
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

9-23-1980

Volume 04 (Part 4)

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

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1 Besse - cross

2 desirous of examining the witness about a letter,
3 let's not get into difficulties, but let him see
4 the letter so he can testify to it accurately.

5 Are you desirous of having him have the letter?

6 MR. WEINER: I was desirous of
7 knowing his recollection.

8 THE COURT: Approach the bench.

9 - - - - -

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

12 THE COURT: Now, please, let's
13 proceed in the proper fashion.

14 What you are trying to do is to create the
15 impression that you can impeach the witness before
16 you give him an opportunity of examining the letter.

17 MR. WEINER: The letter has been
18 examined by the witness.

19 THE COURT: He asked to see it.
20 Why don't you give it to him and be fair about it.
21 My goodness. I have never seen anything like this.

22 MR. LANSDALE: This is also mentioned
23 in Stipulation 117.

24 THE COURT: Give the witness the
25 letter.

1 Besse - cross

2 {End of bench conference.}

3 - - - -

4 THE COURT: Now, the witness has
5 the letter, Mr. Weiner, and you are free to
6 proceed with the final questioning, but let's
7 follow the rules.

8 BY MR. WEINER:

9 Q Mr. Besse, did you have an opportunity to review that
10 letter in recent days?

11 A Yes.

12 Q You have it before you?

13 A Yes.

14 Q Identify the letter.

15 A It is dated February 17, 1965, addressed to me as
16 President of the Cleveland Electric Illuminating
17 Company, and it is signed by Mayor Locher.

18 Q And you received that on or about the date that it was
19 dated?

20 A Yes, I think so.

21 Q It is correct, is it not, Mr. Besse, that Mayor Locher
22 told you the City was very much interested in the
23 interconnection of the two systems?

24 A What he said was that the City has long desired an
25 interconnection between MELP and CEI for the reasons

Besse - cross

1
2 which have supported the development of this technique.

3 Q Is it true also that Mayor Locher told you the City
4 wanted to consider an interconnection on a business
5 basis without unfair strings attached?

6 A Well, he rejected rate equalization, so I guess what
7 you said is a fair interpretation of his language.

8 Q Perhaps I can address your attention to the third
9 paragraph on the first page.

10 Is it correct, Mr. Besse, that Mayor Locher
11 indicated to you that he could not accept this
12 coercive limitation?

13 A "Coercive" -- yes, that is the language he used,
14 "I cannot accept this coercive limitation," that is
15 right.

16 Q And does the following sentence indicate that he would
17 like to consider an interconnection on a business
18 basis without unfair strings attached?

19 A Yes.

20 Q Now, with respect to the other aspect of your offer of
21 the sale of the Municipal System to CEI, isn't it
22 true that Mayor Locher indicated to you that the City
23 was not interested in such a sale?

24 A Yes.

25 Q And that Mayor Locher indicated to you that he believed

1 Besse - cross

2 that the Municipal System provided an efficient
3 low-cost service?

4 A Yes.

5 Q And that the Municipal System had a long history of
6 municipal ownership?

7 A Yes.

8 Q And it had been served by a dedicated public servant?

9 A Yes.

10 Q And that the new expansion of the Muny Light plant
11 would help the system --

12 MR. LANSDALE: May I approach the
13 bench?

14 THE COURT: Yes.

15 - - - - -

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

18 MR. LANSDALE: I have tried not to
19 object to every question that was asked, but I
20 object to using this device, to read the letter to
21 the jury which is admitted into evidence. I don't
22 think it is proper, and we just do it over and over
23 again, and I have to get up the whole time, and I
24 don't want to do that.

25 MR. WEINER: Well, my understanding

Besse - cross

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2 was the witness had no independent memory of what
3 was told to him by the City, and therefore I gave
4 him the letter, and I wanted to know what was told
5 to him by the City; isn't that proper?

6 THE COURT: Mr. Weiner, I can't
7 tell you how to ask questions.

8 I would have to assume that lawyers know how to
9 do that.

10 Needless to say, it has been demonstrated here
11 that there is difficulty in doing it, but you can't
12 read the letter into the record on a line-by-line
13 basis. The document speaks for itself, does it not?
14 Isn't it the best evidence of what is said in the
15 letter, the document?

16 MR. WEINER: Yes.

17 THE COURT: Well, it is already in
18 evidence. It goes to the jury. Let the jury read
19 it.

20 MR. WEINER: Thank you.

21 THE COURT: You may proceed.

22 {End of bench conference.}

23 - - - - -

24 BY MR. WEINER:

25 Q Mr. Besse, is it a fact that after receiving Mayor

1 Besse - cross

2 Locher's letter, that you requested for a letter from
3 your outside counsel on the basis of rate equalization?

4 A I asked for such a letter. I have forgotten whether it
5 was before or after this letter.

6 Q Do you recall receiving such a letter?

7 A Yes.

8 Q Do you recall receiving the advice that recent
9 developments cast doubt upon the validity of the
10 company?

11 MR. LANSDALE: Object.

12 THE COURT: I don't know what the
13 question is going to be. Permit him to finish the
14 question.

15 MR. LANSDALE: May I approach the
16 bench?

17 THE COURT: No. Finish your
18 question.

19 MR. WEINER: Could I have it
20 rephrased or reread?

21 THE COURT: Restate your question.

22 Q Do you recall receiving the advice that recent
23 developments cast doubt upon the validity of the
24 company -- on the company's conditioning and
25 interconnection agreement between Muny Light and CEI

Besse - cross

1
2 on the maintenance of rate equalization?

3 MR. LANSDALE: Objection.

4 THE COURT: Approach the bench.

5 - - - - -

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

8 MR. LANSDALE: I don't have any idea
9 at this time how counsel's advice to the company
10 got into the public domain.

11 I don't understand what relevance it has here
12 long before the damage period, and I object to its
13 being recited to the jury.

14 THE COURT: Mr. Weiner.

15 MR. WEINER: It is evidence to show
16 what actions were taken by the company to demonstrate
17 that the company was on knowledge and on notice of
18 what the law was when they were taking certain
19 actions.

20 THE COURT: I will sustain the
21 objection as to form.

22 Mr. Weiner, if you would stop characterizing
23 your questions and including in them conclusory
24 statements that are unsupported by facts, perhaps
25 you would have less difficulty in asking the

Besse - cross

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question.

Now, "casting doubt," a letter casting doubt upon the validity of whatever that language is, that is obviously conclusory.

MR. LANSDALE: May I make a further statement?

THE COURT: Yes.

MR. LANSDALE: The way counsel says this, in place of asking the witness what advice he received from counsel, and then give me a chance to object --

THE COURT: Mr. Lansdale, I am perfectly aware of the tactics that both counsel for the City are following in this examination.

It is quite obvious, and I keep advising counsel for the City to ask direct questions and not precisely what you are attempting to do, and every time you do it, you get into difficulty, and if you would just ask straight forthright questions that would be probative in nature, we would have less difficulties in this entire proceedings, and it would move along much faster.

I don't know what else to do, and we keep coming up here, and I keep repeating the same

Besse - cross

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2 things, and we go right back, you go right back
3 and follow the same tactics.

4 I really don't want to get into it any
5 further, I don't want to get into any further
6 dialogue. Let's proceed.

7 {End of bench conference.}

8 - - - - -
9 THE COURT: I will sustain the
10 question as to form. You may place another question.

11 BY MR. WEINER:

12 Q What advice did you receive from counsel?

13 MR. LANSDALE: I object.

14 THE COURT: Approach the bench.

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

18 THE COURT: I thought we just went
19 over this, gentlemen.

20 MR. LANSDALE: I am not objecting
21 that it is an improper question. I am objecting
22 to the question as a matter of substance.

23 THE COURT: Are you asserting
24 privilege?

25 MR. LANSDALE: No, sir. I am saying

Besse - cross

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2 that what counsel advised him with respect to the
3 validity is not relevant.

4 THE COURT: That could go to the
5 characterization of intent, and I will permit this,
6 as I indicated before, at this point in time I will
7 overrule the objection. You may proceed.

8 {End of bench conference.}

9 - - - - -

10 THE COURT: Overrule the objection.

11 The witness may answer.

12 A I think the gist of the letter, as I recall it, was
13 that it was legal to attach the condition of
14 equalization of rates to an interconnection contract
15 but that the city itself could not permanently bind
16 itself to the rates that were fixed at that time.
17 In other words, the City had to maintain continuing
18 control over rate fixing. That's my recollection of
19 the gist of the letter.

20 If I could see the letter, there may have been
21 some other points. I don't know.

22 MR. WEINER: Mr. Leo, would you
23 hand the witness Plaintiff's Exhibit 146??

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

Besse - cross

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Q Can you identify that letter, Mr. Besse?

A Yes.

Q Would you do so, please?

A This is a letter from Squire, Sanders & Dempsey dated February 18, 1965, addressed to me as President of the Cleveland Electric Illuminating Company.

Q What was the subject of the letter?

A It encloses a legal memorandum that had been sent to one of the company's lawyers covering this proposal of interconnection conditioned on rate equalization.

Q Have you had an opportunity to review that letter in recent days?

A Within a week or so I have seen it.

Q Have you had an opportunity right now to read that letter?

A I had the opportunity but it is not readable.

Q Are you addressing yourself to the letter or the memorandum, Mr. Besse?

A Oh, I see what this is. The letter is not legible and so there is somebody's copy attached that is legible.

What is the question?

Q The top page is the legible copy?

A Yes, sir.

1 Besse - cross

2 Q Have you had an opportunity to read that?

3 A Yes.

4 Q Does the information in the third paragraph of that
5 letter refresh your memory with respect to the advice
6 you received?

7 A Yes. There is an additional item that I had not
8 recalled.

9 Q What is that additional item?

10 A The paragraph says: "I see no reason to change any
11 of the views expressed in any of these documents" --
12 I think that refers to the previous opinion about
13 rate equalization as a condition to interconnection --
14 "with the possible exception of that relating to the
15 maintenance of rates. A good deal has happened since
16 these opinions were given in the antitrust field,
17 particularly as applied to public utilities. In
18 addition, the company now proposes an interconnection
19 at the Pennsylvania border which will unquestionably
20 subject it to the jurisdiction of the Federal Power
21 Commission. The Federal Power Commission's
22 jurisdiction over sales at wholesale might cast doubt
23 on our ability to make such a condition in an
24 interchange agreement effective."

25 Q Thank you, Mr. Besse.

Besse -cross

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Subsequent to that letter did you have occasion to make another offer to the City to interconnect?

A Yes.

Q Do you recall when that was?

A It was shortly thereafter. I don't recall the exact date.

MR. WEINER: Could Mr. Leo give

the witness Plaintiff's Exhibit 604?

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

Q Can you identify Plaintiff's Exhibit 604, Mr. Besse?

A Yes. This is a letter dated February 25, 1965, from me, as President of the CEI company, addressed to Mayor Locher.

Q And was that another offer to interconnect?

A Yes. In effect, it was a repetition of the first offer that was induced by what I thought was an error in the amount of savings that the city had from reduced rates from the municipal light plant.

Q Was this removed offer acceptable to the City of Cleveland?

MR. LANSDALE: I object.

A I think I never received the reply to this renewed offer and so I assume it was not acceptable.

1 Besse - cross

2 Q Were there other methods at that time or other ways
3 at the time that CEI tried to have Muny Light raise
4 its rates other than the rate equalization proposal?

5 A I don't recall.

6 Q Was the proposal for the City of Cleveland to give
7 free street lighting a way or a means that would --

8 A Yes, that was discussed.

9 Q And that was one means of attempting to have Muny
10 Light raise its rates?

11 A Yes. As I recall that, about, I think, 80 percent of
12 the hundred or so municipal systems in the State of
13 Ohio offer free street lighting rates to their
14 municipal owners, and we felt that if Cleveland followed
15 that lead, the advantage of being free from taxes and
16 whatever advantages they had in the municipal operation
17 would flow to the city as a whole and not to the
18 exclusive group of customers that were on the light
19 plant system.

20 Q The effect of free street lighting would be to raise
21 the rates of Muny Light closer to CEI's?

22 A Yes, it would.

23 Q Do you recall, Mr. Besse, an income tax proposal on
24 the ballot in the spring of 1965?

25 A No.

Besse - cross

MR. WEINER: Would Mr. Leo hand
the witness Plaintiff's Exhibit 640?

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

BY MR. WEINER:

Q Do you have that document before you, Mr. Besse?

A Yes, I do.

Q Have you had occasion to see that in recent days?

A Yes, within a week or ten days.

Q Can you identify that document?

A It is apparently an excerpt from an issue of "The
Motor," which was the house magazine of the Cleveland
Electric Illuminating Company, published monthly, and
this excerpt is an interview by the editors of "The
Motor" asking me, as an officer of the company,
questions about the Muny Light plant. The date is
May of 1965.

Q Would you address your attention to the last page of
that and the last question and the last answer?

A Yes.

Q Have you had an opportunity to read that?

A No, not yet.

{Pause.}

A Yes.

1 Besse - cross

2 Q Having now read that, does that refresh your memory as
3 to {1} there was a tax proposal before the people of
4 the City of Cleveland in the spring of 1965?

5 A No, I don't remember it.

6 There obviously was, based on the content of this
7 document.

8 Q What was the position of CEI?

9 MR. LANSDALE: I object.

10 A We were opposed to it.

11 MR. LANSDALE: Object, if your Honor
12 please.

13 - - - - -

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

16 THE COURT: Turn this way.

17 MR. LANSDALE: I object again. We
18 are entitled to publish propoganda. We are
19 entitled to speak to the newspapers.

20 MR. WEINER: It's not an effort to
21 influence legislation or pass any legislation.

22 THE COURT: I can't hear you.

23 MR. WEINER: This particular thing
24 is not in any effort to pass legislation.

25 THE COURT: Read the question back.

1 Besse - cross

2 {The previous question was read by the
3 reporter.}

4 THE COURT: That's direct
5 Noerr-Pennington.

6 MR. WEINER: Well, if it is, I
7 think we should be able to get it in for the intent
8 and character.

9 THE COURT: Sustain the objection.
10 {End of bench conference.}

11 - - - - -

12 THE COURT: You may proceed, Mr.
13 Weiner.

14 BY MR. WEINER:

15 Q Mr. Besse, do you recall that there were two blackouts
16 in the Muny Light System in the summer of 1966?

17 A No. I have no independent recollection of the dates of
18 the blackouts.

19 Q Do you have any recollection in the summer of 1966 the
20 City again expressed an interest in a no-strings
21 interconnection with the CEI Company?

22 A No, I have no recollection of that.

23 Q Do you have any recollection that Mayor Locher was
24 quoted as saying he had a keen interest in such an
25 interconnection?

1 Besse - cross

2 A That could well be, but it was not expressed by Mayor
3 Locher to me.

4 Q Do you have a recollection of that from some other
5 source? Is that what you are saying?

6 A No. I am saying if Mayor Locher said that, he did not
7 say it to me. I would have picked it up from the
8 newspapers or some such place.

9 I had no request from Mayor Locher to discuss
10 interconnection other than his expression of interest
11 in the letters we have already referred to.

12 MR. WEINER: Perhaps Mr. Leo could
13 give Mr. Besse Plaintiff's Exhibit 513.

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

16 Q Can you identify that, Mr. Besse?

17 A Yes. This is a letter from me, as President of the
18 Illuminating Company, to Mayor Locher dated July 14,
19 1966.

20 Q What was the purpose of that?

21 A It was triggered by a statement in the Cleveland Press,
22 expressed in the letter this way:

23 "In Monday's Cleveland Press you have expressed a
24 kee interest in establishing an interconnection between
25 the Municipal Light Plant and the Illuminating Company."

1 Besse - cross

2 And then, in essence, I repeat the offers we had
3 previously made.

4 Q The offer to interconnect?

5 A Yes.

6 Q Again on the basis of rate equalization?

7 A It would have been on that basis, yes.

8 Q Do you recall a gentleman by the name of Vincent
9 DeMelto?

10 A What do you mean? Do I recall him?

11 Q Do you know who that is?

12 A Yes, I do.

13 Q You recognize he was the Director of the Department of
14 Public Utilities for the City of Cleveland?

15 A Right. Yes.

16 Q Do you recall that he wrote to you after the City
17 received the Plaintiff's Exhibit 513 indicating that
18 the Mayor instructed him to negotiate with you to
19 establish an emergency interconnection?

20 MR. LANSDALE: Objection, if the

21 Court please.

22 A No, I don't.

23 - - - - -

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

1 Besse - cross

2 MR. LANSDALE: I object. Counsel
3 knows that we have no record of having received
4 such a letter.

5 We have been over this again and again and he
6 is again in his questioning suggesting that we
7 received such a letter.

8 I have no objection to asking Mr. Besse whether
9 he knows if they received such a letter or not but
10 again we go to --

11 THE COURT: Read the question.

12 {The previous question was read by the
13 reporter.}

14 THE COURT: What was the answer?

15 {The previous answer was read by the
16 reporter.}

17 THE COURT: He doesn't remember.

18 MR. WEINER: I understand.

19 THE COURT: Having known that
20 beforehand, what is the purpose of asking the
21 question except to discredit the witness?

22 MR. WEINER: We didn't know that from
23 Mr. Besse. We knew it from counsel.

24 THE COURT: Are you misstating the
25 facts to me?

Besse - cross

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2 MR. LANSDALE: No, sir. Counsel
3 knows this is the letter with which we had
4 originally admitted that it was sent out of
5 Cleveland, it was a genuine letter by the City of
6 Cleveland. We found out we had never received it
7 and had no record. We filed an application to
8 withdraw --

9 THE COURT: Is this the letter
10 that was the subject of the admissions?

11 MR. LANSDALE: Yes, sir.

12 THE COURT: You obviously knew
13 about it.

14 MR. WEINER: Aren't we allowed to
15 ask the witness himself? Do we have to rely on
16 counsel?

17 THE COURT: You knew what the
18 answer was beforehand.

19 MR. WEINER: I didn't know. I
20 don't think --

21 THE COURT: If this is the letter
22 that was the subject of that admission, obviously,
23 you had to know because people filed responses.

24 MR. WEINER: There is still an
25 admission in the record that the letter was

1 Besse - cross

2 mailed and received. Now, I've got to be able to
3 ask the witness whether he received it or not.

4 THE COURT: You know he didn't
5 receive it.

6 MR. WEINER: There's an admission
7 on the record that says it was mailed and received.

8 THE COURT: Let him ask the
9 question. I can't understand these tactics at all.
10 Let's proceed, gentlemen.

11 MR. LANSDALE: I object to him stating
12 the contents of the letter. He can show him the
13 letter and ask --

14 THE COURT: You are not going to
15 ask the contents until you lay a foundation.

16 {End of bench conference.}

17 - - - - -

18 THE COURT: Read the question and
19 the answer, please.

20 {The reporter read as follows:

21 "Q Do you recall that he wrote to you after
22 the City received Plaintiff's Exhibit 513 indicating
23 that the Mayor instructed him to negotiate with you
24 to establish an emergency interconnection?

25 "A No, I don't."}

1 Besse - cross

2 THE COURT: Ask the next question,
3 if such a letter was written.

4 MR. WEINER: Can I just defer that
5 for a minute, your Honor?

6 THE COURT: You are free to proceed
7 any way you are desirous of doing so.

8 BY MR. WEINER:

9 Q Do you recall the Director Knuth, K-n-u-t-h?

10 A I knew him, yes.

11 Q He was Director for the City of Cleveland?

12 A Yes.

13 Q And you recall Mr. Howley as Vice President of the CEI?

14 A Yes.

15 Q Do you recall having met with Mr. DeMelto, Mr. Knuth
16 and Mr. Howley in the summer of 1966?

17 A No.

18 MR. WEINER: Could Mr. Leo hand
19 the witness Plaintiff's Exhibit 2588 and Plaintiff's
20 Exhibit 45?

21 {Documents were handed to the witness by the
22 Law Clerk.}

23 Q Mr. Besse, you know Mr. DeMelto is now deceased?

24 A Yes, I think I knew that.

25 Q He's been deceased for some time?

Besse - cross

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2 A I have no information about that.

3 Q Have you had an opportunity to look at Plaintiff's
4 Exhibit 2588?

5 A Yes.

6 Q Do you recall receiving that letter?

7 A No.

8 Q Do you know any reason for Mr. DeMelto to write such a
9 letter?

10 MR. LANSDALE: Object.

11 THE COURT: Sustain the objection.

12 Q It's true, Mr. Besse, that at no time in 1966 an offer
13 was made to the city to interconnect other than on
14 grounds of rate equalization?

15 A I think that is probably true.

16 I'm a little hazy about some of the dates and also
17 different kinds of interconnections. The reason I
18 hesitate is that my recollection of the big blackout
19 in New York City, which alerted the whole country to
20 the problem of blackouts, resulted in a joint
21 committee being appointed representing both the City
22 and the Municipal Light Plant to investigate ways of
23 protecting the City of Cleveland against a comparable
24 situation.

25 I was not on that committee but people representing

Besse - cross

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2 the company were. I believe that interconnection was
3 discussed at that time. What our people may have
4 said, I don't know, but I do recall that they reported
5 back to me that interconnection was rejected as the
6 solution by Mr. DeMelto on two grounds, as I recall.
7 One was that it was interconnections that caused such
8 extensive damage in the blackout in New York and he
9 wasn't sure that that was a good solution to the
10 problem.

11 The other was that he felt that the Municipal
12 Light Plant should remain independent of
13 interconnections, that it would serve its purpose more
14 strongly if it solved its power supply problem by
15 different methods.

16 Q Mr. Besse, at any time up to the time of 1967 when
17 you became Chief Executive Officer, do you recall
18 making an offer to the City of Cleveland to interconnect
19 that was on a condition other than rate equalization?

20 A No, I don't.

21 Q This morning we discussed very briefly the question
22 that CEI was interconnected with Ohio Edison sometime
23 in the 1960's; is that correct?

24 A Yes, it was.

25 Q Do you recall when the interconnection was made with

1 Besse - cross

2 the Ohio Power Company?

3 A No, I don't have that date in mind. It was back in
4 that general time span sometime.

5 Q That was after the interconnection with Ohio Edison?

6 A Yes.

7 Q Was the interconnection with Ohio Power -- were the
8 transmission lines, did they run through the territory
9 of Ohio Edison?

10 A Yes, they did.

11 Q And Ohio Power is an investor-owned utility, isn't it?

12 A Yes.

13 Q One of the reasons CEI made this interconnection with
14 Ohio Power Company was CEI had an opportunity to
15 purchase power from Ohio Power Company?

16 A That was one of the reasons.

17 Q You were seeking an alternative purchase power source?

18 A Yes.

19 Q When you became CEI Chairman, as opposed to President,
20 did your duties with respect to the Municipal Light
21 Plant change in any way?

22 A Oh, not materially.

23 Q You have the same role that you did while you were
24 President?

25 A Well, not the same role, but I certainly had -- the end

Besse - cross

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result was about the same.

3

Q Do you recall that the City of Cleveland asked in the

4

spring of 1969 for an interconnection so that work

5

could be done in the fall of 1969 and through the spring

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of 1970 to install a precipitator in the City's

7

system?

8

A I would not have remembered the dates exactly but I do

9

recall that they made such a request.

10

Q Do you recall that such an interconnection was not in

11

place by the fall of 1969?

12

A I'm sure it was not.

13

Q Do you recall at that period of time having discussions

14

with people in the company about the possibility of

15

the City asking the Federal Power Commission to

16

force CEI to interconnect?

17

A I can't recall specifically such discussions, but I

18

would be sure we must have had them because there

19

seemed to be some developments in the law.

20

Q Do you know what the status of the law was at that time?

21

A Well, I wasn't practicing law then but I understood as

22

an executive that there was more tendency on the part

23

of the Federal Power Commission to order interconnections.

24

Q Than there had been previously, is that correct?

25

A That's right.

Besse - cross

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2 Q Do you know why that tendency was so?

3 A No.

4 Q You were against such a tendency, were you not?

5 A The only place where we took a position opposing
6 interconnections was in areas where we were competing.

7 We had no interest elsewhere.

8 Q But you preferred to have the system as it existed
9 prior to where the FPC did not have the authority to
10 impose interconnection; is that true?

11 A Yes. The less regulation you have, the more we would
12 prefer. I'm sure that's true.

13 Q You realized at the time that an interconnection could
14 mean lower cost and a power supply for Muny Light; is
15 that correct?

16 MR. LANSDALE: Object.

17 THE COURT: Approach the bench.

18

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

21 THE COURT: State your reason.

22 MR. LANSDALE: This is argumentative.

23 It is purely argument. It is before the damage.

24 We have been over this same thing two or three

25 times. I object.

Besse - cross

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2 MR. WEINER: This is the very first
3 time we have gotten into this.

4 THE COURT: Sustain the objection.
5 Let's proceed.

6 {End of bench conference.}

7 - - - - -

8 THE COURT: You may proceed,
9 gentlemen.

10 MR. WEINER: Could Mr. Leo hand
11 the witness Plaintiff's Exhibit 54b?

12 {The document was handed to the witness by
13 the law clerk.}

14 BY MR. WEINER:

15 Q Do you have that in front of you, Mr. Besse?

16 A Yes.

17 Q Have you had occasion to look at that in recent days?

18 A No; I don't think I have read this recently.

19 Q Can you identify that document?

20 A It is a letter from Squire, Sanders & Dempsey dated
21 December 30, 1969, addressed to me at the Illuminating
22 Company.

23 Q What is the subject of the letter?

24 A It is in response apparently to a question that we
25 asked as to whether the Federal Power Commission had

Besse - cross

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2 authority in an action instituted by the City of
3 Cleveland to compel an interconnection between the
4 City's Municipal Electric System and that of the
5 Illuminating Company.

6 Q What was the response that you received?

7 MR. LANSDALE: Objection.

8 THE COURT: Approach the bench.

9 - - - - -

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

12 MR. LANSDALE: I object on the grounds
13 of relevancy. I can see no purpose for this except
14 a continuing argumentative procedure.

15 THE COURT: Well, this goes to the
16 characterization. It could go to characterization.
17 He may answer. Overruled.

18 {End of bench conference.}

19 - - - - -

20 THE COURT: Read the question.

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

23 A We received roughly a three-page reply, the gist of
24 which, as I quickly read it here, is or was that the
25 Federal Power Commission did have authority to compel

Besse - cross

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2 an interconnection between the City and the Municipal
3 Light Plant.

4 Q On what terms, do you know, Mr. Besse?

5 A On whatever terms apparently that it deemed appropriate.

6 Q Was rate equalization one of the terms that was
7 appropriate?

8 MR. LANSDALE: Objection.

9 THE COURT: Sustained.

10 Q At that time did you have occasion to make an offer
11 for interconnection or a purchase of the system to the
12 then Mayor Stokes of the City of Cleveland?

13 A I don't recall that.

14 MR. WEINER: Mr. Leo, would you give
15 the witness Plaintiff's Exhibit 545.

16 MR. LANSDALE: May I approach the
17 bench, your Honor?

18 THE COURT: Yes.

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

22 MR. LANSDALE: I approach the bench
23 with a request to forestall the obvious intent
24 of Plaintiff's counsel to read this draft letter.
25 It is a draft insofar as we know, and it was never

Besse - cross

1
2 sent, and counsel knows that, and I object to the
3 attempt to convey the substance of this document
4 to the jury.

5 MR. WEINER: I was going to ask
6 him to identify it, and I assume he will identify
7 it as a draft, and I would ask if it was sent, and
8 if not, why not, and if there were discussions had
9 with the Mayor or anybody in the City relative to
10 the terms set forth.

11 MR. LANSDALE: Whether it was sent is
12 irrelevant. What difference does it make?

13 THE COURT: Was this the letter
14 that they drafted?

15 MR. WEINER: I don't know. I was
16 going to ask.

17 THE COURT: Was the letter ever
18 sent?

19 MR. WEINER: They say no.

20 THE COURT: All right. You may
21 identify it as a letter dated December 30th, 1969,
22 and if you lay a proper foundation, if you do that,
23 then you can proceed from that point of departure.

24 Do you understand what I have told you?

25 MR. WEINER: Only to mention the date.

Besse - cross

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2 THE COURT: That is correct.

2

3 {End of bench conference.}

3

4

5 BY MR. WEINER:

6 Q Mr. Besse, Plaintiff's Exhibit 545 is a letter dated

7 December 30th, 1969?

8 A It looks to me like a draft of a letter.

9 Q Who prepared the draft of the letter, if you know?

10 A I don't know.

11 There is no initial on it. It is prepared on my
12 letterhead, and it is not signed, and it has numerous
13 corrections in it in handwriting, and not my
14 handwriting.

15 Q Have you looked at each of the pages?

16 A Yes.

17 Q And on none of the pages appear your handwriting?

18 A They do not appear to be my handwriting.

19 Q Can you identify the handwriting?

20 A No, I can't.

21 Q Do you recall having any discussions with anyone in

22 the City of Cleveland toward the end of 1969 with

23 respect to a possible interconnection between the two

24 systems?

25 A No, I can't specifically recall that. I do recall what

Besse - cross

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went on at the time.

Q Are you making reference to the major blackout that occurred?

A Yes; and what followed.

Q And what followed in part, am I correct, Mr. Besse, in saying that the City authorized -- was authorized through the City Council to file a complaint with the Federal Power Commission for a permanent tie-in?

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -

{Bench conference ensued on the record as follows:}

MR. LANSDALE: I object to what followed "was an authorization by the City Council."

What has that to do with the City Council?

MR. WEINER: It followed the major blackout.

MR. LANSDALE: It is argumentative.

THE COURT: I will sustain the objection.

Now, Mr. Weiner, please lay a proper foundation. Do you know what I mean?

MR. WEINER: This is cross-examination.

Besse - cross

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2 THE COURT: You are required to lay
3 a foundation even on cross-examination.

4 I have sustained the objection. Lay the proper
5 foundation, and you can proceed.

6 Let's stop these tactics.

7 {End of bench conference.}

8 - - - - -

9 THE COURT: Mr. Weiner, you are
10 free to proceed if you lay a proper foundation for
11 these questions.

12 BY MR. WEINER:

13 Q Do you recall any actions taken by the City Council after
14 the major blackout in 1969?

15 A I do not recall it, but I did see a sheet that somebody
16 handed me this morning reciting such actions.

17 Q What action was that?

18 MR. LANSDALE: Objection.

19 THE COURT: Sustain the objection.
20 We are talking about when these incidents
21 allegedly occurred, Mr. Weiner.

22 Approach the bench.

23 - - - - -

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

1 Besse - cross

2 THE COURT: Mr. Weiner, you are
3 doing this deliberately.

4 MR. WEINER: No, your Honor, I am
5 not doing it deliberately.

6 THE COURT: Well, don't you know
7 how you are supposed to proceed?

8 MR. WEINER: Yes, I do.

9 THE COURT: Well, obviously we have
10 been reading different books.

11 MR. WEINER: I don't understand what
12 was wrong with the last question.

13 He said he now knows what happened in 1969,
14 and I am asking him what happened.

15 THE COURT: I will sustain the
16 objection. Let's go back.

17 {End of bench conference.}

18 - - - - -

19 THE COURT: I would suggest, Mr.
20 Weiner, that this witness -- if this witness can't
21 testify to what happened, then you bring in the
22 appropriate witness to do it.

23 Shall we proceed, please.

24 BY MR. WEINER:

25 Q Do you recall the agreement that was reached to

Besse - cross

1
2 participate in a three-phase plan between the City of
3 Cleveland and Muny Light?

4 A Yes; I recall that there was such an agreement.

5 Q Do you recall approximately when that was reached?

6 A Yes. I think that big blackout was in December of
7 1969 and the agreement was reached within a month.

8 Q And do you know when the load transfer which was in the
9 first part of that agreement -- when that was started?

10 A No.

11 Q Do you know how much was done on the permanent
12 interconnection by the time you left the employ of CEI?

13 A No.

14 Q When did you leave the employ of CEI?

15 A On the 23rd of November, 1970.

16 Q Is it a fair statement, Mr. Besse, that acquisitions
17 have been a way of life for CEI?

18 A Well, during the history of the company we made
19 several acquisitions.

20 I don't know if that constitutes a "way of life."

21 Q It is true that CEI tried to acquire the Painesville
22 Municipal System while you were president; isn't that
23 true?

24 MR. LANSDALE: Objection. May I

25 approach the bench?

1 Besse - cross

2 THE COURT: Approach the bench.

3 - - - - -

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

6 MR. LANSDALE: The entire situation
7 with respect to the acquisition of Painesville has
8 been gone into repeatedly, and it is contained in
9 the planning exhibits, and I object to any further
10 interrogation on the subject.

11 MR. WEINER: I have two questions and
12 one other, and then I was going to be done with that
13 area.

14 THE COURT: Would you respond to
15 the comments by Mr. Lansdale.

16 MR. WEINER: Yes. I think this is
17 an appropriate area.

18 THE COURT: I will sustain the
19 objection. It is repetitious.

20 {End of bench conference.}

21 - - - - -

22 THE COURT: I have sustained the
23 objection. It is repetitious. Let's proceed.
24 He has been over it a number of times.

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Besse - cross

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BY MR. WEINER:

Q Do you recall when an organization known as CAPCO came into formal existence?

A I think it was the year 1967.

MR. WEINER: May I approach the bench?

THE COURT: Yes.

- - - - -

{Bench conference ensued on the record as follows:}

MR. WEINER: I am planning to go into some things with CAPCO. Is it the Court's pleasure not to go into things with CAPCO?

THE COURT: There is presently a motion before the Court that the thrust of which is to determine if the City will be permitted to go into it at all, or if so, to what extent.

At this juncture you can't go into it until the Court rules, and I remind you that the Court did not receive the reply brief or the answer brief, and I am not faulting you.

The plaintiffs have until Tuesday, and you have four days to work on it over the weekend, and I only had since Tuesday afternoon to work on it.

Besse -cross

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MR. WEINER: I am not being
critical.

THE COURT: I want some time off,
and I am not getting very much, so I am trying to
get it out just as fast as I can.

You can reserve.

MR. WEINER: Yes. We would like
to reserve. I may have a few other questions, okay.

THE COURT: You may reserve the
right to recall Mr. Besse for cross-examination
on this subject, Mr. Weiner.

{End of bench conference.}

- - - - -

MR. WEINER: With that, I have no
further questions of this witness at this time,
your Honor.

THE COURT: Do you have redirect
examination?

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

THE COURT: Thank you. You may
step down, Mr. Besse.

Call your next witness.

MR. NORRIS: We call Judge

1 Ralph S. Locher.

2 {After an interval.}

3 THE COURT: Is somebody calling
4 him?

5 MR. NORRIS: Yes, your Honor.

6

7

8

9 R A L P H S . L O C H E R ,

10 having been called as a witness on behalf of
11 the plaintiff, after having been duly sworn,
12 was examined and testified as follows:

13

14 DIRECT EXAMINATION OF RALPH S. LOCHER

15

16 BY MR. NORRIS:

17 Q Would you state your name.

18 A Ralph S. Locher.

19 Q And what is your address?

20 A 13714 Ardoon, Cleveland, Ward 19, Precinct A.

21 Q What is your occupation?

22 A I am now a Justice on the Ohio Supreme Court.

23 Q Would you briefly describe your professional
24 experience.

25 A I graduated from the law school at Western Reserve

Locher - direct

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2 University, and then I practiced law a number of years,
3 and I was Secretary to Governor Lausche, and I was
4 Law Director of the City of Cleveland for nine years,
5 and I was Mayor of the City for three terms.

6 After I was involuntarily removed, I returned to
7 private practice, and then I was elected to the
8 Common Pleas Court of Cuyahoga County, and then the
9 Probate Court, and now the Ohio Supreme Court.

10 Q When did you first have occasion to become involved
11 with the City's operation of the Municipal Light
12 System?

13 A As Law Director under Mayor Celebrezze, I of course had
14 occasion to be Chief Legal Counsel for the Municipal
15 Electric Light System.

16 Q Did those responsibilities bring you into contact with
17 the operations of the Municipal Light Plant on a
18 regular basis?

19 A Not on a regular basis, but on a basis that was
20 occasional, at least.

21 Q And just place the approximate year that you first
22 became aware of the Municipal Light Plant from the
23 standpoint of your duties as Law Director.

24 A It seems to me when a municipal light plant, or when
25 Mayor Celebrezze authorized us to secure street

1 Locher - direct

2 lighting funds during his administration, which went
3 from 1953 to 1962, I think I was, as I remember, I
4 was the head of the Speakers Bureau, which urged the
5 voters to approve that bond issue, and that was in the
6 middle '50's.

7 Q Who was the Commissioner of Light and Power at that time?

8 A At that time it was Vincent DeMelto.

9 Q During your period of service with the City of

10 Cleveland, what kind of benefits did the Muny Light
11 Plant provide to the City?

12 A It provided street lighting at approximately half the
13 cost, and it provided energy for the various city
14 facilities, anywhere from 20 or 30 percent to 50 or 60
15 percent of what the cost would have been had we
16 acquired it from a private utility.

17 It was innovative in that the municipal plant for
18 many years had believed in it and gone forward with
19 undergrounding of lights.

20 Well, there is an advantage to undergrounding,
21 as opposed to having the wires overhead where the
22 storms knock out the system.

23 And it also provided a very fine type of street
24 lighting through the mercury lighting system which
25 was far superior from the conventional street lighting.

Locher - direct

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2 Those are a few of the things that come to mind.

3 The rates of course were something around 15
4 percent lower than the private company, which meant
5 that it was a big savings for the consumers as well.

6 Q Mr. Justice, can you tell me what the procedure is in
7 the City of Cleveland, was during your time as Mayor,
8 for setting the rate of the Municipal Light Plant?

9 A The rates were fixed by what was called the Board of
10 Control, which was made up of the Mayor and his
11 cabinet, and then those rates were submitted to the
12 City Council for approval.

13 Q During your period as Mayor of the City of Cleveland,
14 did you have occasion to become involved in any rate
15 matters affecting the Cleveland Electric Illuminating
16 Company?

17 A During what period?

18 Q During the time you were either Law Director of Mayor.

19 A Well, as Law Director, there were several negotiations
20 with the CEI involving their rates, and Cleveland
21 joined with other municipalities in resisting the rate
22 increases, and later that same thing occurred when I
23 was Mayor, and I suppose that will happen until the end
24 of time.

25 There is always -- there is either a negotiation

Locher - direct

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2 entered into between the city officials and the
3 private company, or there is a hearing usually
4 filed by an appeal from the decision of the Public
5 Utilities Commission.

6 Q From your own observations during those periods of
7 negotiations, was there any relationship between the
8 rates charged by the Municipal Light System and the
9 rates being negotiated from the Cleveland Electric
10 Illuminating Company?

11 A Yes. I always felt that the Municipal Light System was
12 a yardstick by which to gauge or reckon or measure the
13 rates asked by the private utility, and I would say
14 that there was that relationship.

15 Q Would you kindly indicate what factors enabled, if you
16 know, what factors enabled Muny Light to have rates
17 below those of the Illuminating Company?

18 A The principal factor was that we didn't make a profit
19 as such, nor do we pay higher salaries.

20 The Mayor I think only received \$15,000 or \$25,000
21 in those years, and so we didn't have the high overhead,
22 and we were able to borrow money at less cost because
23 we had no profit, and we were a tax-free entity, and
24 with regard to raising capital and our costs were
25 lower and therefore we could charge lower rates.

Locher - direct

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Q During the mid-1960's are you aware of the annual average dollar amount that Muny Light contributed to the City's operation?

A Well, I received many memoranda from my Director and Commissioner or the Director and Commissioner, and it seems to me the street lighting savings were something like \$900,000 per year, and the reduced cost for energy for the sewage treatment plants and the water division and the other municipal buildings and facilities, that brought the total to what we consider to be about a million and a half dollars per year.

Q Now, did Muny Light supply all the energy for the municipal buildings, or did CEI supply some and Muny Light supply some?

A I think the great preponderance of the energy was supplied by the Municipal Light System, but some rare instances, in some rare instances CEI did supply the energy for buildings, and of course a little bit less than 50 percent of the street lighting.

Q You mentioned street lighting, a street lighting bond issue, I believe, earlier in your testimony.

Was that bond issue finally sold?

A Yes, it was.

Q And what was done with the money?

Locher - direct

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A It was invested in street lighting equipment, lines, poles, and other facilities required for the street lighting.

Q How did Cleveland street lighting facilities compare with those of other cities, to your knowledge?

A We thought that we had the best street lighting around, because we had officials from other cities come to Cleveland to observe how it was being done, and it was considered a fine system.

Q Do you recall receiving letters from Mr. Lindseth proposing an interconnection during your term as Mayor?

A Yes.

MR. NORRIS: Mr. Leo, would you hand Judge Locher Plaintiff's Exhibits 486, 693, and 603, and 604.

{After an interval.}

BY MR. NORRIS:

Q Addressing your attention to Plaintiff's Exhibit 486 and 693, are those the two interconnection proposals received by you from Mr. Lindseth in 1962 and 1963?

A Yes, they are.

Q And did the City respond to those proposals?

A Yes, it did.

MR. LANSDALE: May I approach the

1 Locher - direct

2 bench?

3 THE COURT: Yes.

4 - - - - -

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

7 MR. LANSDALE: Your Honor, this has
8 been covered by a stipulation.

9 THE COURT: I know exactly what we
10 are going to say.

11 MR. LANSDALE: We have been into this
12 before. It is covered by stipulation, and it is
13 repetition, and I have known Mr. Locher for a good
14 many years, and he is a good friend and an honest
15 man, but in all good conscience, he has been here,
16 and this is just repetition. I object.

17 THE COURT: Mr. Besse just went
18 over these, and Mr. Lindseth went over these,
19 and it is part of the stipulation.

20 Are you denying that these letters were sent?

21 MR. LANSDALE: Of course not.

22 THE COURT: Are you denying the
23 content?

24 MR. LANSDALE: No, sir.

25 THE COURT: I don't know what to

1 Locher - direct

2 say, Mr. Norris.

3 Are we going over the same thing again?

4 I will sustain the objection.

5 If you are desirous of asking Mr. Locher
6 something that has not been gone into, you are free
7 to do so, and which his presence is required to
8 testify, and you are free to do so.

9 MR. NORRIS: I am going to offer his
10 letter to Mr. Besse. Are you going to object? I
11 have the letter he sent to Mr. Besse.

12 Now, are you going to object to that?

13 MR. LANSDALE: It is a stipulation.
14 It has been stipulated. It is in evidence.

15 THE COURT: You can assume that
16 to be true, and you can use that as a point of
17 departure.

18 MR. NORRIS: Okay.

19 {End of bench conference.}

20 THE COURT: In the interests of
21 time, Mr. Norris, it is my understanding that these
22 letters are the subject of stipulation which I
23 read to the jury; I think on two occasions, and
24 Mr. Lindseth has testified to the letter, and
25 Mr. Besse has testified to the letter, and the

1 Locher - direct

2 existence of the letter, and their contents, and
3 the fact that his Honor sent these letters while
4 he was Law Director or Mayor are not in issue, so
5 you may use that as a point of departure to ask
6 any questions that have not been developed by the
7 evidence thus far.

8 You may proceed.

9 {End of bench conference.}

10 - - - - -

11 BY MR. NORRIS:

12 Q You made no written response to Mr. Lindseth's letters?

13 A No. I asked my Director of Public Utilities, Mr.
14 Vincent DeMelto, to respond, and I responded
15 publicly.

16 Q Addressing your attention to Plaintiff's Exhibit 603,
17 and Plaintiff's Exhibit 604, do those letters represent
18 the exchange of correspondence that you had with Mr.
19 Besse in 1965?

20 THE COURT:

Mr. Norris, you

21 agreed to that up here, and Mr. Lansdale agreed
22 to that, and it is in the stipulation, and Mr.
23 Besse testified to it. The answer is "yes."

24 Now, let's use that as a point of departure
25 and proceed with the examination of his Honor.

Locher - direct

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BY MR. NORRIS:

Q Mr. Justice, did the City ever make a specific request to CEI to purchase power from CEI while you were Mayor?

A I received a memorandum from the Director to purchase power in 1966, but we did request a tie-in for all the year that I was Mayor, and I think the years that many of my predecessors were Mayor.

MR. NORRIS:

Mr. Leo, would you hand the Justice Plaintiff's Exhibits 284, 513, and 44 and 45.

THE COURT:

I am sorry. I missed the first one.

MR. NORRIS:

284b.

THE COURT:

Thank you.

{After an interval.}

Q I am handing you what has been marked for identification as Plaintiff's Exhibit 284b.

Would you identify this for the jury.

A This was a communication from John A. Fakult, Commissioner of the Division of Light and Power to myself, and the subject was the emergency relief of generation for the Division of Light and Power.

Q Do you recall what the occasion was that resulted in this memorandum coming to you?

Locher - direct

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2 A Well, the Commissioner pointed out that during the prior
3 summer and peak season, during the Christmas and New
4 Year's holidays, when the peak is very high due to the
5 long nights and the street lighting, but in any event,
6 the year before, there was heavy usage, and there was
7 an inability to maintain the various boilers and the
8 other equipment, and as a result we were operating at
9 near capacity with some major repairs that were
10 required, and he suggested that to alleviate the
11 situation, that we should ask the CEI for a purchase
12 of power and that it should be done immediately, and
13 that memorandum was dated June 3rd, 1966.

14 Q Now, there was no interconnection between the two
15 systems at that time, is that correct?

16 A That is correct.

17 Q And in order to purchase power there would have to
18 have been an interconnection; isn't that correct?

19 A That is true.

20 Q Did you do anything as a result of receiving this
21 memorandum from Commissioner Fakult?

22 A I did nothing, because we had no interconnection.
23 I knew of no way to wheel the power from the private
24 utility to the City.

25 Q Mr. Justice, if you would address your attention to

Locher - direct

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2 Plaintiff's Exhibit 44 and 45, and also 513, if you
3 would, please.

4 A Yes.

5 Q Now, at that time, in July of 1966, did you do anything
6 in an effort to obtain an interconnection with CEI?

7 A Yes. I asked Director DeMelto and Finance Director
8 Edward Knuth to meet with CEI, and they did.

9 Q Did you receive any reports with respect to that
10 meeting?

11 A Yes. I received a report -- I received oral reports
12 from both of those directors, but I also received a
13 written memorandum from Director DeMelto.

14 Q And what was the nature of the reports that you
15 received?

16 MR. LANSDALE: Object.

17 THE COURT: Approach the bench.

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

21 MR. LANSDALE: It is obvious that
22 the justice did not know that a meeting took place
23 other than he was told that it was, and I object to
24 the use of this device to get this before the jury.

25 MR. NORRIS: I am going to present

1 Locher - direct

2 evidence with respect to routine practice of the
3 City, and with respect to its correspondence.

4 There is an admission that the letter was
5 written and mailed, and I am going to ask the
6 former Mayor what the City's routine practice was
7 with respect to correspondence from City Hall, and
8 if I elicit the testimony that I think I will, then
9 under Rule 406 there is a presumption that it was
10 received, so I respectfully request the right to
11 elicit that testimony in light of the admission
12 made by the defendant.

13 MR. LANSDALE: All I can request is
14 that counsel be instructed to ask the question with
15 due regard that the Mayor can only have his knowledge
16 through hearsay.

17 THE COURT: That is right. How
18 can he cross-examine as to the content of the letter.

19 MR. NORRIS: Well, if I am right as
20 to the evidence I think exists, as to what the
21 routine practice was, I think that creates a
22 presumption that the letter was received.

23 THE COURT: I will sustain the
24 objection. Proceed.

25

1 Locher - direct

2 MR. NORRIS: May I ask another
3 question?

4 THE COURT: Sure.

5 - - - - -

6 {Bench conference ensued out of the hearing
7 of the jury.}

8 MR. NORRIS: Are you instructing,
9 then, not to elicit the evidence about the routine
10 practice? I just want to make sure I understand.

11 THE COURT: Yes.

12 MR. NORRIS: I take it then that
13 it is all you have sustained, because he hasn't
14 objected to the --

15 I just want to understand the Court's
16 instruction. That's all.

17 THE COURT: You object?

18 MR. LANSDALE: Yes, sir.

19 THE COURT: I have indicated to
20 you what my thinking is, Mr. Norris.

21 MR. NORRIS: Well, then, if I may --

22 THE COURT: This man is not privy
23 to these letters at all. Unfortunately, DeMello
24 is dead. Where is Knuth?

25 MR. NORRIS: Dead.

1 Locher - direct

2 MR. LANSDALE: Don't know about Knuth.

3 MR. NORRIS: He's dead.

4 This is the letter with respect to which CEI
5 withdraws its earlier admission, and if I am not
6 permitted to go into it, let me make an offer of
7 proof on the record.

8 THE COURT: Go ahead.

9 MR. NORRIS: If permitted to put
10 the question to Former Mayor Locher as to what the
11 City's routine practice was with respect to
12 correspondence addressed to addressees outside the
13 City administration, Mayor Locher, I believe, would
14 testify that it was the City's routine practice
15 that secretaries of officials were instructed to
16 type the envelopes; with appropriate addresses, to
17 stamp the envelopes properly and to either deposit
18 them in the mails or give them to the City Hall
19 mailroom for depositing in the U.S. Mails.

20 My purpose in making this offer of proof is
21 that under Rule 406, combined with the CEI's
22 admission that PTX-44 was written and mailed, that
23 I believe it would create a presumption that the
24 letter, PTX-44, was received by the addressee,
25 and the purpose of adducing that evidence would be

Locher - direct

1
2 to permit the jury to infer that the meeting did
3 take place, that the letter would not have been
4 written unless the facts stated therein had
5 occurred.

6 That ends my offer of proof.

7 THE COURT: Is there anything to
8 indicate that the Mayor knew that these practices
9 were followed by each of his service directors or,
10 in fact, Mr. DeMelto followed his practices?

11 MR. NORRIS: I have not asked the
12 question whether or not he knew specifically that
13 that particular director followed the practice.

14 THE COURT: We are getting into
15 these areas of speculation and --

16 Well, I have sustained it. Let's proceed.

17 {End of bench conference.}

18 - - - - -

19 THE COURT: You may proceed.

20 Mr. Norris.

21 BY MR. NORRIS:

22 Q Mr. Justice, during your tenure with the City

23 Government did the City of Cleveland undertake to

24 expand its generation facilities?

25 A Yes, it did.

Locher - direct

1

2 Q And did the City engage consultants to assist them
3 with this plant expansion?

4 A Yes.

5 Q What period of time are we talking about in terms of
6 this plant expansion?

7 A The studies were made during the last term, I believe,
8 of Mayor Celebrezzee, and when I took office in July
9 of 1962 the plan was there in the office, already
10 suggested.

11 Q By the time the construction was undertaken, you were
12 the Mayor, is that correct?

13 A That's right.

14 Q Did you, in your capacity as Mayor, have occasion to
15 discuss with any of your directors or with Mr.
16 DeMelto any of the operating information about the
17 expansion?

18 A Yes.

19 Q Do you know what the City's plans were with respect to
20 the future back-up for this big unit that was being
21 installed?

22 A Well, the plans that I referred to suggested additional
23 generating capacity and the back-up would have been, or
24 had to be the existing generators plus a tie in with
25 the private utility.

1 Locher - direct

2 MR. NORRIS: No further questions.

3 THE COURT: Cross-examination, Mr.
4 Lansdale?

5 - - - - -

6

7 CROSS-EXAMINATION OF RALPH S. LOCHER

8

9 BY MR. LANSDALE:

10 Q Mr. Justice, that last statement you made with reference
11 to a tie-in, are you referring to your recollection of
12 the consultant's report?

13 Is my question clear, sir?

14 A Yes. I don't know whether it was contained in the
15 report, per se. No, I don't, but I know that --

16 Q How do you know that? Did somebody tell you? Somebody
17 must have told you this, I think.

18 A No.

19 Q That is to say --

20 THE COURT: Mr. Lansdale.

21 A I have not discussed that report, I don't believe, with
22 anyone, to my knowledge.

23 I think the Beiswenger and Hoch reports that was
24 made in Celebrezze's time, Tony Celebrezze, and lay it
25 on the shelf for a time, and when I came in, I

Locher - cross

1
2 implemented it.

3 Q And this is the report of the consultants to which you
4 referred a moment ago, is that correct?

5 A Yes.

6 Q And when you stated part of the back-up was to be a
7 tie-in with the private utility, are you stating now
8 your recollection or something that appeared in this
9 Beiswenger Report?

10 A No, not necessarily, no.

11 Q Where is it in your recollection that such a
12 recommendation as to the back-up was made?

13 A If I were earning the \$15,000 I was receiving, I don't
14 think I would have had to be told by anyone that we
15 needed some back-up. You don't build a new plant without
16 back-up, and the only logical, rational back-up would
17 be the tie-in that we so strongly urged, number 1, and
18 secondly, the existing plant which we were not about to
19 scrap.

20 Q All right, sir. Mr. Justice --

21 A Oh, I remember a third. We had an old plant called the
22 East 53rd Street plant, which was ancient, really, as
23 technological matters go, but in order to further
24 back up, even though it cost over 2 cents, I believe,
25 to produce each kilowatt hour, however it is reckoned,

1 Locher - cross

2 we were even going to implement or to restart it and
3 use it as a further backup in the event something
4 went wrong with the 85,000 KV plant that was then
5 considered really the most modern, I guess, type of
6 generator you could get, much better than our old
7 Brown-Boveri generators that were bought in Tom
8 Burke's time.

9 Q Mr. Justice, you have told us how rates were approved,
10 fixed by the Board of Control and approved by City
11 Council.

12 Do you recall also that at that time, as indeed
13 today, the City Council similarly had power to fix
14 the rates of the private utility, subject to appeal
15 to the Public Utilities Commission, and thereafter
16 to your own court, do you not?

17 A Yes.

18 MR. LANSDALE: Thank you. That's
19 all.

20 THE COURT: Redirect?

21 MR. NORRIS: No redirect, your
22 Honor.

23 THE COURT: Thank you, your Honor.

24 Honor.

25 THE WITNESS: Thank you. Good

1 seeing you.

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

4 THE COURT: Yes. Supposing we
5 take a short recess at this time, ladies and
6 gentlemen. We will take a little seventh-inning
7 stretch and retire to the jury room.

8 Please don't discuss the case and keep in
9 mind my admonition. You are free to go.

10 {Recess taken.}

11 THE COURT: You may proceed,
12 gentlemen.

13 MS. COLEMAN: Call Mr. Charles
14 Bednar, please.

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1 C H A R L E S M . B E D N A R ,

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

5
6 DIRECT EXAMINATION OF CHARLES M. BEDNAR

7
8 BY MS. COLEMAN:

9 Q Please state your name and address.

10 A My name is Charles M. Bednar.

11 Q And your address, please?

12 A 3667 Atherstone Road, Cleveland Heights.

13 THE COURT: Mr. Bednar, please

14 speak into the microphone so all the ladies and
15 gentlemen can hear you.

16 A 3667 Atherstone Road, Cleveland Heights.

17 Q By whom are you currently employed?

18 A I am employed by Woodruff, Incorporated.

19 Q How long have you been employed by Woodruff?

20 A Six years.

21 Q What is your occupation?

22 A I am Manager of Environmental Projects.

23 Q Do you have a profession?

24 A Yes.

25 Q What is that?

Bednar - direct

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A I am a consulting engineer.

Q Are you registered in any states?

A Yes, I am.

Q What state is that?

A Ohio.

Q What are your responsibilities at Woodruff?

A My responsibilities involve supervision and management and coordination with design engineers and county and municipal people involving water, sewer and related utility construction work.

Q What is your educational background, briefly, Mr. Bednar?

A I graduated with a Bachelor of Science degree from Case Institute and got a Master's degree in engineering administration.

Q Do you belong to any professional societies?

A Yes. I belong to the Cleveland Engineering Society, American Waterworks Society, National Society of Professional Engineers, its Ohio Branch, and Cleveland Society of Professional Engineers.

Q What was your first position as Engineer?

A My first position was with the Westinghouse Electric Corporation for about five years.

Q Have you held any other positions?

Bednar - direct

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A Yes. I then went to work for the Square D Company for about eight years and after that for the API Instruments Company for about four years.

THE COURT: Mr. Bednar, we are having a problem hearing you so you are going to have to speak into the microphone.

THE WITNESS: Is that better?

MS. COLEMAN: Yes. Thank you.

Q Have you been employed by the City of Cleveland, Mr. Bednar?

A Yes, I was.

Q When was that?

A From May of 1969 until approximately June of 1962 -- 1972. I'm sorry.

Q By what department of the City were you employed?

A I was employed by the Director of Public Utilities and assigned to work in the Division of Utilities Engineering.

Q By what Department of the City were you employed?

A I was employed by the Director of Public Utilities and assigned to work in the Division of Utilities Engineering.

Q What was the nature of your responsibilities there?

A My responsibilities involved the coordination and

Bednar - direct

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supervision of consulting engineers who did work with the Utilities Department involving design and construction and expansion of the Water Department, Water Pollution Control, Sewage Treatment Plant and also Muny Light.

Q You worked then with each of the various divisions in the Department of Public Utilities?

A Yes, I did.

Q Did you have any assignment to the Division of Light and Power?

A Yes, I did.

Q What was the nature of those assignments?

A Those assignments really were as a troubleshooter and as a coordinator on various projects that were involved in Muny Light.

Q Did you have any involvement in Muny Light negotiations to purchase power from CEI?

A Yes.

Q When did you first become involved in that project?

A I first became involved in December of 1969 when Director Stefanski asked me to go to the Muny Light

~~Plant on Lake Road and to investigate and make a~~
determination of the reason for the major outages at that plant.

1 Bednar - direct

2 Q What outages are you referring to, sir?

3 A The outages that occurred in 1969 during the month of
4 December and especially during Christmas week when
5 there was a massive outage that knocked out a lot of the
6 downtown area and traffic lights and street lights.

7 Q Did you make such an investigation?

8 A Yes, I did.

9 Q What were the conclusions you came to?

10 A It was determined then at that time, after-conferring
11 with the operating people and doing some research in
12 the various reports that were available, that there
13 was no stand-by power capacity at the generation plant
14 and whenever there was an outage, with the equipment
15 being very old, there just was no back-up for providing
16 power.

17 Q Did you take any steps to obtain back-up?

18 A Yes.

19 Q Could you explain what those steps were?

20 A Ben Stefanski and myself met with -- requested and had
21 a meeting with Lee Howley of the Illuminating Company
22 sometime between Christmas and New Year's and we had
23 asked him for an interconnection between Muni Light
24 and CEI.

25 Q Did he make a response to that request at that time?

Bednar - direct

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A Yes, he did.

Q What did he say?

A We had discussed with him, as I said, and requested that we meet with the engineers and the technical people, and he said he would set up such a meeting.

Q Did you have such a meeting?

A Yes, we did.

Q What occurred at that meeting?

A That meeting was in January of 1970 and at that time the engineers from the Illuminating Company and the utilities engineers and myself and Ben Stefanski met and it was determined at that time that the best CEI could do would be to give the City load transfer points so they could transfer power.

Q Is a load transfer point the same as an interconnection?

A No, it is not.

Q What is an interconnection, very briefly?

A An interconnection between two utilities is the joining together of the power that is generated so that the power can flow from one utility to the others in a synchronous fashion.

Q How does a load transfer differ from that?

A A load transfer are certain specific points in the system which provide for having the system turned off

1 Bednar - direct

2 and then a switch is thrown so power can flow from
3 one system to another that needs the power.

4 Q At the meeting which you just described, was there any
5 further discussion with the CEI representatives of an
6 interconnection?

7 A Yes, there was.

8 Q What was the nature of that discussion?

9 A The nature of the discussion was that the engineers
10 would meet and try to work out a method whereby Muny
11 Light would have some stand-by power, and we could not
12 be particular at that time to stress a complete
13 interconnection. We had to take whatever we could get
14 because at that time there was no other method of getting
15 power from one utility to the other.

16 Q Did you discuss an interconnection any further as
17 opposed to load transfer points?

18 A Yes, we did. We asked and had discussions with Mr.
19 Howley and had asked him when the Muny Light, City of
20 Cleveland, could get a permanent interconnection with
21 CEI, and he said the engineers would have to work on
22 that and it would probably be from -- I would say from
23 around January until midsummer before he could give us
24 an answer on that.

25 Q To your knowledge was there any response from CEI in

Bednar - direct

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the midsummer of 1970?

A No, there was not.

Q Did you have any further assignments to the Division of Light and Power in 1970?

A Not specifically. They were more of a follow-up nature to talk with utilities engineers and to make sure that the transfer load points and the coordination was actually being taken care of so you could supply the power.

But I was working on the gas turbine to expedite those as well as the installation of electronic electrostatic precipitators at the electric light plant because of problems of air pollution.

Q Did you have any further assignments to the Division of Light and Power in 1971?

A In 1971?

Q Yes.

A Yes.

Q What was your assignment in 1971?

A In 1971 my responsibility was to prepare the necessary reports and documents so that we could get

legislation before Council and to get some bonds to

provide for repairs and rehabilitation of the

Municipal Light System and, in so doing, work toward

Bednar - direct

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getting reliability.

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Q Who made that assignment to you, Mr. Bednar?

4

A That was done by the Director of Public Utilities.

5

Q Who was that at the time?

6

A That was Bill Gaskill.

7

Q And the request which you had made to CEI for an interconnection, what was the reason for seeking an interconnection?

9

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A The reason for seeking an interconnection was to provide for a reliable backup while we were getting the funding and the legislation and the purchase of equipment to repair the system and to repair the boilers and the generating capacity of the plant.

11

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Q You mentioned you were given an assignment to prepare for funding to be raised.

16

17

Did you carry out that assignment?

18

A Yes, I did.

19

Q And did you prepare an ordinance for passage by Council?

20

A I helped to prepare the ordinance along with the Commissioner of Light and Power and the people in the Law Department. I provided them with data and reports and background information.

21

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MS. COLEMAN:

Mr. Leo, would you

25

hand the witness, please, Plaintiff's Exhibit

1 Bednar - direct

2 2313?

3 {A document was handed to the witness by the

4 Law Clerk.}

5 Q Please, will you look at this exhibit, Mr. Bednar, and
6 identify it for the jury?

7 A This is a Xerox copy of a city record dated July 7,
8 1971, Ordinance No. 1187-71, and it provides all the
9 necessary legal language to provide for \$5 million of
10 mortgage revenue bonds for the Municipal Electric Light
11 and Power Division for the City of Cleveland to make
12 improvements and rehabilitation.

13 Q You used the phrase "all the necessary legal language."
14 You are not a lawyer, are you?

15 A No.

16 Q Is this the ordinance we have been discussing?

17 A Yes.

18 Q Was the ordinance passed?

19 A The ordinance was passed.

20 Q Was money made available to Muny Light as a result of
21 passage of this ordinance?

22 A Yes, it was.

23 Q Could Muny Light have completed the rehabilitation
24 of the plant without the interconnection which had
25 been requested?

Bednar - direct

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MS. COLEMAN:

Your witness, Mr.

2

Lansdale.

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CROSS-EXAMINATION OF CHARLES M. BEDNAR

6

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BY MR. LANSDALE:

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Q How much money had you specified you needed for the permanent interconnection as a part of the information furnished as the basis for the drafting of the ordinance to which you have just referred, Mr. Bednar?

9

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A To the best of my knowledge, in the preliminary report it was about \$1.2 million, a million and a half, I believe.

13

14

15

Q Was it not in excess of \$3 million, Mr. Bednar?

16

17

A It may have been. I do not recall.

18

Q It may have been?

19

A Yes.

20

MR. LANSDALE:

I have no further

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questions.

22

MS. COLEMAN:

No further questions,

23

your Honor.

24

THE COURT:

Thank you, Mr. Bednar.

25

MR. NORRIS:

May we approach the

1 bench?

2 THE COURT: Yes.

3 - - - - -

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

6 MR. NORRIS: Your Honor, we have a
7 little bit of a logistical problem. We were
8 counting on Mr. Masters to be our next witness and
9 I understand Mr. Masters has gone back to the
10 office and we do not have any other witness here
11 at the moment because he's been here all day and I
12 wasn't aware that he wasn't here.

13 THE COURT: I don't care about
14 that, Mr. Norris. Now, I adjourned yesterday for
15 you 15 or 20 minutes early because of some
16 logistical problem. I adjourned again today
17 because Weiner had some logistical problem.

18 Now, why don't you have your witnesses here,
19 Mr. Norris? Why don't you people get prepared?

20 I have tried to impress upon you the fact that
21 I would like to move this case along. I am calling
22 this jury in every morning at 8:45 and keeping them
23 here until 4:30, quarter to 5:00. Those are long
24 hours to impose upon a jury, and all we are doing is
25 wasting their time when you are not prepared to

1 proceed.

2 MR. NORRIS: Your Honor, there
3 was a confusion because we had asked if CEI
4 witnesses would be available and they were here
5 today. I assumed he would stay.

6 THE COURT: All I get is excuses,
7 excuses. Will you have your people here and will
8 you be prepared to proceed?

9 MR. NORRIS: Yes, your Honor.

10 THE COURT: I don't know what I
11 have to tell you people. You just ignore everything
12 I say.

13 MR. NORRIS: Your Honor, I certainly
14 do not.

15 THE COURT: You certainly do. You
16 say you don't but the facts speak for themselves.
17 Go back and we will adjourn.

18 {End of bench conference.}

19 - - - - -

20 THE COURT: Ladies and gentlemen
21 of the jury, perhaps this would be an opportune
22 time for us to adjourn for the day, and we will
23 permit you to retire to the jury room so that you
24 may view the exhibits of the day. When you have
25 concluded, you are free to go.

1 We will return here at 8:45 tomorrow morning
2 at which time we will resume.

3 Please, during the recess, do not discuss
4 the case either among yourselves or with anyone else.
5 You are to keep an open mind until such time as all
6 the evidence is in. I have instructed you on the
7 law, the application of the law to the facts, and
8 until such time as the matter is submitted to you
9 for your judgment.

10 And again, keep in mind you are not to read
11 any newspaper report of the proceedings or listen
12 to any radiobroadcast or view any television program
13 which may bear upon the progress of the case. You
14 are the individuals that must decide the case upon
15 the facts as they are developed from the witness
16 stand by the witnesses and the exhibits that are
17 permitted into evidence and only upon that
18 evidence.

19 With that, thank you very much. Good night.
20 See you in the morning.

21 {The jurors left the courtroom.}

22 THE COURT: Now, gentlemen, we
23 will review the exhibits for the day.

24 These are the exhibits that the jury has
25 not seen that we discussed this morning, and Mr.

1 Leo is submitting those to the jury for their
2 examination.

3 MR. LANSDALE: May we also discuss
4 yesterday's exhibits as to which there are some
5 objections?

6 THE COURT: Yes.

7 {Conference ensued among the attorneys off
8 the record.}

9 THE COURT: Gentlemen, I am
10 prepared to rule upon the objections that have
11 been interposed to the following exhibits:

12 491, 608, 610, 612, 628, 601, 618, 638, 494,
13 495, 345, 346, 2400, 141, 143, 144, 2639, 703.

14 MR. LANSDALE: Those were yesterday.

15 THE COURT: I am prepared to rule
16 on them, and counsel will have the opportunity of
17 stating objections and responding.

18 MR. NORRIS: We have just agreed
19 that five of those we are going to meet and take
20 those up. Those are 345, 346, 141, and 143 and
21 2400.

22 THE COURT: 141 and then 2400 --

23 MR. LANSDALE: The first page only.

24 MR. NORRIS: You are objecting to
25 the first page only?

1 Set those aside.

2 MR. MURPHY: Other than the one
3 Mr. Norris just read, we are withdrawing our
4 objections to the ones that you read.

5 THE COURT: Very well. If that is
6 the situation, they are admitted; 491, 608, 610,
7 612, 628, 601, 618, 638, 494, 495, 144, 2639, and
8 703.

9 And are you saying to me that we should
10 consider the others tomorrow morning?

11 MR. NORRIS: Yes, but we do have
12 a discussion that we can have productively today
13 regarding the excerpts from the planning reports,
14 and Mr. Lansdale is objecting to them.

15 MR. LANSDALE: I do not object to the
16 reports themselves. I object to the blow-up
17 reproductions, portions of them, because each of
18 the big blow-ups contain bits and pieces for two
19 or three or four pages, and I object to the partials.

20 THE COURT: Well, the Court is not
21 opposed to the use of demonstrative evidence, and
22 the charts of this nature, and so forth.

23 My understanding of the law; if my
24 recollection serves me correctly, they must be
25 accurate reproductions of that which they purport

1 to be before they are permitted to go to the jury.

2 Now, if you are objecting at to that?

3 MR. LANSDALE: No, sir.

4 THE COURT: Well then, what are you
5 objecting to? I thought you just told me they do
6 not accurately reflect that which they purport to
7 be?

8 MR. LANSDALE: In the sense that the
9 pieces, the things they have copied are accurately
10 copied; however, they omit substantial portions of
11 the pages.

12 THE COURT: That is what I just
13 finished saying.

14 If the documents are prepared within the
15 context that they actually reflect, then if there
16 is no objection to that segment of it going to the
17 jury, you are free to send it in, but technically
18 the entire exhibit must go to the jury.

19 MR. LANSDALE: I do object to the
20 exhibits and to the pieces of the exhibits that
21 are placed on the blow-up that we refer to.

22 I do not object to the basic exhibits
23 themselves. They are in evidence, I believe, or
24 soon will be.

25 I do object to the blow-ups because they

1 are not complete of the pages that they purport
2 to represent.

3 THE COURT: Maybe the hours I am
4 keeping are too long. Maybe I am not articulating
5 properly, but I thought that is just what I said,
6 Mr. Lansdale.

7 I take it that your objection is to the context
8 in which that exhibit appears?

9 MR. LANSDALE: Yes, sir.

10 THE COURT: I just finished saying
11 that such an objection is well taken.

12 If the exhibit is revised to reflect the entire
13 context of a portion of a document, and if there is
14 no objection, it may go to the jury; otherwise, the
15 document in its entirety must go to the jury.

16 MR. NORRIS: Your Honor, the
17 document in its entirety is going to the jury,
18 and as Mr. Besse was doing on his testimony, he
19 had the entire document in his hands, and each
20 of the blow-ups has the source --

21 THE COURT: You are not going to
22 do it that way. I just finished telling you that.

23 If you want to send the entire document to the
24 jury, you are free to do so, and if you are
25 desirous of paperclipping the portions that are

1 material, you are free to do that, but the jury
2 should be permitted to review the single document
3 in its entire context, and there is a reason for
4 that which is evident.

5 Now, you are free to proceed, and as I said,
6 if you people can agree that a reproduction of a
7 given portion of the exhibit may be sent to the jury,
8 fine, and if not, the entire document goes, and it
9 may be, as I said, paperclipped or you can take
10 those portions out of it which both of you agreed
11 to, otherwise the entire document goes to the
12 jury.

13 Now, what else?

14 MR. LANSDALE: Initially I objected
15 to 567, which is a report from Morgan to Loshing
16 of the so-called brainstorming operation that
17 Loshing did not attend and knew nothing about.

18 THE COURT: Well, I will sustain
19 that.

20 MR. LANSDALE: I object to 44 which
21 is the purported letter of July 19, and also to 45.

22 THE COURT: Wait. I don't think
23 as fast as you fellows. I have a one-track mind.

24 Did you say 44?

25 MR. LANSDALE: Yes, sir; 44.

1 THE COURT: Is this the letter
2 that was the subject of an admission that was
3 subsequently withdrawn and the Court ruled upon it?

4 MR. NORRIS: It was only partially
5 withdrawn.

6 THE COURT: I will sustain that
7 objection.

8 MR. LANSDALE: I object to 45, the
9 next one, the memorandum from Mr. DeMelto.

10 THE COURT: Sustained.

11 MR. LANSDALE: I object to 545, which
12 is the draft --

13 THE COURT: Wait a minute. Sustained.

14 Apropos the DeMelto situation, during the
15 recess I did check the appropriate rule, and as I
16 indicated on the record previously, there is no
17 question that presented in the right context a
18 presumption could, or an inference could be
19 raised.

20 I don't know if it would be at the presumption
21 level. It might be at an inference level that the
22 letter was received if it was mailed. That is a
23 logical inference that the law accepts; however,
24 within the context that that letter was offered,
25 as I indicated, it is purely speculation, because

1 it is an inference predicated upon an inference
2 predicated upon an inference, so it is two
3 inferences removed from that which the law permits,
4 so I just wanted to clarify that.

5 What other documents?

6 MR. LANSDALE: One other, 703.

7 THE COURT: 703?

8 MR. LANSDALE: Yes, 703.

9 THE COURT: I have got 703.

10 MR. LANSDALE: My position is that it
11 is irrelevant. I fail to see what the actual
12 purchase price of the system of Willoughby and
13 Berea has to do with this case.

14 MR. NORRIS: This was a time when
15 the company was making a reevaluation of its
16 position towards Munny Light, and it is one of the
17 things that the company undertook to do.

18 THE COURT: I think that is
19 admissible. It goes to the weight.

20 Anything further, gentlemen? Thank you.
21 See you tomorrow morning at 8:45.

22 {Court was adjourned for the day.}

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