would have been provided for that service under those particular tariffs?

A They reflect the rates one would pay to purchase power

Chaney - cross

and energy under the tariff.

Q Okay; and I believe, am I correct, that your work papers support your analysis, and they include the tariffs upon which you relied?

A Yes.

Q And as I understand, this is a general tariff, and not one specifically designed for Muny Light, because in fact it didn't actually happen?

A It is a general tariff in that it applies to all municipals that are purchasers that fit the applicability clause.

In addition to the tariff, there would be a contract that would be set forth, that would set forth the peculiarities that are subject to the individual municipalities, but all municipalities would pay the same tariff, but they might have slightly different contracts insofar as the points of receipt or the various provisions, and among others, the amount that they would purchase, and so forth.

Q And you said that in order to be under that tariff, you have got to qualify for it and fit within the terms and conditions of the tariff?

A Yes, you do.

Chaney - cross

Q Okay.

Now, Mr. Chaney, am I correct that the tariff that you relied upon for the 1973 analysis for the Ohio Edison Company is reflected at F-2 of your work papers?

A Yes.

Q Am I correct that in the second sentence that it provides on that page:

"Service purchased hereunder shall be all the electric service required for the operation of the municipal's electric distribution system, and such service shall not be used for auxiliary and standby purposes"?

A Yes.

Q Does that mean that that tariff only applies for the purchasers, if the purchaser is purchasing all the electric service for that system?

A That is the way it reads, but that is not what actually happens in actual practice.

Q You are saying that actual practice is different from the specific language of the tariff?

A What I am saying is that that provision is in there for the protection to the seller, that you do not have a purchaser that will use the tariff for the

Chaney - cross

purposes that it was not intended for, and there is basically -- that is basically that a purchaser would try to use the tariff solely for the swinging or peaking periods, and that proviso protects the seller.

If, on the other hand, a purchaser or a potential purchaser approached the utility and points out that, "Look, I want to buy base load power and energy from you, and I will take the swings on my own facilities," and then that is the type of sale that the seller can make, and that is more advantageous to the seller than one where they must take all of their service, because the cost of swing provisions is high, and the low load is absorbed by the purchaser instead of the seller.

Q Is it a fact that before the Muny Light System could have purchased any power from Ohio Edison in 1973, or thereafter, that they would have to have filed a new tariff with the Federal Power Commission?

A No. They would have to file a contract, and the contract would contain the provision in here that the service would be rendered under this particular filed tariff.

Chaney - cross

Q Even though this tariff provides for the system to purchase all of the power?

A That is correct.

Q And that contract would have to be negotiated between the Muny Light System and the Ohio Edison System in this case?

A Yes.

Q And it is true that there was no partial requirements tariff on file by Ohio Edison during this period?

A I am not aware of any.

Q It is true, is it not, that you cannot be sure at this time what the actual price that Muny Light's System would have to have paid from the Ohio Edison?

A Yes. I mean, it would not be anything greater than the rate schedule that I relied upon.

Q Now, Mr. Chaney, am I correct that with respect to the Penelec System, the tariff that you relied upon -- and it is G-6 of your work papers?

A Yes, for the period 1973 and 1974.

Q And that provides under the title of "Applicability:

"This system shall be applicable for electric service performed from the company to other electric power systems, that they shall take their entire

Chaney - cross

requirements from the company for resale to the other municipal consumer" -- and so forth?

A Yes.

Q And am I correct it is your testimony that even though this tariff says it only applies to people taking their entire requirements, that you felt that they get around that?

A No.

I am saying the rate that they could negotiate with the company would not be greater than this tariff.

Q But you would have to file a new tariff?

A You would have to file a contract and have the tariff with it.

You would have to file the contract, and it would contain the basis for charges, and all I am saying is that whatever came out of those negotiations, the rate would not be higher than that that I relied upon.

Q Mr. Chaney, in your experience as a utility economist, have you ever advised a municipal light system the size of Muncy Light's System, approximately 100 megawatts of load, to build a 75-mile transmission line outside of its own service area



Chaney - cross

when there was a duplicate transmission line already in existence by another utility?

A No.

Q And in your experience and the Black & Veatch experience, had you ever been involved in such a project?

A Black & Veatch has. I have not had a connection with the qualifications that you gave.

We have advised many utilities in regard to interconnections with transmission facilities outside of their service territory.

Q Do you understand the conditions that I put on it?

A Yes, sir.

Q A 75-mile, or roughly, transmission line outside of its own service area where there is a duplicate transmission line already in existence?

A Yes.

Q And you say you have not been involved, but Black & Veatch has?

A Yes.

Q Could you tell us which ones they have been involved in?

A Well, one that I have here in front of me, and I presume that this is approximately the same size,

Chaney - cross

and it has to do with the City of Orlando, Florida, and they have over 100,000 customers, and there was 65 miles of 230 KV and 115 KV circuit lines, and these facilities crossed the service territory of the Florida Power Corporation and Florida Power & Light Company. That is one that I can give you.

If you would like others -- while these municipals are nowhere near the number -- have nowhere near the number of customers that the City of Cleveland has or the Municipal System in the City of Cleveland has, there were a number of communities in Texas having a total of about 60 or 70 thousand customers that built over 240 miles of high-voltage transmission lines across the service territory of the Texas Power & Light Company and the Gulf States.

Incidentally, this is a system where the actual feasibility in this regard was found by the R. W. Beck Company, and Black & Veatch were the design engineers to accommodate it.

I have another one here in connection with the Platt River Power Authority that we were involved in, and it represented the efforts of four communities in Colorado, and the total number

Chaney - cross

of customers were about 75,000, and there was approximately 60 miles of 230 KV transmission line that crossed the service territory of the Public Service Company of Colorado and the Padre Valley Electric Cooperative.

And I have some smaller ones if you would like me to go into this.

There is a town of Jetmore, Kansas, that built a line through the service of the REA Cooperative to acquire electricity by transmission.

I could probably go through our experience list and come up with more of these examples if you would like.

My recollection is that we have been involved in the design and construction of -- let me get the figure -- it is pretty impressive, at least it is to me.

It is about 2,600 miles of transmission lines.

Q And Black & Veatch have been in existence for some years?

A Yes, since 1915.

MR. WEINER: Your Honor, this may be a good time to break.

THE COURT: Yes.

Chaney - cross

Ladies and gentlemen, please during the recess keep in mind the Court's admonitions, and we will return at 1:30 and resume at that time.

{Luncheon recess had.}

- - - - -

TUESDAY, SEPTEMBER 22, 1981, 1:30 O'CLOCK P.M.

{The following proceedings were had in  
the absence of the jury:}

MR. NORRIS: Your Honor, I  
wanted to put something on the record first.

The defendant supplied work papers to the  
City of Mr. Blank, and those working papers  
we received on Friday the 14th -- I'm sorry --  
on --

MR. LANSDALE: That must have been  
about a week ago, I think.

MR. NORRIS: It was on the 14th  
in the evening, and let me just see what --  
Monday night, the 14th.

And then the Kemper work papers we got  
during court on Tuesday the 15th; and the  
Bingham working papers we didn't get until the  
17th.

THE COURT: Bingham?

MR. NORRIS: The Bingham working  
papers.

MR. LANSDALE: We have given them  
as far as they're getting ready.

MR. NORRIS: Now, some of this

1 just requires a tremendous amount of analysis.

2 There are four volumes of working papers  
3 for Kemper, and the bottom line of it, your  
4 Honor, is that I have just discussed with Mr.  
5 Lansdale our concern that if he puts these  
6 witnesses on the stand -- well, take Kemper  
7 and Blank, we would be prepared to go forward  
8 with if he puts these gentlemen on the stand  
9 on Friday, but not before, at least at this  
0 present reading.

1 MR. LANSDALE: You told me  
2 Bingham and Blank.

3 Kemper --

4 MR. NORRIS: No, sir.

5 MR. LANSDALE: -- Kemper, you have  
6 seen.

7 MR. NORRIS: No, sir.

8 MR. LANSDALE: You saw all this  
9 stuff last time.

0 MR. NORRIS: Listen, you have  
1 given us four new volumes on Kemper, and we have  
2 not had an opportunity to finish analyzing  
3 those things, and we were concerned about that  
4 when we asked for the work papers earlier.

5 But what we are now representing to the

1 Court, your Honor, is that if the defendant  
2 goes forward with Kemper and Blank not before  
3 Friday, we think that we will have an adequate  
4 time to prepare for that, and if he doesn't go  
5 forward with Mr. Bingham prior to Monday, we  
6 think that we will have adequate time to prepare  
7 for that.

8 But we would urgently note the prejudice  
9 to the City if we are asked to go forward on  
10 these witnesses prior to the dates indicated,  
11 and we would hope that the Court would approve  
12 this schedule all because of the tardiness of  
13 the work papers from the defendant.

14 MR. LANSDALE: Well, the work  
15 papers have been given to you as soon as they  
16 were ready.

17 On Kemper, I don't quite understand the  
18 problem, because while we put them all together  
19 again in four volumes, it is substantially the  
20 same stuff that you saw a year ago.

21 But, I don't know, we can -- we'll do our  
22 best without running --

23 THE COURT: Who is "Blank"?

24 MR. LANSDALE: A fellow named  
25 David Blank, who is a CEI employee that we put

1 in a new study.

2 THE COURT: What is Brook  
3 going to testify to that he didn't testify to?

4 MR. LANSDALE: Brook is not --

5 THE COURT: Or Bingham?

6 He's already testified.

7 MR. LANSDALE: We intend to have  
8 testimony concerning the validity of some of  
9 the damage studies put in by the defendant,  
10 and there wasn't any way to do those until the  
11 plaintiff's case was completed on that, your  
12 Honor.

13 THE COURT: Well, the only  
14 thing that I can say is that we are running  
15 so far behind time in this case -- let me just  
16 read you some figures on that.

17 {A document was handed to the Court by  
18 Law Clerk Kurdziel.}

19 THE COURT: The first trial  
20 took 33 trial days, from 9/15 to 11/5.

21 This case already has taken 53 trial days  
22 going from 7/13 to 9/22. That is exclusive of  
23 the time that we spent on this case in June,  
24 starting around June 18th.

25 Now, referring to the first trial, there



1 were 6,847 pages of transcript. Already in  
2 this case you have got over 7,500.

3 In the trial of the first case, the City  
4 had 47 witnesses; CEI had 12.

5 In this case, the City has had 45 witnessses;  
6 CEI has had 8, and they tell me they have 12 more.

7 In the first trial I wrote nine opinions;  
8 in this trial I have written already seven.

9 And the imposition on this jury is getting  
10 to be a serious problem.

11 You know, I get requests from them  
12 every day.

13 One young lady is desirous of getting  
14 married.

15 Mr. Penrod, in the back, is asking to leave  
16 on the 1st of October because his wife has  
17 planned a vacation, and the only time they can  
18 get away is October 1st.

19 The jury is distracted, and you people  
20 keep asking for additional time.

21 You are just going to have to keep at it.  
22 If I can keep at it, so can you.

23 All I'm saying to you is, Mr. Norris,  
24 I'm going to extend to you every courtesy that  
25 I can to give you enough time.

1 I don't know what kind of documentation  
2 your adversaries have given you, and I don't  
3 know how much of it you have to analyze, but --  
4 I don't know what the thrust of the direct  
5 examination is going to be. Perhaps after you  
6 get the direct examination, you won't have to  
7 go through all of the documentation.

8 I would ask Mr. Lansdale to accommodate  
9 you as best he can.

10 Now, you know, already there is a  
11 possibility that we may have to take off one  
12 or possibly two days next week because of the  
13 holiday.

14 MR. NORRIS: Your Honor, all I'm  
15 trying to do is be objective in analyzing this  
16 thing and, you know, Mr. Lansdale has not  
17 indicated a disagreement with my request; and,  
18 indeed, if on further study we decide that we  
19 don't need that amount of time, we will so  
20 report.

21 But we would certainly not want the  
22 situation to arise, your Honor, where the  
23 cross-examination was to be separated from the  
24 direct by any substantial period of time. We  
25 think that that would be prejudicial and,

1 therefore, that's why I have raised it.

2 THE COURT: I think that we  
3 ought to press ourselves to conclude this case  
4 for the benefit of all the parties as quickly  
5 as possible; I really do.

6 MR. NORRIS: We agree with that,  
7 your Honor, and we're working nights and we're  
8 working weekends, I can assure you of that.

9 MR. LANSDALE: I was just asking  
10 Mr. Murphy about whether or not one witness  
11 that we had here earlier has gone home. We  
12 will do some shifting around.

13 I sympathize with him.

14 THE COURT: Yes; so I will do  
15 whatever I can. I just don't want to  
16 interrupt the trial and lose days and lose  
17 hours.

18 MR. NORRIS: Thank you, your  
19 Honor.

20 THE COURT: And I could give  
21 you gentlemen some very practical suggestions.  
22 You ought to look at your witness lists and  
23 cut out all the repetitious matter, and I  
24 think the party having the burden should  
25 reevaluate the questions on direct examination

1 and make it as concise as possible, and, Mr.  
2 Weiner, you are not listening.

3 MR. WEINER: I am.

4 THE COURT: I suggest you make  
5 your questions probative and eliminate all of  
6 the irrelevant material, and in effect, eliminate  
7 50 percent of the bench conferences, and I think  
8 maybe we could save time.

9 Let's proceed.

10 You may bring the jury in.

11 - - - - -

12 {The jury was seated in the jury box.}

13  
14 CROSS-EXAMINATION OF WILLIAM R. CHANEY {Resumed}

15  
16 BY MR. WEINER:

17 Q Mr. Chaney, I would like to deal quickly with the  
18 four utilities that you mentioned in answer to my  
19 hypothetical question about a system having similar  
20 load the size of the Cleveland system and building  
21 a 75-mile line outside of the service area and  
22 duplicating lines already in existence.

23 Now, looking at Orlando, Florida, does that  
24 have some 500 megawatts of load?

25 A I am sorry. I don't recall. I just don't know at

Chaney - cross

this time.

Q Do you know the interconnection that you are talking about; that is, 66 miles, and was that built to Lakeland, Florida?

A To tie the plant in to Titusville, Florida, if that is near Lakeland.

Q Is that where Lakeland and Orlando built a joint power plant?

A I believe so.

Q And it serves both of those municipalities?

A Yes.

Q And do you know of any duplicate line running to that power plant?

A No, I do not.

Q Now, with respect to the Jetmore, Kansas, as I understand it, they built only 13 miles?

A Yes.

Q And there is no duplication there?

A No. This is an example where it crossed the service territory of somebody else.

Q But there was no duplication. They had no choice but to build that line?

A Well, I don't know that that is necessarily true. There might have been other choices.

Chaney - cross

One of the logical choices was to cross somebody else's service territory.

Q And they built 13 miles to the closest transmission system?

A Yes, for 573 customers.

Q And then you mentioned some utilities in Texas. Is that the TMPA system?

A Yes.

Q And am I correct they have a load of some 700 megawatts?

A I believe so.

Q And there is no duplicate line there, and this was not a duplication but rather a new line?

A Well, it is a duplication in that it crosses two service territories.

Q But it was serving a different purpose, was it not?

A Yes.

Q And am I correct that TMPA, that that system is already connected with IOU in that area?

A Yes.

Q And am I correct that that part of Texas is pretty rural country?

A Yes, it is.

Q And I take it the fourth one that you mentioned was

Chaney - cross

Platte River in Fort Collins?

A Yes.

Q And that was a line that they built to tie in a new power plant for four municipalities jointly owned?

A Tie in three of the four.

Q Can you think of any system that fits the three characteristics that I gave you, the load of Muny Light, the load of that system, and the 75 miles outside of the service area, and the duplicate transmission facilities?

A No; with those parameters, no.

MR. WEINER:

Mr. Lansdale, do

you still have the exhibit on the machine there, 1035?

MR. LANSDALE:

1035?

MR. WEINER:

I think it is on the machine, and if you would just turn it on, please.

{After an interval.}

Q This is the first page of Exhibit 1035?

A Yes.

Q Now, with respect to 1969 and 1970, with respect to that period, Mr. Chaney, the first column, Column A is the existing power supply costs for Muny?

Chaney - cross

A Yes.

Q And that indicates that they were having system generation costs of 13 mills and peaking service of 15 mills?

A Yes.

Q Were they not also purchasing power from CEI in that period?

A Not firm power from CEI, but they did purchase power from CEI in 1970. Their purchased power totaled about a million six hundred thousand.

Q And what was the cost per mill for that power from CEI?

A 9.4 in 1970.

Q Now, Mr. Chaney, as a utility manager, would it have made sense for the system at that point to have looked to its closest source for power when that source is cheaper than any other source that you projected on your study?

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -  
{The following proceedings were had at the bench:}

MR. LANSDALE: This witness has



Chaney - cross

not testified respecting the cheapest source of power under the conditions postulated by Mr. Weiner.

The witness testified as to whether it was feasible for Muny Light to independently secure power, and it is not -- he has not offered any direct testimony about this feasibility or the economics of interconnecting with CEI, and I object to the interrogation along this line. It simply is argumentative.

MR. WEINER: His testimony was that the alternative that Muny should have done was the alternative that he projected.

Where there are other alternatives available, it is proper to show that was not the best alternative for the system.

THE COURT: Overruled.

{End of bench conference.}

- - - - -

THE COURT: Read the question.

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

"Q Now, Mr. Chaney, as a utility manager, would it have made sense for the system

Chaney - cross

at that point to have looked to its closest source for power when that source is cheaper than any other source that you projected on your study?"}

A I don't believe so, in light of the acknowledged competition between the two utilities.

As I stated before, I feel it is a mistake to trust your destiny to your competitor.

Q But that was certainly an option that was open at that period of time, was it not?

A I don't know if the option was open or not.

Certainly the indications were at that point in time that CEI would only interconnect a dead transfer, and not a synchronous connection.

Q You knew, did you not, that the City did make efforts to get a synchronous interconnection from CEI?

A Yes.

MR. LANSDALE: Objection.

THE COURT: Sustained.

Q Are you familiar with when the system made an effort to get a synchronous interconnection for the City from CEI?

A No.

Chaney - cross

Q Now, Mr. Chaney, you didn't put the 9.4 percent on your study; is that correct?

A Yes; I did not put it up there.

Q And you did reflect the cost of purchasing power from CEI in the period of 1973 and 1974?

A Yes, because -- now, that was firm power, a firm power purchase rather than a non-synchronous purchase.

Q How do you know it was firm power, Mr. Chaney?

A From the records that were available to me from the City.

Q From where, Mr. Chaney?

A From the City records that were available to me. I interpreted that to be firm power purchases.

Q Do you have any particular record that you are making reference to?

A I would have to go through my work papers. I don't recall where I gained that indication.

I have a note on my work paper here that all information was obtained from the actual bills by CEI.

Q The bills from CEI to the City?

A Yes.

Q Mr.. Chaney, are you aware at that time, the 1973-1974

Chaney - cross

period, that the City was receiving power on a  
when-as-and-if basis?

A No.

Q You are not aware of that?

A No.

Q If that was the testimony in this case, as it has  
been testified to earlier, that would not be firm  
power, would it?

A No.

MR. WEINER:

Jack, would you

flip that off, please.

{After an interval.}

Q Is that source for your reliance on firm power in  
your work papers?

A I would have to look. I don't remember.

Q Can you take a quick look and see if you can find  
it?

THE COURT:

Do it at the

recess. Let's move along, please.

Q All right.

Mr. Chaney, on the --

MR. WEINER:

Pat, if you would --

Q {Continuing} Do I understand, Mr. Chaney, there are  
three different types of corridors that were

Chaney - cross

projected to be built, three different types of equipment that you were going to use, poles, towers, and so forth?

A Yes, with wood or steel options.

MR. WEINER: Pat, put the first picture up, Plaintiff's Exhibit 2550.

{After an interval.}

Q Mr. Chaney, does that reflect the conductor with B type construction?

A B?

Q Yes.

A Yes, it does.

Q That is with the conductors all on one side?

A Yes.

Q And Corridor A would be the same type of wood pole except for the -- I mean "conductor" -- on each side?

A Yes; that is right.

Q I understand there would be some lattice to your construction needed?

A Yes.

Q Would this be similar to the type of lattice construction that you would project?

A Yes.

Q Mr. Chaney, have you had an opportunity to

Chaney - cross

familiarize yourself with the various areas of these lines that they would cross in transfer?

A Yes.

Q Can you actually -- did you actually walk the line or fly it, or a combination?

A I flew the lines.

MR. WEINER:

Pat, would you put

up the next photo.

{After an interval.}

Q It is a new photo, Mr. Chaney, but do you recognize it as the area in Gordon Park where the right-of-way runs?

A Yes. It is on the line to Penelec.

Q And the right-of-way that runs with the trees is on the right side of the photo?

A Yes.

Q Would it not be correct that besides Gordon Park, the line would run through Mohican Park, and that is Line 3?

A I don't recall on Mohican Park. I believe so.

Q Do you recall Kirtland Park?

A Yes.

Q It runs through Kirtland Park?

A Yes.

Chaney - cross

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at  
the bench:}

MR. LANSDALE: He is trying to  
say that the question of feasibility of the  
line is because somebody might think it is  
unsightly, and it has nothing to do with this  
case. I object.

MR. WEINER: The question of  
the feasibility is broader than dollars and  
cents, and it includes the ability to build  
the line, and --

THE COURT: Sustain the  
objection. Let's get on to something material.  
Let's proceed.

MR. WEINER: May I ask for a  
ruling?

THE COURT: I said that I  
sustained the objection because it is irrelevant.  
The sole purpose is to prejudice the jury.

Let's proceed.

{End of bench conference.}

- - - - -

Chaney - cross

THE COURT: I will sustain the  
objection.

BY MR. WEINER:

Q Are you familiar, Mr. Chaney, with whether or not  
those composed lines run through residential areas?

MR. LANSDALE: Objection.

THE COURT: I will sustain the  
objection.

Mr. Weiner, approach the bench, gentlemen.

- - - - -

{The following proceedings were had at the  
bench:}

THE COURT: Mr. Weiner, do you  
have difficulty understanding?

MR. WEINER: I was going to  
show a picture.

THE COURT: Mr. Weiner, do you  
have difficulty understanding?

MR. WEINER: No.

THE COURT: I sustained the  
objection to this line of questioning. Go on  
to something else.

MR. WEINER: Well, I would like  
to make a proffer.



Chaney - cross

THE COURT: Make a proffer, and then go on to something else. I am getting tired of this unprofessionalism up here.

As I told you before, if you persist, you are going to have to get somebody else to do this examination.

If you don't know what to do, get somebody else up here. I don't want to argue with you.

Put it on the record.

MR. WEINER: I would like to demonstrate with this witness the various types of property that these lines would have to go through in order to be constructed.

They would have to go through park land, through homes, through very nice residential areas where the cost is much greater than the projected cost in the study that was done, and they would have to go through some very difficult areas of construction where he has no figures compiled for the type of construction necessary to go through those areas.

THE COURT: All right. Proceed. You have got it on the record.

{End-of bench conference.}

- - - - -

Chaney - cross

THE COURT: I will sustain the  
objection. Proceed to proper material.

BY MR. WEINER:

Q Mr. Chaney, looking at the 1973 period, the fall of 1973, after the wheeling denial, did you take into consideration the possible option by Muny Light to build such transmission lines as you project here?

A No.

Q Would it be fair to say that if CEI opposed such construction, it would be more difficult for the City to build it?

A "More difficult" is a tough word to define, but if there is opposition, I would say that it probably would be more difficult.

Q Now, as I understand it, Mr. Chaney, on the lines that you have projected, and for the most part single wood and H-frame wood construction; is that correct?

A Yes.

Q And do you know the percentage of wood construction, for example, on Route 1?

A No, I do not.

Q I have made a rough calculation to show about 25 percent of Route 1 would be on wood poles.

Chaney - cross

A I will accept that as reasonable.

Q Do you know the amount of wood construction, wood pole construction CEI has of high-voltage transmission lines in this area?

A No.

Q Do you know that they haven't had, as of 1974, any wooden poles?

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. LANSDALE: He says he doesn't know.

MR. WEINER: The first question was the percentage.

THE COURT: I will sustain the objection.

Please, Mr. Weiner, kindly proceed in the proper fashion.

Let me ask you something: Do you know what you are doing, or are you doing it purposely?

MR. WEINER: No. I know what I am doing.

Chaney - cross

THE COURT: But you are doing  
it on purpose?

MR. WEINER: Yes, but I am not  
doing anything wrong.

THE COURT: You are doing  
something wrong as far as I am concerned, and I  
am in charge of the trial, and I don't have to  
have argument with you when I rule on something.

Please accept it, and take it up with the  
Court of Appeals, will you?

MR. WEINER: I have done that.  
I skipped all the photos.

THE COURT: I have never seen  
anyone so inept.

Let's proceed.

{End of bench conference.}

- - - - -

THE COURT: You may proceed.

BY MR. WEINER:

Q What was the alternative to wood pole construction?

A Steel or aluminum.

Q How about underground?

A Yes.

Q Did you make any study to determine the cost

Chaney - cross

difference between wood and steel poles?

A Yes.

Q Do you have those available?

A Yes. They were in the work papers supplied to you.

Q But it is correct to say the type B construction, where the conductors are all on one side, that the difference in cost is some 1.7 times as great if it is built on steel rather than wood?

A I thought it was a little bit higher than that, but, yes, it is closer to 1.75 times.

Q And the type of A construction, where you have conductors on both sides of the poles, that is some 2.65 times as costly?

A 2.6.

Q Mr. Chaney, were your calculations in any way based on underground construction of any of the conductors?

A Yes. I made calculations regarding the effect of underground.

Q Were your studies based on such calculations?

A The studies that resulted in Exhibit 1035 do not reflect the effect of underground.

Q You didn't put in any cost for underground?

A Not in the exhibit.

Q You did make a study to determine what the relative

Chaney - cross

cost difference would be between underground and overhead?

A Yes.

Q And that is because you thought there was a possibility the City might have to put underground some of those lines?

A Yes. And also I guess that the more proper answer would be that I anticipated that I might be asked that on cross-examination, because I really wasn't dealing with the feasibility study rather than actual implementation.

Q Have you been advised that the CEI company has had no overhead construction from its Lake Shore plant since the 1950's?

A No. I thought the interconnection between the Lake Road and the Lake Shore was overhead.

Q That is the one exception, is it not?

A Okay.

Then, the answer to your question is that I am aware that there is an overhead line going into the Lake Shore plant.

Q And that is an interconnection between Muny Light and CEI?

A Yes.

Chaney - cross

Q And are you aware that there is a corridor to put that interconnection underground?

A I understand there was, but it is my understanding it is still overhead.

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. LANSDALE: I don't know what he is trying to do here, but I do know that these things are irrelevant to this case, and if there is a corridor, what has it got to do with this line, whether it is overhead or underground, and I object to these questions.

MR. WEINER: The purpose is that he places his cost estimates on no underground, and there is a court order which requires the City to put its transmission lines under ground.

MR. LANSDALE: The Court is to put a specific line underground. Would you be accurate. I get so damn tired of you using these generalities.

MR. WEINER: And that court order

Chaney - cross

was arrived at through the work of CEI and obtained through the work of CEI, and it would show there is an inference if they went to that trouble to get that court order to acquire a temporary interconnection underground, that they would do the same thing for others.

THE COURT: Sustain the objection, and I don't want you to get into that. It is not relevant here.

MR. WEINER: I would like the Court to consider reading stipulations on this point.

THE COURT: Overruled -- on what basis?

MR. WEINER: On the basis that when the City did build an interconnection in 1973, 1974, and 1975, what did they do? They went out and hired clandestinely a firm to bring a lawsuit to require that to be put underground.

THE COURT: Sustained. Proceed.

Incidentally, apropos of Mr. Weiner's former argument concerning his desire to put on



Chaney - cross

the record the route of the lines through residential and other areas, let the record show that Mr. Weiner overlooked the fact that utilities have eminent domain, so they can condemn residential property and other properties to erect a line.

Please proceed.

MR. WEINER: That is not necessarily true outside of the City of Cleveland.

THE COURT: Proceed.

{End of bench conference.}

THE COURT: All right, proceed.

BY MR. WEINER:

Q Mr. Chaney, what did your study with respect to the cost of undergrounding indicate?

A Based on my analysis of employing a certain amount of underground to get through the more congested downtown areas, for each of the alternates, for each of the alternates that I studied, I found that the pay-out periods would increase something less than one year if underground were used instead of overhead construction.

## Chaney - cross

Q How many miles did you project undergrounding might be built?

A In connection with the first line to Penelec it was 10.56 miles.

With respect to the line to the Ohio Power, which is the second line going south, 5.65 miles; and on the west extension to Ohio Edison, the distance was 3.15 miles.

Q What was the cost of the 10.56 miles in overhead construction?

A I don't recall.

Q Do you know how much it would have cost in underground? Do you know the difference between the two?

A I know what the underground would cost.

On the 10.56 miles to Penelec, using cost levels for the mid-1973 period, the investment would have been \$8,448,000.

Q I did the calculations, I believe, on the cost to those of the wood construction, and I got \$1,171,000.

Does that sound like an appropriate figure?

A I will accept it, subject to check.

Q So, if my figure is correct, the difference would

Chaney - cross

be just some \$7 million?

A Yes.

Q Mr. Chaney, you were asked to look at some exhibits of the City, some exhibits of Mr. Pofok, with respect to some studies he did on building from West 41st Street down to the Southerly; is that correct?

A Yes.

Q And you plotted that on the map for us this morning.

Could you plot -- let me ask you this:

Are you familiar with where the CEI Inland Substation is?

A No.

MR. WEINER: Your Honor, may I approach the bench?

THE COURT: Yes.

- - - - -  
{The following proceedings were had at the bench:}

MR. WEINER: I would like to show Mr. Chaney where the Inland Substation is so I can ask questions about it.

MR. LANSDALE: I have no objections.

Chaney - cross

THE COURT: It is beyond the direct examination.

MR. LANSDALE: What has it got to do with this?

MR. WEINER: He took some comparisons of Mr. Pofok.

THE COURT: Sustain the objection. It is beyond the direct.

Let's proceed.

MR. WEINER: Could I make a point?

THE COURT: Certainly.

MR. WEINER: It is not beyond the direct examination. They took some records of the City to build transmission lines down to the Southerly, and there are records of CEI to show what the cost to build was to Inland on the same exact route, of Route 2, how much that would have cost.

MR. LANSDALE: What has that got to do with this?

THE COURT: Sustain the objection.

MR. WEINER: It shows that I have to proffer this. It is vital to this defense.

THE COURT: Sustain the objection.

Chaney - cross

and proffer your answer.

MR. WEINER: It really is unfair.

THE COURT: Proffer your answer.

Do you want to proffer it? What are you waiting for?

MR. WEINER: I was trying to catch my composure.

THE COURT: Do you want a recess?

MR. WEINER: But it is so darn unfair. It is just terribly unfair.

THE COURT: Mr. Weiner, kindly display some professionalism.

MR. WEINER: It is getting more difficult.

THE COURT: Then, let someone else take over and perhaps we can get along and move the trial along a lot better and maybe somebody else knows better how to do these things.

MR. WEINER: It is pertinent testimony, and it is outrageous to me.

THE COURT: Mr. Weiner, please proffer, and let's go. I have never seen such

Chaney - cross

adolescent behavior. You are a lawyer. I don't believe it.

Let's proceed. Put it on the record, and let's proceed.

MR. WEINER: It is so uncomfortable for me.

THE COURT: Stop crying and please put it on the record.

MR. WEINER: I am upset. Just let me take a minute and I will do it.

THE COURT: Certainly. I will give you all the time in the world.

MR. WEINER: Now, you don't -- you really are being unfair. There are exhibits from the CEI company that indicate that this first six miles of the line that Mr. Chaney projected to be built for a total cost of some \$12 million, the CEI Company projected that line would have cost some 12 to 24 million dollars, some three to six times as much as Mr. Chaney's costs would indicate.

Now, on direct examination Mr. Chaney went into the figures of the Muny Light Company that built lines going south, but not nearby, to show

Chaney - cross

that his comparisons were fair, and the point of the testimony would be to show the comparisons of the CEI company for construction, but it would take over three years to build, and it flies counter to Mr. Chaney's projections.

MR. LANSDALE: That is a different type of line.

MR. WEINER: No. It is the same line. Let me get the exhibits that I make reference to.

It is Plaintiff's Exhibit 900, a letter from Mr. Howley to the City, in 1974, and also the 1978 Power Citing Commission Report of the CEI company. I don't have the exhibit numbers off the top of my head, which indicate that the 132 KV line from the CEI plant, and the same type of line built down to Inland, would take three years from start to finish to build.

THE COURT: Have you got it all in?

MR. WEINER: I don't have my notes in front of me.

THE COURT: Well, get your notes. I want you to have an opportunity to put it all

Chaney - cross

in. Get your notes.

MR. WEINER: Okay.

{After an interval.}

MR. WEINER: The exhibit number was 3299, Plaintiff's Exhibit 3299, 12 to 24 million dollars.

MR. LANSDALE: What is the exhibit number?

MR. WEINER: 3299. It is the Ohio Power Citing.

It is a new one. I just marked it for the purposes of this cross-examination.

Would you like No. 900? Would you look at it, your Honor?

THE COURT: No. I don't want to see it. It is beyond the direct examination, and there is no relevance to it here at this stage of the game, and there is, Mr. Weiner -- If you are desirous of putting that in, there is a way of doing it.

MR. WEINER: With this witness, you are saying?

THE COURT: Come on, please.

Have you got everything in? If you have



Chaney - cross

got everything in, please let's proceed.

Do you have anything to say?

MR. LANSDALE: No, sir.

THE COURT: All right. Please proceed.

{End of bench conference.}

- - - - -

THE COURT: You may proceed.

Mr. Weiner.

BY MR. WEINER:

Q Mr. Chaney, looking at the decision point of 1973, September, 1973, that's one of the areas you studied, is it not?

A Yes.

Q Would I be correct that after the City received word that CEI would not wheel the 30 megawatts of PASNY power that the City was interested in obtaining, the first step that you would have to do in order to determine whether something else was feasible was to hire -- make a feasibility study?

A Assuming they had not made one before that, yes.

Q That's right.

In fact, Mr. Chaney, although you didn't do a projected feasibility study, you did one looking

Chaney - cross

back -- when did you start yours?

A I'm not sure mine was looking back; but I started mine the first part of 1979.

Q When did you finish it?

A Towards the summer of 1979.

Q And am I correct, Mr. Chaney -- when I said "looking back," I meant you used the actual costs incurred by Muny Light in the period from 1979 backwards to 1973.

A I used the actual costs, yes; but that's not looking back.

Q I know.

But if you were in 19 -- if we're putting ourselves in September of 1973 after we found out we would not be able to obtain the wheeling we'd asked for, you would not have had those costs in mind; you would have had to project those costs?

A I'm sorry.

If I were looking at --

Q Once you have to make a decision in September, 1973 --

A Yes.

Q -- you would not know the future cost of Muny Light from '74 to '79?

A No, you would not.