
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

10-1-1980

Volume 06 (Part 2)

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

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1 Bingham - cross .

2 One class is the residential, and the other class
3 is the general service.

4 Now, we have three or four different rate
5 schedules applicable to this general service cost,
6 but they are mainly related to the size of customers --
7 yes, the size of customers.

8 In effect, we have stratified the broad, overall
9 general service class into very small customers, which
10 we call general commercial, even though there may be
11 a basement factory or something there, and then large
12 commercial, and industrial, and large industrial.

13 Now, in addition to that, you run into some things
14 that I wouldn't call major classes like area lighting,
15 the kind of thing that you may have in parking lots,
16 or in some cases around large plants, and street
17 lighting may be a little larger, but certainly it is
18 not a very major class, and you would have a number
19 of miscellaneous smaller groupings.

20 Q And would these smaller groupings -- would they have
21 only a few number of customers purchasing under those
22 rates; is that correct?

23 A I believe that the smallest number of customers we have
24 on any standard tariff is six.

25 Now, I forgot one other category. Occasionally you

Bingham - cross

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2 run into, in our case, extremely large customers with
3 unique conditions, and in a number of cases we would
4 negotiate a special contract with that kind of
5 customer.

6 Q Now, in performing your cost-of-service analysis,
7 would that be based on the two broad categories, the
8 general service customers and the residential
9 customers?

10 A No. It is actually done by rate schedules.

11 Q And you would allocate certain costs to the customer
12 that is going to be served under a particular rate
13 schedule; is that correct?

14 A That is right.

15 Q Now, in determining what rate it would propose to
16 retail service, did CEI consider competition from
17 other electric energy suppliers?

18 A Not really.

19 Q Would the same be true if I limited the question to
20 large industrial customers?

21 A Let me see if I understand that question.

22 Would we be concerned about competition from
23 other suppliers for large industrial customers?

24 Q Would you take that into consideration in designing
25 rates?

Bingham - cross

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A Not directly.

I can't say that I ever compared one of my proposed large industrial rates against that of any other company.

Q But did you consider competition from other sources when proposing rates for large industrial customers?

A Well, there may have been provisions in the large industrial schedule.

As a matter of fact, there is a provision in the large industrial schedule that imposes certain additional conditions.

If the customer is generating a portion of his own power and is operating in parallel with the company, then I suppose that you would say that that is a consideration of someone else's generating. I am not sure that it has anything to do with competition.

Q Do you recall testifying in another proceeding in May of 1976, in Silver Springs, Maryland?

A Yes.

Q And referring to page 10,329 of the transcript of those proceedings, and I will ask you if you recall this question and this answer:

Q You were asked questions this morning about when you designed rates, whether you took competition into consideration, and I believe you referred possibly

Bingham - cross

to the case of very large industrial customers; do I summarize roughly your testimony?

"A Yes.

"Q In giving that answer were you thinking of competition only between electrical energy suppliers?

"A Yes."

Do you agree with those answers?

A Well, there might be cases where we would -- yes.

Q Now, does the consideration of competition in proposing or designing rates for large customers have an impact on the company's rate of return?

A No.

Q Do you recall in the same proceeding, page 10,330 to 10,331, the following questions and answers:

"Q Does competition with other ~~electric~~ *energy* suppliers ever enter into your consideration in designing rates?

"A Yes, it does."

And then there was colloquy among counsel, and then:

"Q How?

"A We have over the years faced continual competition with gas companies, very strongly in our little steam-heating business, but also in the electric

Bingham - cross

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2 business; and pretty much in all markets, home
3 appliance markets and various industrial heat treating
4 operations, and many of which can be done either gas
5 or electric, and the impact of this I think has
6 probably been pretty much across the board.

7 "We haven't tried to design a residential
8 schedule specifically to fight the gas company or
9 some other schedule.

10 "It is in a general overall impact, and in essence
11 perhaps results in our earning a slightly or somewhat
12 lower return than we might otherwise be entitled to."

13 Now, is it your testimony that the only competition
14 that impacted rates was with the gas company?

15 A That was the primary one, and what you are really
16 talking about there is that up until 1976, the
17 regulatory scheme in Ohio, at least as it applied to
18 CEI, wouldn't -- if you pulled out all the stops,
19 perhaps it would let you get more money than you really
20 needed.

21 It was the competition that kept us below that
22 rate of return, but I think generally we felt that we
23 got an adequate rate of return.

24 Q Now, it would be possible, would it not, to determine
25 a cost of servicing customer inside the City of

Bingham - cross

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2 Cleveland and separately to determine the cost to
3 service customer outside of the City of Cleveland?

4 A Yes.

5 Q And do you know of any such studies, do you know if any
6 such studies had been made with respect to CEI's cost
7 of service?

8 A Yes, they had.

9 Q What studies had been made?

10 A In our most recently completed rate case there was
11 submitted on behalf of the company what we call a
12 territorial allocation.

13 My recollection is that it did not break it down
14 into classes. It was just the total in Cleveland
15 as contrasted either with the total company or the
16 total outside of Cleveland, which you could get by
17 difference.

18 Q Do you know of any other such studies?

19 A In 1944, prior to my joining the company.

20 Q Okay.

21 A In an ordinance appeal case, there was a territorial
22 allocation done, which broke out and showed separately
23 for the City of Cleveland what we then called the
24 ordinance classes, and that being residential and
25 general commercial, and those are the only two I know

Bingham - cross

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2 of that ever got finished.

3 Q And isn't it a fact that there is very little
4 difference in the cost-to-service customer inside the
5 City of Cleveland as compared to the cost-to-service
6 customers outside th City?

7 A That is our opinion..

8 Q And your opinion is based on at least the most recent
9 study, I would assume?

10 A Yes.

11 Q Are there procedures which permit CEI to have different
12 rates in different parts of its service territory?

13 A I don't know if you call it procedures, but it can be
14 done.

15 Q Are you familiar with whether there is any differences
16 in the amounts of electricity used by a typical
17 residential customer inside the City of Cleveland
18 as compared to such a customer outside the City?

19 A I believe the average residential customer in the
20 City of Cleveland uses less electricity than one outside
21 of the city.

22 Q Do you know why that difference would exist?

23 A Probably two reasons:

24 One is that the average dwelling unit, I think,
25 and please don't ask me to furnish you support for this.

Bingham - cross

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2 is probably smaller in the City of Cleveland than it is
3 outside of the City of Cleveland.

4 And secondly, the average dwelling unit is probably
5 much older.

6 Now, this would relate to two things:

7 It sort of follows that a smaller dwelling unit
8 will use less energy than a larger one, although not
9 in every case, obviously, and likewise we have found
10 that over the years that as time goes by more and
11 more things get put into new homes that are not in
12 older homes.

13 They become the new standard, so to speak, and we
14 find that very close in suburbs like East Cleveland
15 and Lakewood, that they are much the same as Cleveland,
16 that the average use per residential customer is less
17 than the system average or the average for all other
18 places.

19 Q Now, is the incremental cost of adding additional
20 capacity to serve customers higher than the cost of
21 serving additional customers?

22 A What kind of capacity?

23 Q Generating capacity.

24 A The installed cost of new capacity -- this is the capital
25 investment -- is greater than the average cost of

Bingham - cross

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2 existing investment, and I would express this in terms
3 of dollars of kilowatts per capacity, and that is only
4 half of the story.

5 Of course, you have to look at the operating
6 costs.

7 Q Now, in rate making you don't make any effort to determine
8 which customer is responsible for this additional cost;
9 you spread it over the customer cost?

10 A To date we have assigned costs on an average basis that
11 all customers are assigned the same unit costs.

12 Q Do you have a record that would show how many circuit
13 miles of distribution lines CEI has in the City of
14 Cleveland? Are they broken out that way?

15 A I am not sure. I don't think that our records show
16 circuit miles.

17 I think they show wire miles. I think what I
18 said was correct.

19 Q And wire miles would be broken out by the City of
20 Cleveland?

21 A Yes, I believe we do know how many feet of wire we
22 have in the City of Cleveland.

23 If we don't know the feet, we at least know the
24 dollars.

25 Q How many customers does CEI have within the City of

Bingham - cross

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2 Cleveland?
- 3 A I am not exactly positive, but I think it is in the
4 range of 250,000.
- 5 Q If CEI lost 400 customers, that would be a very small
6 percentage of their -- for example, if it was 400
7 residential customers, that would be a small percentage
8 of their residential customers in the City of
9 Cleveland; isn't that correct?
- 10 A It would be a small percentage.
- 11 Q Now, we have talked about, somewhat about the rates that
12 CEI charges for service.
- 13 What we are really talking about here is the cost
14 or the price to the consumer; isn't that correct?
- 15 A The rates would establish what the consumer pays.
- 16 Q And if it was a very simply designed rate with the --
17 with just the price per kilowatt hour, the cost to the
18 consumer would be measured by the number of kilowatt
19 hours times price per kilowatt hour?
- 20 A. Yes.
- 21 If you had a flat rate, and that was the only
22 element of the rate, the bill would be the product of
23 the kilowatt hours times the rate.
- 24 Q And within a customer class, all customers would be
25 charged the same rate, have the same rate applied to

Bingham - cross

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2 their usage; is that correct?

3 A If you only had one rate, they would be charged the same
4 rate.

5 Q Within a customer class, you wouldn't discriminate
6 between customers by charging a different rate to the
7 customers; is that correct?

8 A Well, we do charge different rates. We don't have a
9 flat rate, but we would charge the same amount for the
10 same use or factual situation.

11 Q In other words, the same rate schedule would apply to
12 all customers if they fell under that rate schedule?

13 A In our case it is.

14 MR. HJELMFELT: Your Honor, may I
15 approach the bench?

16 THE COURT: Yes.

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

20 MR. HJELMFELT: I would ask that
21 Stipulation ?? be read.

22 MR. LANSDALE: I have no objection to
23 that.

24 While I am up here, I would like to raise a
25 question that I was just waiting for the question to

1 Bingham - cross

2 be asked.

3 It appears to me that we are getting into the
4 question of whether or not a different effective
5 rate was charged in the competitive areas because
6 of the competitive conditions than was charged
7 generally, and it is my contention that as a matter
8 of law that we are entitled to meet competition, and
9 I want to interpose an objection to the suggestion
10 to the contrary, and to find out if the plaintiff
11 contends differently.

12 MR. HJELMFELT: Well, we are not
13 suggesting that they can't meet competition.

14 What we are suggesting is that there was
15 certain predatory practices that went far beyond
16 meeting competition, and I think they are different
17 things.

18 I think we have to be able to show what was
19 happening, and Mr. Lansdale could show it was meeting
20 competition. That is a defense.

21 MR. LANSDALE: Well, I don't have any
22 objections to your trying to show predatory
23 practices, but I object to the suggestion that the
24 uniform rate practices -- I don't think that has
25 anything to do with our right to --

Bingham - cross

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2 THE COURT: I will overrule the
3 objection. Proceed.

4 {End of bench conference.}

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6 THE COURT: Read the question.

7 MR. HJELMFELT: Your Honor, I have
8 just requested a stipulation be read.

9 THE COURT: That is right. I am
10 sorry.

11 Stipulation No. 77 reads as follows:

12 "Approximately 30 percent of CEI's revenues
13 come from sales made within the City of
14 Cleveland."

15 BY MR. HJELMFELT:

16 Q Now, we have been talking about rates.

17 There is also terms and conditions of service that
18 are applicable to service to a customer, are there not?

19 A Yes.

20 Q And would you explain this briefly, what we are
21 referring to as "terms and conditions of service"?

22 A In very general terms they spell out the rights and
23 obligations of the consumer and the company in areas
24 other than just how you calculate the amount of the bill.

25 They will cover such things as payment conditions

Bingham - cross

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2 and facilities and all of the other things that you
3 have to cover some way in order that the consumer and
4 the company know who has to do what.

5 Q And these terms and conditions of service are filed --
6 or for retail service -- are filed with the Public
7 Utilities Commission of Ohio just like the rate
8 schedules are; is that correct?

9 A Yes, they are.

10 Q And are the terms and conditions of service in CEI's
11 filings uniform throughout the CEI service territory?

12 A They apply to the entire territory.

13 Q And so long as CEI follows the policy of uniform rates,
14 you can't change the terms and conditions inside the
15 City of Cleveland without doing the same thing outside
16 of the City of Cleveland; is that correct?

17 A Well, we can't change the filed terms and conditions
18 unless we go down and file new ones.

19 Q And you could file new ones that applied to the City
20 of Cleveland and not applied to the remainder of your
21 service territory; is that correct?

22 A I suppose that we could.

23 Q But CEI's policy has been to keep uniform the terms
24 and conditions?

25 A Yes.

Bingham - cross

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2 Q And under that policy the impact of a change in the
3 City of Cleveland would impact the area where CEI
4 obtains 30 percent of its electric revenues, while the
5 impact outside the City of Cleveland would be felt in
6 the area where 75 percent of CEI's revenues come from;
7 is that correct?

8 A Would you read the question to me.

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

11 A If we were to make a system-wide change, it is obvious
12 from the previous questions and answers that it would
13 affect areas in Cleveland that constituted 30 percent
14 of our revenues and areas outside -- 70.

15 Q You stated that the terms and conditions relate, among
16 other things, to the facilities involved.

17 What sorts of facilities are you talking about
18 as applies to residential customers?

19 A I don't think -- in the area of facilities I am not
20 sure there is anything in the rules that specifically
21 relate to residential customers.

22 I can't think of one.

23 Q What sorts of facilities would you be thinking of
24 when you mentioned that the terms and conditions would
25 include a reference to facilities?

1 Bingham - cross

2 A Well, this could cover anything from the meter which
3 generally is on the customer's property somewhere,
4 back into the distribution of the distribution
5 substation, and in some cases even further than that,
6 or the areas of facility that would be involved here:

7 Sometimes it even gets into the subtransmission
8 system.

9 Q And does the purpose of these terms and conditions
10 with respect to facilities set forth in writing what
11 facilities CEI will provide at its expense and what
12 facilities the customer will provide at his expense?

13 A They generally spell out the minimum facilities that
14 the company will furnish at its expense, and they
15 imply, and in some cases state that the customer will
16 supply some other things.

17 MR. HJELMFELT: I would ask that the
18 witness be furnished Exhibit 2605, please.

19 {After an interval.}

20 Q Can you identify that exhibit, please?

21 A This exhibit is made up of -- it must be a large
22 number of various different rate schedules that the
23 company has had over various periods of time.

24 A part of it appears to be -- the first part
25 appears to be rates that were proposed originally in

Bingham - cross

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2 late March of 1978, and there was what we call a rate
3 case held on that, and whatever the final rates were,
4 they became effective I believe on May 8, 1979.

5 This was followed by, again, a set of rates --
6 well, the table of contents -- and then the general
7 rules and regulations and rate schedules that were in
8 effect generally from October 1, 1976, until May 8,
9 1979.

10 That is followed by --

11 THE COURT: Are we going to have
12 to go through this document page by page?

13 MR. HJELMFELT: No, your Honor.

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

16 THE COURT: Yes.

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

20 MR. HJELMFELT: I didn't want to cut
21 off his answer.

22 MR. LANSDALE: It appears to me to be
23 a collection of our rate schedules in part, and in
24 part certain applications dating from as early as
25 1970 to date, and I object to confronting the

1 Bingham - cross .

2 witness, without notice, with just a hodgepodge
3 like this, with no way to find your way through it.

4 He has got to look at it page by page to be
5 sure the answer is right, and I think that is
6 unreasonable, and I object.

7 THE COURT: It appears to be a
8 conglomerate.

9 MR. HJELMFELT: It is a collection of
10 rate schedules over a period of years, and what I
11 want to get at and direct his attention to is the
12 general rules and conditions for Rule 9 that was
13 in effect in the period 1973.

14 THE COURT: Read that to me,
15 please.

16 {Record read by the court reporter.}

17 THE COURT: Why don't you ask him?

18 MR. LANSDALE: I submit that he has
19 rate schedules there running out of his ears, and
20 if he wants a certain schedule, he can make it an
21 exhibit.

22 THE COURT: Well, we will straighten
23 it out, Mr. Lansdale.

24 {End of bench conference.}

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Bingham - cross

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2 THE COURT: I think perhaps you
3 should ask him the direct question and eliminate
4 the necessity for him to go through this.

5 BY MR. HJELMFELT:

6 Q In dealing with a residential customer, CEI would provide
7 the wire running from the distribution lines over to the
8 residence; is that correct?

9 A Yes.

10 Q And is that referred to as the "secondary"?

11 A No.

12 Q Or the "house loop"?

13 A It is called the "service drop."

14 It is generally supplied from the secondary
15 distribution system.

16 THE COURT: Keep your voice up.

17 Q And CEI would pay the expense of the service drop; is
18 that correct?

19 A Yes.

20 Q And CEI would also install and maintain at its expense
21 the meter used to measure how much electricity was
22 taken by the customer?

23 A Yes.

24 Q And the transformation needed to reduce the current
25 down to the level used by the homeowner or the resident

Bingham - cross

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would also be furnished at CEI's expense?

A The voltage, yes.

Q And if you were in an area where you had underground service, CEI would also pay for the underground service drop, the service wire; is that correct?

A I don't believe that that is generally correct.

Q At any rate, that would be set out in the terms and conditions of the tariff, would it not?

A That doesn't happen to be.

Q Now, the wiring inside the house would be provided for by the customers; is that correct?

A Yes.

Q And the customer would furnish the master switch?

A In a new home, yes.

Q And were there other items that the customer would provide?

A In a new home he would provide the pipe that comes down the side of the building or the service cable, whichever it may be, and the meter socket.

Q And what is the meter socket?

A It is what you plug the meter into.

Q And you have been distinguishing between a new residence, I assume, from an old, and what difference would that make?

Bingham - cross

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A There are quite a few things that we would do with that kind of equipment.

We would replace at our cost the maintenance disconnect and the service pipe and the meter socket that goes with it; whereas, we would not furnish that equipment in new housing generally.

Q And will you furnish any interior wiring?

A Generally speaking, no.

Q And if the customer wanted to change the location of the service entrance on his house, such as from the rear to the side, would the customer be expected to pay for that entrance?

A That would depend on the facts of the situation.

Q Could you give me an example of a situation where CEI would pay for that expense?

A Probably in the case of a residential customer, we would ask the customer to pay for it, because -- well, there are cases where we would not.

If a customer, say, had a service attachment at the back of his house, and he was putting on an addition, we would probably relocate the service connection point at our cost; as a matter of fact, I am sure we would relocate it at our cost.

Q And these things you would do uniformly throughout

Bingham - cross

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2 your service territory; is that correct?

3 A Generally speaking, yes.

4 Q And you say "generally speaking."

5 Are there exceptions?

6 A It depends partly on the conditions. For example, if
7 a customer just wanted his service entrance loop moved
8 because he didn't like it here and he would rather have
9 it over there, because it went over his new swimming
10 pool, we might charge; on the other hand, the example
11 I gave you, if he is putting an addition on the house,
12 that was a different proposition.

13 Now, there is another set of cases that you get
14 into it, and this doesn't have to be residential, where
15 a customer had a service installed at one particular
16 location for a very long period of time, and if he
17 wanted to add something onto his building, we would do
18 the same thing that I said we would do for the
19 residential customer.

20 We would, in all likelihood, shift and relocate
21 the service at our cost.

22 On the other hand, if the new service had just
23 been put in, and I can think of one case many years ago,
24 and I believe it was a bowling alley, and the service
25 was virtually brand new, and the customer suddenly

Bingham - cross

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2 decided he wanted to add to his bowling alley, and we
3 made him pay for that shift.

4 We felt that it occurred in a short enough period
5 after the original installation such that he should have
6 known what was going to happen; and therefore he should
7 have paid for it; so there is a lot of latitude in
8 how you apply these rules.

9 Q But again, these examples that you gave me wouldn't
10 depend on a geographic area, whether you were inside
11 the City of Cleveland or outside?

12 A That is correct.

13 Q And what you have been talking about with respect to
14 latitude, that is part of the function of rate
15 administration; is that correct?

16 A In a sense.

17 Q Now, we established some internal rules on what we will
18 do and what we will not do.

19 Now, like this addition on the house -- I probably
20 would never hear about things like that. The ones
21 that generally I hear about is where there is some
22 disagreement between the people, say in the customer
23 engineering elements, and in the Energy application
24 service elements, as to whether the customer should
25 pay or should not pay, and I guess I generally hear

Bingham - cross

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2 about the ones that have a lot of dollars associated
3 with them.

4 Q Now, from 1971 to 1973, did CEI have something called
5 a Muny Displacement Allowance?

6 A We had a program that I suppose could have gone under
7 that name.

8 The exact name, I am not sure about.

9 I certainly would not dispute your words.

10 Q Do you have other terms for it that you are more
11 familiar with?

12 A I think different people called it different names,
13 but, yes, we had a program that involved displacement
14 of Muny service.

15 Q And what was that program?

16 A I believe in the period from -- well, all of 1971,
17 say, perhaps to the middle of 1973, we would pay for
18 certain facilities over and above that, or perhaps
19 not even of the type that we would normally furnish
20 in order -- if the customer would convert from Muny
21 to CEI.

22 Q And was this available only in the area in which CEI
23 was competing with Muny Light?

24 A Yes, it was available in the competitive areas.

25 We were doing what we felt that we had to do to

Bingham - cross

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2 meet the competition.

3 Q And what sort of things would you do?

4 A In one area that I am thinking of, the Muny Light
5 plant had a practice of combined billing or
6 conjunctional billing, which I will describe.

7 It is a practice whereby a customer may have more
8 than one service, more than one meter, and generally
9 at different locations, and in the billing process those
10 meters are summed up and billed as if they were one.

11 This produces a significantly lower, generally
12 lower amount of revenue than if they were billed at
13 separate accounts.

14 CEI has not done this to my knowledge, has not done
15 it during my tenure with the company except in most
16 unusual conditions.

17 We would, in cases where a customer of that
18 nature was willing to convert over to CEI, hire a
19 contractor in order to wire the separate service
20 entrance points supplied by Muny to a single point
21 that could be supplied by CEI, so that it would be
22 from thence forward the same as other CEI customers.

23 Q And were there any other things that CEI did under
24 this program?

25 A There are cases where I believe in apartment houses,

Bingham - cross

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2 some apartment houses, and in particular I guess I am
3 thinking of two kinds of things, and very old ones,
4 where for some reason some work was being done that
5 very likely had a number of code violations.

6 I am not exactly sure what this term means, but
7 we used to do some work called "dressing up the
8 service entrance," or something or other.

9 Generally speaking, we did this, to my knowledge,
10 only in those cases where we were led to believe that
11 Munny was offering the same thing.

12 In the case of residential, there were various
13 different situations that occurred.

14 In some instances, in order to connect up,
15 really nothing had to be done but to connect up to our
16 service drop or loop to the top of the pipe that was
17 there.

18 In other cases the service might have been
19 inadequate, in which case we would increase the pipe
20 and furnish a maintenance switch, and in other
21 locations, in other situations, and I am sure this
22 must have happened, the CEI service entered at a
23 different place than the Munny service had entered, in
24 which case I believe there were some instances where
25 we paid a contractor to wire across the basement between

Bingham - cross

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2 the two points.

3 Those cover the same kinds of things that I can
4 think of.

5 Q And did these programs appear in your filed terms and
6 conditions?

7 A No.

8 Q Did CEI bear the full cost of these programs?

9 A Generally speaking, I expect in the majority of the
10 cases, the consumer incurred no expenditure.

11 I am sure that in a number of cases that was not
12 true, and they probably did incur expenditures for
13 something.

14 MR. HJELMFELT: Would this be a
15 convenient time for the recess?

16 THE COURT: It would probably be
17 a convenient time for the adjournment.

18 Now, if you are going on to another subject,
19 fine.

20 Ladies and gentlemen of the jury, we will
21 adjourn for the day, and the exhibits of the day
22 that you have not been introduced to or have not
23 viewed will be submitted to you, and you will
24 return tomorrow at 8:45.

25 Please during adjournment, please adhere to

1 the Court's admonition, that you do not discuss
2 the case with anyone, not even among yourselves,
3 and that you please keep an open mind until you
4 have heard all of the evidence and the case has
5 been submitted to you for your final judgment
6 upon the instructions of the Court.

7 With that, good night, and have a nice
8 evening. We will see you tomorrow morning.

9 {Court adjourned for the day.}

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Transcript

Thursday, October 2, 1980

Bingham
Moore court room

KF
228
.C43
1980

1 THURSDAY, OCTOBER 2, 1980; 9:05 A.M.

2
3 {The following proceedings were had before
4 the jury entered the courtroom:}

5 THE CLERK: City of Cleveland,
6 plaintiff, versus the Cleveland Electric Illuminating
7 Company, defendant.

8 This is Civil Action No. C 75-560.

9 {The Court and the Clerk, Mr. Schmitz,
10 conferred off the record.}

11 THE COURT: How long are you going
12 to take with this witness, Mr. Hjelmfelt?

13 MR. HJELMFELT: 20 minutes, maybe.

14 THE CLERK: Do you want the jury?

15 THE COURT: Call the jury.

16 - - - - -

17 {The Clerk calls the jury to enter the
18 courtroom.}

19 THE COURT: There are some exhibits
20 here, gentlemen, that we can admit into evidence,
21 those that there are no objections to, if you will
22 approach the bench.

23 {Respective counsel approach the clerk's
24 table.}

25 THE COURT: Why don't we just come

1 around here, Mr. Murphy.

2 {Respective counsel approached the bench.}

3 THE COURT: Good morning, ladies
4 and gentlemen.

5 THE JURORS: Good morning, your
6 Honor.

7 THE COURT: Somebody must have got
8 caught in the sculpture traffic. Is that right?

9 That's always a good time to put those things
10 up and take them down, during the busy hour.

11 - - - - -

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

14 THE COURT: I have the following
15 exhibits to which there are no objections.

16 57, 570, 578, 755, 796, 1433, 1493, 2301, 2302,
17 2303, 2304, 2626, 2628, 2629, 2694, 2949, 2959, 2960,
18 3077, 3078, 3079, 3080, 3086, 3087, 3088, 3089, 3090.

19 Those are all plaintiff's exhibits.

20 The following CEI exhibit: 1173.

21 There have been objections taken to a number of
22 exhibits which we can address at the recess.

23 MR. MURPHY: Fine, your Honor.

24 MR. NORRIS: Would you read those,
25 your Honor, the ones that we're going to be able to

1 address at the recess?

2 THE COURT: 569, 581, 833, 1048,
3 2557, 2558, 2627, 2713, 2714, 2736, 2958, 795,
4 and 2605.

5 MR. NORRIS: Thank you.

6 {End of bench conference.}

7 - - - - -

8
9 CROSS-EXAMINATION OF WILLIAM N. BINGHAM {Resumed}

10

11 BY MR. HJELMFELT:

12 Q Good morning, Mr. Bingham.

13 A Good morning.

14 Q The Munny displacement allowance that we were talking
15 about yesterday was generally a wiring allowance program,
16 was it not?

17 A Yes.

18 MR. HJELMFELT: I would ask that Mr.
19 Bingham be handed PTX 2457.

20 {After an interval.}

21 Q Mr. Bingham, this is information that you furnished to
22 the Public Utility Commission of Ohio in connection
23 with the investigation of promotional activities of
24 utilities in Ohio; is that correct?

25 A Yes.

Bingham. - cross

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2 Q Did you ever see the preparation of that material?

3 A I had a general responsibility for seeing that it was
4 put together.

5 Q And you were generally familiar with the material?

6 A Most of it.

7 Q I would ask you to turn to B, which I believe is the
8 fifth page, although they are not numbered -- actually,
9 on page 6 of it it lists a Commission request for
10 certain information, and Part B of that request they
11 ask for information relating to promotional payments to
12 stores or individuals who sell electrical appliances,
13 discounts, or wiring allowances.

14 Now, that would be a Muny displacement allowance
15 that would fall within the category of a wiring
16 allowance?

17 A No.

18 Q And what category would that fall in?

19 A I am sorry. I think perhaps you may be right. It is
20 about the only one of the three that it could be in.

21 The problem is that the general heading here asks
22 for, "Amount spent on activities such as but not limited
23 to," and the Muny practice would be under the, "But
24 not limited to" part.

25 Q The Muny practice did include wiring allowance?

1 Bingham - cross

2 A Yes. It included payments for wiring, yes.

3 Q Now, if I could invite your attention to page 9; am I
4 correct that on page 9 that is the page that you set
5 forth the Bar expenditures in response to the questions
6 that appeared on page 6?

7 A Yes, that is correct.

8 THE COURT: I can't find it --
9 page 9 of Tab B?

10 MR. HJELMFELT: No. Page 9. I
11 started counting from the start of the front of the
12 book.

13 THE COURT: All right. Go ahead.

14 Q Now, there is no amount shown on page 9 for the category
15 of wiring allowance; is that correct?

16 A Yes, that is right.

17 Q The amount spent on the wiring allowance as part of the
18 Munny displacement program would show up in some of those
19 categories, would they not?

20 A You have got a misstatement of terms, Mr. Hjelmfelt.

21 "Wiring allowances," the term "wiring allowances,"
22 didn't apply to Munny. Now, as a generic term, if you
23 pay for something for wiring, I guess you could call it
24 a wiring allowance, but we had programs called
25 "wiring allowances," and it is going to be a little

Bingham - cross

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2 difficult to keep them separated, but, yes, the amounts
3 paid for Muny displacement is included on this page.

4 Q Now, what was your wiring allowance program?

5 A We have had -- we did have -- we no longer have --
6 programs where we would generally, in cooperation with
7 another party, pay for the installation of a 240-volt
8 circuit for the installation of a range, during some
9 periods for dryers, and other periods for water
10 heaters, and these were uniformly available throughout
11 the entire service area.

12 Generally speaking it would be in cooperation with
13 a dealer or distributor.

14 Q Now, referring now to the Muny displacement program,
15 what category would we find those dollars in?

16 A No. 8.

17 Q And standardization of customer services?

18 A Yes.

19 Q Am I correct that for 1972 that amount was \$421,119?

20 A You are correct.

21 Q Would there be any other accounts or categories there
22 that would include Muny displacement payments?

23 A There shouldn't be. They would include them only if
24 an error had been made in the accounting.

25 Q Now, was an amount for wiring allowance included in the

Bingham - cross

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2 cooperative advertising, dealer, distributor, and
3 manufacturing category?

4 A Yes.

5 That is where it all should have been.

6 I know one instance where it got into a different
7 category.

8 Q Now, is that the Muny displacement type of wiring
9 payments?

10 A No -- as I said --

11 Q The wiring allowance that you explained to me --

12 A -- excuse me.

13 As I just said, wiring allowances were the programs
14 generally cooperative with the dealer or distributor to
15 pay for the installation of the special 240-volt circuit
16 that was required to connect up the electric range,
17 dryer or water heater, and these programs were
18 uniformly available through the entire service area,
19 and because they were cooperative in nature, someone
20 decided they ought to be listed under the cooperative
21 advertising program, and they are included in the first
22 line under the heading, "Cooperative Advertising,"
23 where it says, "Dealer/Distributor/Manufacturer."

24 Q Now, were there any payments for wiring included in
25 the categories for builders?

Bingham - cross

Yes. That was the mistake I referred to earlier.

Okay. And which is that, Muny displacement wiring, or is that the other wiring allowance?

It is the other.

It was an error made by someone in our Eastern District Department. This is the area that covers most of Lake County, most of Geauge County, and Ashtabula County. And, for some reason, they either got the wrong instructions; but in 1973, they included these wiring allowances for at least a part of the year for the range-dryer-water heater type thing under builder programs.

Mr. Bingham, you were once head of the Technical Services branch, were you not, Technical Studies?

The General Supervisor of the Technical Studies Section reported to me for a period of time.

And during what period of time did he report to you?

1972 to '76.

I should also point out, so we don't confuse things, that prior to 1973 there was a rates and technical studies section which combined all of those functions into one section of which I was the head.

Was Mr. Moore in that section, technical studies section?

In what time frame?

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ey

Bingham - cross

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2 A Yes.

3 Q And the loss of those customers reduced the revenues
4 received by Muny Light, is that correct?

5 A I expect it did; with the one possible exception
6 mentioned earlier, if it had to be a customer that
7 didn't pay their bill.

8 Q But most customers do pay their bills, is that correct?

9 A Yes. Hopefully, yes; fortunately, yes.

10 MR. HJELMFELT: I would ask that

11 Mr. Bingham be handed PTX 319, please.

12 {The Clerk complies.}

13 THE COURT: What number is that?

14 MR. SCHMITZ: 319.

15 Q Would you identify that, please, Mr. Bingham?

16 A This is a memorandum -- company memorandum from Mr.
17 R. R. Gould who, at that time, I think was a manager
18 of one of the departments in the energy applications
19 services group, to me, on the subject of rate adjustment
20 request suggestions.

21 Q And he is suggesting, is he not, that the terms and
22 conditions of CEI's filed rates be amended to provide
23 for a program such as the Muny displacement allowance
24 program, isn't that correct?

25 A Yes, it would have provided for that, as well as other

Bingham - cross

possibilities.

Q But Muny's -- or CEI's terms and conditions never did have such a provision, did they?

A No such provision was ever finally approved by the Public Utilities Commission.

MR. HJELMFELT: No further questions.

THE COURT: Do you desire to make inquiry at this time, Mr. Lansdale?

MR. LANSDALE: Yes.

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REDIRECT EXAMINATION OF WILLIAM N. BINGHAM

BY MR. LANSDALE:

Q Mr. Bingham, early on you were asked a question relating to whether the company had determined its costs of service, and I believe that you were led to make a distinction between costs of service by class and overall costs of service.

What is the fact as to whether or not between 1946 which, I believe, was the year you gave, and to date, the company has made more than one determination of its overall costs of service in connection with applications for the rate changes before the Public Utilities

Bingham - redirect

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Commission?

A Well, the total costs of service, that is, for the whole company, would have to have been done and was done for every rate application made by the company.

Q And your suggestion that only two or three times in the past years had you made a determination of the separate cost of service by class of customers was related to the classwise determination of costs rather than the overall company costs?

A That's correct.

Q You have been interrogated to some extent about the expenditures of the company for the inducement of customers to change from Muny Service to CEI service.

What, if any, limitation on such expenditures did the company use and apply?

A For facilities which were in excess of those we normally supply to customers, we established a limit which was equal to one half years of the estimated annual revenue to be received from that customer in the future.

Q And the fact, of course, Mr. Bingham, that you made a specific expenditure for these customers that was not generally made for other customers meant that your costs of service to these specific customers were

Bingham - redirect

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2 greater than the average of other customers in the
3 specific class, did it not?

4 A Technically, yes.

5 Q You made -- have you made any determination as to
6 whether or not such expenditures were justified from a
7 profit standpoint by the revenue to be expected, that is
8 to say, the estimated annual revenue for such a customer?

9 A Yes. We analyzed, to the extent -- or have analyzed,
10 to the extent that we can, we are convinced that we
11 still made a profit on these customers, although it
12 might have been slightly lower than the average rate
13 of profit.

14 Q Now, you indicated, I believe, that you would dress up
15 the meter board, I believe was the expression you used,
16 for a residential customer, both to secure the conversion
17 of that customer from the Munny service to CEI service
18 and, also, to retain a CEI -- a customer as a CEI
19 customer.

20 Do you wish to correct that statement?

21 A Yes, I would like to make a minor correction.

22 Q What is the correction?

23 A I was -- we were only talking about apartment houses
24 and, generally, in the basement, there is something
25 known as the meter board. It's a collection of meters,

Bingham - redirect

1 switches, and so forth, and so on.

2
3 I find -- I overclaimed, is what I did. We would
4 make offers to do certain work in order to get a Muny
5 customer; indicated that we would also do this to retain
6 a CEI customer and, upon checking, I find I'm wrong.

7 Much to my surprise, I find that both we and Muny,
8 as far as we can determine, would try to raid each
9 other's customers, but would do nothing along this line
10 to save one of our own.

11 Q All right. Now, one more question.

12 You have indicated that in many instances,
13 primarily with respect to customers other than
14 residential, that the so-called wiring allowances were
15 made in order to consolidate the customer's wiring so
16 as to enable the service of the particular customer at
17 a single location.

18 What is the fact, Mr. Bingham, as to whether it is
19 more expensive to serve one customer from multiple
20 locations than it is to serve that same customer from
21 one location, even though in each case he takes the
22 same amount of energy and has the same characteristics
23 as to the manner in which he takes it?

24 A It is less costly to serve a customer through a single
25 delivery point than it is to serve him through multiple

Bingham - redirect

delivery points.

Q And, very briefly, tell me why.

A There are two main reasons for this.

One, -- let's talk in terms of, say, residential customers, where you may have a block of ten houses in a row.

In order to serve those ten homes, we will have an over -- generally, an overhead service loop into each of the ten homes, and we will have a meter, we will have secondary distribution lines down the street.

If you had just one customer, you would only have one loop in, although it might be of a larger size; you'd have one meter, and you probably would have less secondary distribution.

Now, this tends to show up in residential customers in -- for example, in our current rates, we have something -- one of the elements of the rate is a customer charge, in our case, it happens to be \$3 a month. The customer pays that amount whether he uses any electricity or not.

This charge, at least in part, recognizes the cost of the individual loop meter; and in that kind of property, it also recognizes the fact that we have to read each of those meters, we have to prepare a bill for each of these theoretical ten accounts; if you

Bingham - redirect

1 would have one customer, you have less property.

2 Q When you said a customer you mean --?

3 A Yes. If these ten were combined into a single customer
4 served at one entrance point.
5

6 As you start getting into larger sizes of customers,
7 you run into cases where each customer or the customer
8 will have his own individual transformer, that he is of
9 the size to warrant that kind of service.

10 That transformer is sized to meet that customer's
11 maximum load.

12 If you take a group of such customers and combine
13 them onto a single service entrance, it is statistically
14 a fact that any fair sized group of customers are not
15 all going to have their peaks at the same time.

16 One will have it at 10:00 o'clock in the morning,
17 and another at 3:00 o'clock in the afternoon, and,
18 who knows, you may get one that would have a peak at
19 night, where they were running machinery on the night
20 shift; so when you combine those individual loads, it
21 is what we call the "coincident load," the sum of the
22 loads of the individuals, the maximum of that
23 combined coincident load will be less than the sum of
24 the individual maximum loads; so that the transformer
25 that you would put in to serve a combined load would

Bingham - redirect

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2 be smaller than -- smaller in capacity than the sum
3 of the capacities of transformers that would be
4 required to supply the loads individually.

5 Q And is it fair to state that when the number of
6 entrance points to a single customer is reduced in
7 number, the cost of service is reduced?

8 A Yes, it is.

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

11 THE COURT: Recross-examination.

12 - - - - -

13
14 RECCROSS-EXAMINATION OF WILLIAM N. BINGHAM

15
16 BY MR. HJELMFELT:

17 Q Did CEI ever exceed the one half of the estimated annual
18 revenues in the payments under the Muny displacement
19 program?

20 A I am sure there must have been a couple of instances
21 where that happened accidentally.

22 Q And you don't have personal knowledge of Muny Light's
23 practices that you were describing, do you? That is
24 something that you were told?

25 A Yes.

Bingham - recross

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2 Q And I understand that you were willing to take a lower
3 profit on your business when faced with that competition;
4 is that correct?

5 A Yes; we would have been willing to do that.

6 Q Very few residential customers have multiple delivery
7 points, do they?

8 A Very few.

9 Q But there were still wiring payments or Muny displacement
10 items provided for residential customers that didn't
11 have multiple delivery points; isn't that correct?

12 A Oh, yes.

13 Generally that was a matter of trying to connect
14 up the old main switch location to the point of a new
15 service entrance, a wire across the basement, for
16 example.

17 Q Now, when you or CEI paid up to one half of the
18 estimated annual revenue to obtain a municipal customer,
19 the amount would not be recovered from that customer for
20 several years, would it, through the rates?

21 A It would take time, yes.

22 Q Do you have any idea how long it would take?

23 A It would vary with the specific individual case.

24 You have got to realize there are a lot of places
25 where we could connect up a customer, and although we

Bingham - recross

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2 might make a wiring payment and do some free wiring,
3 we didn't really incur any other costs at all, and
4 in fact, even including the payment for wiring, the
5 total cost to service that customer might in fact
6 have been less than the average that we already had,
7 so you just can't generalize on that.

8 Q There would be cases where the pay-back period would
9 be a number of years?

10 A Yes, I am sure.

11 MR. HJELMFELT: That is all.

12 MR. LANSDALE: I have no further
13 questions.

14 THE COURT: You may step down.
15 Please call your next witness.

16 MR. NORRIS: We call Mr. George
17 Moore, please.

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1 G E O R G E M O O R E,

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

5
6 CROSS-EXAMINATION OF GEORGE MOORE

7
8 BY MR. NORRIS:

9 Q Please state your name for the record.

10 A George Lawrence Moore.

11 MR. NORRIS: If your Honor please,

12 I can't hear the witness.

13 THE COURT: Pull up the

14 microphone.

15 MR. NORRIS: Thank you.

16 A {Continuing} George Lawrence Moore; M-o-o-r-e.

17 Q And what is your address, please?

18 A 16966 Bob White Circle, Strongsville.

19 Q And you have an electrical engineering degree from Case;
20 is that correct?

21 A That is correct.

22 Q When did you graduate?

23 A 1960.

24 Q How long have you been employed by CEI, Mr. Moore?

25

1 Moore - cross

2 A On a full-time basis, since 1960.

3 Q 1960?

4 A That is correct.

5 Q And on a part-time basis prior to that time; is that
6 right?

7 A Yes; the summers of 1958 and 1959.

8 Q What jobs have you held at CEI?

9 A Well, the titles have varied over the years, but since
10 1960 I have worked in the Rates and Technical Studies
11 Section of the Treasury Department, which is the
12 Finance Group, and with the exception of about a
13 two and a half year period between 1976 and 1978, when
14 I was in the Transmission and Distribution Engineering
15 Department.

16 Q And then you went back to the Rate Section?

17 A Yes.

18 Q And your title was Rate Engineer?

19 A Senior Rate Engineer.

20 Q Please describe what is a Senior Rate Engineer or a
21 Rate Engineer.

22 A Well, I guess a Rate Engineer would have responsibility
23 for bringing together various pieces of information
24 which may be available throughout the company to
25 address a specific kind of problem, principally

Moore - cross

1
2 financial in nature, and generally related to the
3 development of costs or rate schedules.

4 Q Do you have an accounting background as well as an
5 engineering background?

6 A I think I have taken one or two accounting courses.

7 Q What about additional courses, Mr. Moore, in the
8 financial area? Have you had any additional education
9 along that line?

10 A I have a Master of Science degree in engineering
11 administration, which I would think that that would
12 provide additional information along those lines.

13 Q Where did you get that, at Reserve?

14 A Case Western Reserve.

15 Q When?

16 A 1963.

17 Q And the course of study for that degree included
18 financial management courses, is that correct?

19 A I believe so.

20 Q Just to your left, Mr. Moore, is a chart on the easel,
21 Plaintiff's Exhibit 248b, and is that an accurate
22 representation of the Treasury Department during the
23 period of the early '70's?

24 A It is dated August 1st, 1974, and I believe that it is
25 accurate.

Moore - cross

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Q Would you kindly locate on that chart for the jury the square that has your name in it, so that your line of reporting can be identified.

A I am identified here, and my line of reporting would be through Mr. Bingham to Mr. Loshing.

Q Thank you.

How many Rate Engineers were there at CEI in the 1974 period?

A There were two.

Q At the top of that exhibit there is an objective set forth.

Who established the objective described on that exhibit, Mr. Moore?

A I don't know who established that.

Q Would you accept the proposition that that objective was established by company policy as an objective carried out with the Treasury Department?

MR. LANSDALE: Objection.

THE COURT: Sustain the objection.

He just answered the question. Let's proceed.

He said he doesn't know. You are asking him to guess.

Q Mr. Moore, over the years you have done various studies monitoring Muny Light's finances; is that correct?

Moore - cross

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A Yes.

Q And those studies have included Muny Light's rates and its competitive position; is that right?

A I am not exactly sure what you mean by "competitive position."

Q Well, vis-a-vis Muny Light.

A I was certainly aware of the difference in the level of bills between CEI and Muny Light at various points in time and for various sizes of customers.

Q And in addition to following the rates of the two companies, you did from time to time analyze their operating expenses and make comparisons between them, didn't you?

A Yes.

Q And you would make calculations as to what percentage relationship there was between rates charged by the two competitors for different kinds of services; is that right?

A Yes. I would call that making a bill comparison study.

Q Were there any other providers of electric service included in those bill comparison studies?

A I believe you asked me about comparing CEI and Muny bills, which we did.

Q Let me rephrase the question:

Moore - cross

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2 You stated that the percentage comparison of rates
3 for different kinds of service, you would characterize
4 as a bill comparison study; is that correct?

5 A Yes.

6 Q And in those bill comparison studies that you made that
7 involved the Muny Light rates, there were no comparisons
8 -- there was no data other than data relative to CEI and
9 Muny Light?

10 A I think that is correct.

11 Q And you have also had occasion, have you not, to study
12 over the years the value of the Muny Light in the event
13 that CEI should be able to purchase it; is that correct?

14 A That is correct.

15 Q You are familiar with the CEI service area in general
16 terms; is that right?

17 A Yes.

18 Q And the only areas in CEI's service area where CEI has
19 competition are within the City of Cleveland and a
20 12-square mile area adjacent to the City of Painesville;
21 is that accurate?

22 A Are you asking if that is for electric service
23 competition, competition for electric service?

24 Q Yes. Thank you for that correction.

25 With that correction, is that an accurate statement?

Moore - cross

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A Direct house-to-house competition for electric service, yes.

Q Well, what about other competition; does CEI have in the providing of electric service other than within the City of Cleveland and in the 12-square miles adjacent to the City of Painesville, what other competition does CEI have?

A This is perhaps more general, but we certainly have had competition with the gas companies that serve in the area, and we have had competition with respect to isolated generation, and we have had competition between serving our own area or customers who might locate in our area as opposed to locating in other geographic areas.

And those would be additional kinds of competition that the company would have.

Q Is it a fair statement that the area in which CEI has no direct house-to-house street-by-street competition in the supplying of electrical service, probably is 98 percent of CEI's total service area?

A I would think that it would be close to that.

MR. NORRIS:

Mr. Schmitz, would you

kindly hand the witness Plaintiff's Exhibit 1788.

{After an interval.}

Moore - cross

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2 Q Mr. Moore, can you identify Plaintiff's Exhibit 1788?

3 A Yes.

4 Q Would you please do so.

5 A This is entitled, "The history of rate schedules of
6 the Cleveland Municipal Electric Light Plant, Cleveland,
7 Ohio."

8 Q Did you have any involvement in the preparation of that
9 document?

10 A Yes.

11 Q What involvement did you have in the preparation of that
12 document?

13 A The initial, at least the initial ten pages had been
14 prepared by someone other than myself.

15 But the subsequent material was either prepared by
16 me or at my request.

17 Q The first ten pages, Mr. Moore, were prepared, I take
18 it, by some other CEI employee; is that correct?

19 A I would think so, yes.

20 Q And were those earlier pages then prepared, did you say,
21 prior to your joining the company; insofar as you know?

22 A I don't know whether it would have been prior to my
23 joining the company.

24 I broke that at about 1960, so it may have been
25 before I joined the company.

Moore - cross

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2 Q Now, am I correct that Plaintiff's Exhibit 1788 sets
3 forth a history of Muny Light's rates and rate
4 schedules from 1914 to approximately 1973; is that
5 correct?

6 A Yes.

7 Q Have you kept up with Muny Light's rates since 1973
8 in your department?

9 A I left the Treasury Department in 1976, for a
10 two-and-a-half-year period of time, and I haven't been
11 directly involved with those activities since then, so
12 I am not sure what happened after that time, but I
13 would think that up to the time I left that we were
14 familiar with the changes in Muny Light's rates.

15 Q And when you say "we," I presume you mean to include
16 yourself and you also were familiar?

17 A Yes.

18 Q Is it a fair statement, Mr. Moore, that with respect
19 to Muny Light's rates, you have probably analyzed on a
20 continuous basis every rate change Muny Light has made
21 from the mid-'60's to 1976, the time that you left
22 that department, is that a fair statement?

23 A Yes.

24 Q That was part of your job, wasn't it?

25 A Yes.

Moore - cross

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Q And throughout that period of time Muny Light's rates were traditionally lower than CEI's rates; is that right?

A Generally.

Q Addressing your attention to the pages of Plaintiff's Exhibit 1788 that you stated that you prepared; and this is just after page 13, and there is a page headed, "Comparison between CEI's new rates and MELP's proposed rate ordinance 1629, 1973."

Do you see that page?

A Yes.

Q And am I correct that the proposed Muny Light rates that are referred to in your memorandum here were with respect to a rate proposal made in 1973?

A Yes, they were.

Q And the pages that are set forth here are the results of your analysis of those proposed rates; is that right?

A That is correct.

Q And looking at the first paragraph of your summary, you indicate "that Muny Light's proposed rate increase generally is more than CEI's."

Now, in making that statement, Mr. Moore, what comparison did you have in mind?

Moore - cross

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There is nothing in this document that refers to a CEI rate increase. Could you explain what you meant by that?

A I don't remember at this time.

Q Is it fair to say that there was some CEI proposed rate increase that you had in mind when you made this statement?

A The title of this is, "CEI's New Rates."

CEI had new rates going into effect in January of 1974, following a two- or three-year period of time which we were litigating the new rates.

Q Is it likely then that the 1974 CEI rates are what you had in reference to when you made this statement?

A Yes; they are. They had already been approved by the Public Utilities Commission.

Q And then the next sentence, "It should produce more than \$2 million a year, an increase of over 20 percent."

Was that a statement with reference to Muny Light's rates?

A It appears to be so, yes.

Q So your answer is yes?

A Correct.

Q And then your next sentence states: "The difference between the monthly charges of the two utilities has

Moore - cross

1
2 been eliminated or reduced to an almost insignificant
3 amount for 99 percent of MELP customers {those billed
4 on their residential and small commercial schedules}."

5 Is that correct?

6 THE COURT: What page are you on?

7 MR. NORRIS: I am sorry. I am
8 reading from the page immediately behind No. 13.
9 It is an unnumbered page.

10 THE COURT: All right. It is
11 styled, "Comparison between CEI new rates and
12 MELP's proposed rates"?

13 MR. NORRIS: Yes.

14 THE COURT: All right.

15 THE WITNESS: May I have the question
16 read back?

17 THE COURT: Read the question.

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

20 "Q And then your next sentence states:

21 'The difference between the monthly charges of the
22 two utilities has been eliminated or reduced to an
23 almost insignificant amount for 99 percent of MELP's
24 customers {those billed on their residential and
25 small commercial schedules}.'

Moore - cross

1
2 A Yes.

3 Q Was that the first time, Mr. Moore, in your experience,
4 that the rates of the two utility systems had become
5 so closely equalized?

6 A Yes, but I would like to explain.

7 Q Please go ahead and explain.

8 A There was a rate change that both utilities made in
9 about 1970 and 1971, and I think the bill comparisons
10 would indicate that the relative rates were relatively
11 close at that time, but I would have to look at that
12 to be sure.

13 Q Did there then occur a resotation of the rate
14 differential through increases, either by one utility
15 or the other?

16 A There would have been changes from time to time in that
17 period of time, and I am not sure exactly what the
18 comparison would be without having the additional data.

19 MR. LANSDALE: Objection.

20 THE COURT: Approach the bench.

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

24 MR. LANSDALE: These matters of timing
25 of the rate increases, and so on, are covered in

1 Moore - cross

2 a series of stipulations.

3 The one that was first inquired of this
4 witness was Stipulation 94.

5 MR. NORRIS: What was that?

6 MR. LANSDALE: 94.

7 THE COURT: Which one?

8 MR. LANSDALE: 94 is the stipulation
9 which covers the CEI rate increase which was
10 initiated in 1971 and effective January 22, 1974.

11 The subsequent stipulations seemed to cover
12 the other things, and I have what I might characterize
13 as a "minor objection" to putting the witness through
14 this memory course when we have got a stipulation.

15 MR. NORRIS: I am going to be asking
16 the Court to read that, but I went into those
17 questions, Mr. Lansdale, because of his responses to
18 my earlier questions about his memorandum.

19 You are absolutely correct, and a little later
20 in my examination I will ask the Court to read
21 several of those stipulations.

22 THE COURT: Why do we keep repeating
23 all the time. You keep wasting time with these
24 repetitious matters.

25 MR. NORRIS: Your Honor, I was only

1 Moore - cross

2 following up on an answer that the witness gave
3 me, and I will move right on to the question and
4 request to read the stipulation.

5 THE COURT: It is all here --
6 which stipulations?

7 MR. NORRIS: Well, I am going to
8 request -- but I would like them read in a certain
9 order.

10 THE COURT: Fine.

11 MR. NORRIS: And I am not quite to
12 the point where I want them read. Shall I give you
13 the list?

14 MR. LANSDALE: I object to putting
15 this witness through a memory course on these
16 dates and comparative timings.

17 THE COURT: Yes, when it is all
18 here and it is stipulated to, and why are you
19 asking him to try to remember?

20 MR. NORRIS: I am not covering the
21 same material that is in the stipulation.

22 I asked him to tell me, your Honor, which
23 rate increases he is referring to in his memo, and
24 it is not indicated there.

25 MR. LANSDALE: You didn't give him the

Moore - cross

1
2 date, which is cut off there -- January 24, 1974.

3 MR. NORRIS: I was unaware of that
4 date.

5 MR. LANSDALE: And you are suggesting
6 to him that it is a proposed CEI rate increase when
7 it is not.

8 MR. NORRIS: That does not appear
9 on the exhibit, and if you tell me that that is a
10 cut-off date, I will accept it.

11 THE COURT: I will let him go and
12 keep it in context, but I am telling you, you
13 people sure know how to waste time.

14 Let's proceed.

15 MR. NORRIS: I am trying, your Honor.

16 THE COURT: You are not trying hard
17 enough.

18 {End of bench conference.}

19 - - - - -

20 MR. NORRIS: Would you hand the
21 witness Exhibit 245.

22 {After an interval.}

23 BY MR. NORRIS:

24 Q Mr. Moore, I hand you what has been marked for
25 identification as one of the defendant's exhibits, which

Moore - cross

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2 bears the number CEI 245, and the cover page of that
3 exhibit indicates that it is a report dated April 28,
4 1942, I believe, by the Cleveland Municipal Light
5 Plant Association; is that correct?

6 A Yes, sir.

7 Q I am going to put on the overhead screen page 16 from
8 that report.

9 Would you find page 16, please?

10 A Yes, sir.

11 Q At the bottom of that page, of page 16, there is a
12 table, and it is a residential service table, and it is
13 in two parts.

14 On the left side of the table it refers to 25
15 KWH, and on the right side it refers to 100 KWH.

16 Do you see that?

17 A Yes, I do.

18 Q Addressing your attention to the left side of that
19 table, the rate block 25 KWH.

20 Is it accurate, to your knowledge, that CEI had
21 identical rates from 1924 down to 1932, and then a
22 rate decrease, and then the rates were uniform from
23 1933 to 1940; and is that correct, to your knowledge?

24 MR. LANSDALE: Objection.

25 THE COURT: Approach the bench.

1 Moore - cross

2 - - - - -

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

5 MR. LANSDALE: I doubt if this
6 witness was even born at that time.

7 That is a report not made by the company. It
8 is a report by somebody else, and if these data are
9 important, I suppose we could find out what the fact
10 is, but I object to asking this witness such a
11 question.

12 MR. NORRIS: Well, it is his
13 experience --

14 THE COURT: Mr. Norris, let me
15 ask you, under what rules of evidence are you
16 proceeding with this line of questioning?

17 He has neither identified the report, and you
18 don't give it credibility, and you don't ask the
19 witness whether or not he has ever seen it before.

20 You don't ask anything. You are just reading
21 this into the record.

22 I will sustain the objection, and let's proceed
23 in a proper manner. Let's stop these departures
24 from basic rules of evidence. You ought to know
25 better than that.

1 Moore - cross

2 {End of bench conference.}

3 - - - - -

4 THE COURT: Mr. Norris, you may
5 proceed with this line of questioning if you can
6 qualify and lay a proper foundation and establish
7 the credibility of the document and this witness's
8 familiarity with it.

9 BY MR. NORRIS:

10 Q Mr. Moore, have you ever seen this report before?

11 A I believe I have.

12 Q Have you had any occasion to use it in your business
13 as a senior rate engineer for CEI?

14 A No.

15 Q What use have you made of this report?

16 A I saw it was available and noted its existence during
17 the preparation for trial.

18 Q Have you made any attempt to determine whether anything
19 in this report is accurate?

20 A No, I haven't.

21 {After an interval.}

22 THE COURT: Please proceed in
23 accordance with the rules of evidence, Mr. Norris.

24 MR. NORRIS: Mr. Schmitz, would you
25 kindly hand the witness Defendant's CEI-30?

1 Moore - cross

2 {The Clerk complies.}

3 Q Mr. Moore, this exhibit is entitled, "The Cleveland
4 Municipal Light Plant," by Edward J. Kinnealy.

5 Are you familiar with this document?

6 {After an interval.}

7 A Yes, I have read it.

8 Q And have you read it in connection with your employment
9 as a senior rate engineer at CEI?

10 A No.

11 Q Have you had any occasion to examine its contents from
12 the standpoint of accuracy and truth?

13 A I've read this document during the preparation for trial.

14 There are statements that the author makes in the
15 document that I have no reason to disbelieve.

16 Q Would you turn to page 107 of this document?

17 In the middle of the page is a paragraph entitled,
18 "Rates", --

19 THE COURT: Just a moment, please.

20 Let him find it.

21 {After an interval.}

22 THE COURT: Are these pages
23 numbered, Mr. Moore?

24 MR. NORRIS: Yes, in the upper
25 right-hand corner.

1 Moore - cross

2 THE COURT: I'm sorry. My page
3 numbers are obliterated.

4 MR. NORRIS: May I approach the
5 bench, your Honor?

6 THE COURT: There are some
7 paragraph identifications in the upper left-hand
8 corner of each page.

9 Could you direct me to the appropriate
10 paragraph number?

11 MR. NORRIS: The appropriate
12 paragraph number is number two, your Honor.

13 The pages should be numbered in the upper
14 right-hand corner.

15 THE COURT: What page are you
16 referring to?

17 MR. NORRIS: I'm referring to page
18 107.

19 THE COURT: I have a page here
20 styled "A summary of the outstanding facts", is
21 that the one?

22 MR. NORRIS: Yes, that's correct.

23 THE COURT: All right.

24 Are you standing to object?

25 MR. LANSDALE: Mr. Norris had asked

1 Moore - cross

2 to approach the bench, and I was just waiting for
3 the cue lead to come up.

4 MR. NORRIS: I will withdraw the
5 question.

6 I will approach the bench after I have asked
7 the next question.

8 BY MR. NORRIS:

9 Q Have you had a chance to read that paragraph?

10 A Yes.

11 Q Referring to the last sentence in that paragraph, do
12 you have any reason to disagree with the last sentence?

13 A I don't believe I have any knowledge one way or the
14 other about that sentence.

15 MR. NORRIS: May we approach the
16 bench, please, your Honor?

17 THE COURT: Yes, you may.

18 - - - - -

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

21 MR. NORRIS: I request that the
22 Court read Joint Stipulations 85 --

23 THE COURT: Just a moment. Is this
24 the sequence in which you would like them read?

25 MR. NORRIS: Yes, your Honor.

Moore - cross

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2 THE COURT: 85 --
3 MR. NORRIS: 85, 204 --
4 THE COURT: Just a moment.
5 85, 204, --
6 MR. NORRIS: And then 87, --

7 MR. LANSDALE: Is that 204?

8 MR. NORRIS: Yes.

9 THE COURT: 87, yes.

10 MR. NORRIS: 88, 89, 92, 94, and 97.

11 MR. LANSDALE: You're omitting --

12 I object to reading those without reading the
13 intervening ones in view --

14 THE COURT: Without what?

15 MR. LANSDALE: Without -- I object
16 to reading 89 and skipping to 92 without reading
17 No. 80.

18 Mr. Norris is dealing here with rate
19 comparisons not with basic rates, and he's
20 requesting you to read information as to what the
21 CEI rate changes were in the various periods prior
22 to the damage period; and I submit that the
23 intrinsic character of CEI's rates in those
24 periods is not relevant, it's only relevant if it's
25 used for comparative purposes, even if that is

Moore - cross

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2 relevant.

3 THE COURT: Well, I can't tell him
4 the sequence he wishes me to read them in, Mr.
5 Lansdale.

6 It's quite apparent what the tactic is here,
7 but if you are desirous of having --

8 MR. LANSDALE: I think I will withdraw
9 that.

10 I will object to all of these, I object to all
11 of them, Exhibit 204, on the ground that it's not
12 relevant.

13 THE COURT: Well then I'm going to
14 have to read them.

15 What I was going to say before you interrupted
16 me, Mr. Lansdale, was --

17 MR. LANSDALE: Sir?

18 THE COURT: What I was going to say
19 before you interrupted me was that I can't preclude
20 him from requesting a reading in the sequence in
21 which he projects them.

22 MR. LANSDALE: Of course not.

23 THE COURT: However, if, on your
24 redirect, you are desirous of having them read in
25 sequence, I'll reread those which Mr. Norris has

1 Moore - cross

2 requested in the order in which you are desirous
3 of having them read. That's what I --

4 MR. NORRIS: If I may be heard,
5 your Honor?

6 THE COURT: Yes..

7 MR. NORRIS: My purpose in selecting
8 this order was to try to deal with the same subject
9 matter and, at a subsequent time, I'm going to
10 request that those others be read.

11 I have no objection if your Honor wants to
12 include the intervening numbers, I don't have any
13 objection to them at all.

14 MR. LANSDALE: I don't think his Honor
15 has any desire one way or the other. But what
16 I'm -- I guess I have no really serious objection
17 to a historical rate comparison, but I do object
18 to the introduction of evidence as to --

19 THE COURT: If we're desirous of
20 developing substantive facts, gentlemen, it would
21 appear to me that if we are going to establish a
22 rate comparison as a substantive effect, then I
23 would say that the fairest way of doing it would be
24 to read it in sequence to show what the rate
25 comparisons actually were.

Moore - cross

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2 MR. LANSDALE: Well then, I would
3 amend my request, your Honor.

4 MR. NORRIS: I certainly do not
5 disagree with that, and I would suggest, however,
6 that we start with 85 and go to 204, then we come
7 -- I don't have my stipulations here -- I didn't
8 suggest that your Honor read 86 because it's a
9 table, and I don't think that that's a serviceable --

10 MR. LANSDALE: I agree as to 86.

11 MR. NORRIS: That is why I skipped
12 86.

13 THE COURT: 85, -- which ones do
14 you want to include, Mr. Lansdale?

15 MR. LANSDALE: 85, 87, --

16 THE COURT: Wait a minute.

17 Okay. 85, 87, --

18 MR. LANSDALE: -- 88, 90, --

19 THE COURT: How about 88 and 89?

20 MR. LANSDALE: 89 seems to deal with
21 something --

22 MR. NORRIS: I have requested 89.

23 MR. LANSDALE: All right, 89 --

24 MR. NORRIS: Just 87 through 94.

25 I have left out 95 and 96; I went to 97

1 Moore - cross

2 because it was a different subject; but if you want
3 it in, I agree.

4 THE COURT: Okay. Now, wait a
5 minute.

6 85, 204, 87 through --

7 MR. NORRIS: 94.

8 THE COURT: -- 94, --

9 MR. NORRIS: And then 97.

10 THE COURT: -- 97.

11 MR. LANSDALE: I agree with that.

12 THE COURT: All right.

13 Are you prepared for me to read them now?

14 MR. NORRIS: Yes, your Honor.

15 {End of bench conference.}

16 - - - - -

17 THE COURT: Ladies and gentlemen
18 of the jury, Joint Stipulation 85 reads as follows:

19 "In 1914, when Muny Light's East 53rd Street
20 plant was placed in service, the Council of the
21 City of Cleveland passed an ordinance that the
22 maximum rate for electricity in the City of
23 Cleveland should be 3 cents per kilowatt hour.
24 The municipal plant put this rate in effect.
25 CEI refused to lower its rate from the then

1 Moore - cross

2 existing 10 cents per kilowatt hour rate and
3 appealed to the Public Utilities Commission of Ohio.
4 After almost five years of litigation, the Public
5 Utilities Commission of Ohio upheld the 10 cent
6 per kilowatt hour rate of CEI. The decision of
7 the Public Utilities Commission of Ohio --" and
8 I'll refer to that as the "PUCO" from now on,
9 ladies and gentlemen -- "-- was appealed to the
10 Supreme Court of Ohio which reversed the order of
11 the PUCO and remanded the entire proceeding.
12 During the period of this litigation, thousands
13 of CEI customers switched to Muny Light. Due to
14 this condition, a compromise CEI rate of 5 cents
15 per kilowatt hour was established by CEI in 1920.
16 Muny Light continued with its 3 cent per kilowatt
17 hour rate."

18 Joint Stipulation 204 reads as follows:

19 "At all times relevant to this case, at any
20 given point in time, CEI had the same rates and
21 rate structure for all of its private customers
22 throughout its entire 1,700 square mile service
23 area including all parts of the City of Cleveland."

24 Joint Stipulation 87 reads as follows:

25 "In 1965, CEI reduced its rates for electric

1 Moore - cross

2 power and energy charged in the City of Cleveland
3 pursuant to contract negotiated with the Law
4 Department of the City of Cleveland. CEI then
5 went to the PUCO and filed a tariff which had the
6 effect of implementing a similar rate decrease to
7 all CEI customers throughout CEI's service area."

8 Joint Stipulation 88:

9 "The effect of the 1965 CEI rate decrease was
10 to decrease CEI's residential average revenue per
11 kilowatt hour by 3 percent and its total revenue
12 per kilowatt hour by about 2 percent.

13 "89. All of the actions of the City of
14 Cleveland in negotiating and litigating with CEI
15 with respect to the rates CEI would charge its
16 customers located in Cleveland were undertaken by
17 the City in its governmental capacity. This
18 stipulation is not intended to suggest one way or
19 the other whether the City's governmental activity
20 referred to above had any relationship to Muni
21 Light or its rates. All Ohio municipalities have
22 the legal power to regulate {subject to appeal to
23 the PUCO}, the rates charged by private electric
24 utilities within their borders or to contract
25 respecting such rates and many Ohio municipalities

Moore - cross

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2 which do not own an electric light plant have over
3 the years exercised this power and negotiated and
4 litigated with privately-owned electric utilities
5 concerning the rates that would be charged the
6 municipality and its inhabitants.

7 "90. Ordinance 913-68, effective July 14,
8 1968, increased rates for all Muny Light customers
9 by 6 to 8 percent.

10 "91. The information concerning Muny Light's
11 and CEI's rates and the difference between them
12 set forth in PTX-332 is accurate.

13 "92. On September 15, 1969, CEI applied to
14 the PUCO for approval of a rate increase. This
15 increase was approved pursuant to a stipulation
16 with the City of Cleveland and became effective
17 on August 15, 1970. The new rates extended a
18 fuel charge to residential and commercial
19 customers for the first time.

20 "93. Ordinance 2163-70 introduced 12/16/70
21 was passed March 8, 1971 to take effect on April
22 18, 1971. The effect of this ordinance was to
23 increase most Muny Light rates, to change the
24 brackets in the residential schedule, to change
25 the calculation of fuel charges and to impose a

Moore - cross

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2 fuel charge on residential and small commercial
3 customrs for the first time customers. It had the
4 effect of reducing billings to some customers.

5 "94. CEI applied to the PUCO for approval of
6 a rate increase on October 7, 1971. The staff
7 report of the PUCO was published March, 1973 and
8 contained recommendations for increases in CEI
9 rates. PUCO approved these recommended increases
10 on November 28th, 1973 effective January 22, 1974."

11 And Joint Stipulation 97 reads:

12 "CEI obtained approval from the PUCO of a
13 rate increase effective July 12, 1975, pursuant to
14 the mandate of the Supreme Court of Ohio by
15 CEI's appeal from a smaller rate increase approved
16 by PUCO on November 28, 1973, effective January 22,
17 1974, which rate increase CEI had applied for in
18 1971."

19 I think that covers all of them, gentlemen.

20 MR. NORRIS: Thank you, your Honor.

21 Mr. Schmitz, --

22 THE COURT: Ladies and gentlemen,
23 would this be an appropriate time to take a short
24 recess?

25 MR. NORRIS: Fine, yes.

Moore - cross

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2 THE COURT: Ladies and gentlemen,
3 during the recess, do not discuss the case, as I
4 have so often reminded you, and keep an open mind
5 until you have heard all the evidence and you have
6 heard the charge of the Court and the matter is
7 submitted to you for your final deliberation and
8 judgment.

9 You are free to go. We will take a short
10 recess.

11 - - - - -
12 {The jury left the courtroom and the following
13 proceedings were had at the bench out of their
14 hearing and presence.}

15 MR. LANSDALE: I think 95 and 96 should
16 be read, it's the same stuff.

17 You mean I let this slip by me?

18 THE COURT: I had it as 87 through
19 94 and 97.

20 MR. LANSDALE: I let that slip by me.
21 It's right in sequence.

22 THE COURT: Figure it out.

23 MR. LANSDALE: Do you want --

24 MR. NORRIS: I was agreeing to your
25 suggestions and you deleted those numbers; so if you

Moore - cross

want them in --

MR. LANSDALE: I deleted them?

MR. NORRIS: You put a circle
around them. You said, "That's right, I agree";
but if you want them read, I'm agreeable.

MR. LANSDALE: I want them read so I
can make argument on them.

THE COURT: All right. Remind me
when I come back.

MR. LANSDALE: Yes.

{End of bench conference.}

- - - - -

{Recess had.}

THE COURT: Please be seated.

{The following proceedings were had in the
courtroom before the jury entered the jury box.}

THE COURT: What stipulations are
you desirous of having me read now?

MR. LANSDALE: 95 and 96.

THE COURT: 95 and 96, all right.

- - - - -

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

1 Moore - cross

2 THE COURT: Ladies and gentlemen,
3 Joint Stipulation No. 95 reads as follows:

4 "Subsequent to March 3, 1973 and prior to July
5 11, 1973, Messrs. Hinchee and Mathews prepared a
6 revision of Muny Light's rates based upon the
7 increase proposed by the PUCO and Commission staff
8 for CEI and such rates were embodied in a resolution
9 of the Board of Control adopted on July 11, 1973.

10 "Such rates were included in Ordinance 1629-73,
11 introduced August 13, 1973, passed and effective
12 January 28, 1974, changed Muny Light rates. The
13 brackets for all schedules were changed and an
14 environmental and ecological adjustment charge was
15 added. The 5 percent limitation on fuel charges
16 was removed.

17 "96. By Ordinance 332-75, passed May 19,
18 1975 and effective May 27, 1975, Muny Light's rates
19 were changed so that the fuel charge was determined
20 on a monthly basis, rather than on a quarterly
21 basis. No other change in Muny Light's rate was
22 made by this Ordinance."

23 MR. NORRIS: Thank you, your Honor.

24 Mr. Schmitz, would you kindly hand the witness
25 Plaintiff's Exhibit 336?

1 Moore - cross

2 {The clerk complies.}

3 BY MR. NORRIS:

4 Q Mr. Moore, would you look over that exhibit, please?

5 {After an interval.}

6 Q Have you had a chance to look that over?

7 {Pause.}

8 A Yes.

9 Q Mr. Moore, can you identify Plaintiff's Exhibit 336?

10 A This is a five-sheet document entitled "Competition",
11 apparently dated May 4, 1967.

12 MR. NORRIS: If it please the
13 Court, I'm not sure that the witness's microphone
14 was turned on.

15 {The Clerk turns the microphone on.}

16 MR. NORRIS: Thank you.

17 Q Is this a document --

18 THE COURT: Wait a minute. What
19 was the date of it?

20 THE WITNESS: The date is May 4, 1967,
21 as indicated on Sheet 5.

22 Q Mr. Moore, what is the meaning of the term, "selling
23 12"? What is the meaning of that term just above the
24 date on page 5?

25 A I don't know.

1 Moore - cross

2 Q Is this a document that was prepared internally at CEI?

3 A Yes.

4 Q Did you play any part at all in the preparation of the
5 document?

6 A Yes.

7 Q What part did you play in the preparation of the
8 document?

9 A The handwritten note on the first page indicates a
10 request from one of the people in the Marketing
11 Department for an update for some material, apparently
12 on page 3.

13 Q And then turning to page 3, there are other marks on
14 that document.

15 Can you identify those marks that are there?

16 A No.

17 Q Was this -- what is the meaning of CAMSO within CEI?

18 A That is an abbreviation for a course which I believe
19 was entitled "Creating and Managing Selling Opportunities."

20 Q Is it possible that this document was used in connection
21 with CAMSO?

22 A Yes.

23 Q It is possible. And my next question is, was it used
24 with CAMSO?

25 A I think it might have been.

Moore - cross

1

2 Q

And do you have any reason to -- strike that.

3

Insofar as you are aware, the information contained
4 in Plaintiff's 336 is accurate?

5

MR. LANSDALE: I object, if your

6

Honor please.

7

THE COURT: Approach the bench.

8

- - - - -

9

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

11

MR. LANSDALE: The witness did not

12

prepare the document, and to ask him insofar as he

13

knows is it accurate, that secures no information

14

whatever, although it is designed to suggest that

15

it constitutes an admission that it is accurate,

16

and the witness is not in a position to admit

17

anything for the company, and it is a 1967 document,

18

and I don't know what the purpose of the amendment

19

is, but I object to it.

20

THE COURT: Well, it is

21

cross-examination, Mr. Lansdale, and if the witness

22

cannot attest to the accuracy, all he has to do is

23

say sorry, he doesn't know.

24

I will overrule the objection.

25

MR. LANSDALE: These are statements

25

1 Moore - cross

2 that are obviously argumentative, and qualitative
3 admissions as to accuracy --

4 {End of bench conference.}

5 - - - - -

6 THE COURT: You may answer if you
7 know.

8 A I didn't review the entire document, so I don't know
9 whether the other portions of the document are accurate
10 or not.

11 Q Well, what portions of the document have you reviewed?

12 A The request as indicated on the first page was to
13 review some material on page 3.

14 Q Would you kindly review the balance of the document,
15 and if you know, tell me whether you have any reason
16 to doubt the accuracy of the information contained
17 therein?

18 MR. LANSDALE: Objection.

19 THE COURT: Sustained as to the
20 form of the question.

21 We just went over that up here.

22 If he knows, he can, but let's not be
23 argumentative.

24 Rephrase your question. I will sustain the
25 objection as to the form of the question, not as

Moore - cross

1
2 to the substance.

3 BY MR. NORRIS:

4 Q What opportunity have you had to look at this document
5 prior to this morning?

6 A I believe I was asked about this document during a
7 deposition taken in 1975.

8 Q And did you comply with the request that was made of
9 you, Mr. Moore, to revise the material on page 3 of
10 this document?

11 A I provided some of this information, and I don't know
12 at this time whether this copy reflected the suggested
13 revision or not.

14 Q During the time that you were making those revisions,
15 did you have occasion to look at any other portions of
16 the document?

17 A I don't believe so.

18 MR. NORRIS: Mr. Schmitz, would you

19 please hand Mr. Moore Plaintiff's Exhibit 176.

20 Q Mr. Moore, this is a letter that you wrote on February
21 27, 1974; is that correct?

22 A Yes.

23 Q Would you indicate -- strike that.

24 The second page of this exhibit is a memorandum
25 also written by you on the same date; isn't that correct?

Moore - cross

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A Yes.

Q And I put on the overhead projector a blow-up of the third page of that document which are graphs which you prepared of rate comparisons between CEI and Muny Light; is that correct?

A No.

Q Who prepared them, Mr. Moore?

A Someone at CEI, but I have no idea who.

Q But were these drafts forwarded with your memorandum?

A Yes, they were.

Q That is a part of this exhibit; is that right?

A Yes.

Q And were they also forwarded to Mr. Lansdale in the covering letter which is the first page of this exhibit?

A Yes.

Q And we can only get the first three graphs on the screen at the same time, and I will now ask you to address your attention to just the first three of these graphs, and would you kindly identify what these graphs represent.

A The graph at the top of the page depicts the price of electricity as billed by CEI in MELP to a residential customer which uses 250 kilowatt hours per month.

Moore - cross

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2 The amount of the bill is shown at the left on the
3 vertical axis with a break in the scale.

4 And the horizontal axis covers the time period
5 apparently from 1959 through 1974.

6 Q And the horizontal lines that connect different points,
7 what do those represent, Mr. Moore?

8 A That would be the bill that each utility would render
9 to a residential customer using the designated amount
10 of energy, 250 kilowatt hours per month.

11 Q And would the second graph entitled "Small Commercial,
12 750 KWH Per Month," essentially represent the same type
13 of information that you have just described?

14 A Yes.

15 Q And what about the same question for the large commercial
16 at "10,000," and also the large commercial at 400,000?

17 Would your answer be the same with respect to what
18 the graphs depict?

19 A Yes.

20 Q Is there a relationship between the likelihood between
21 customers switching from one utility to another based
22 upon the rate differentials charged by the two utilities?

23 A That would -- yes.

24 Q Would you agree in general that the greater the
25 difference between Muny Light's rates and CEI's rates,

1 Moore - cross

2 that is, with Muny Light being lower, the more likely
3 it is that customers would continue to switch to get
4 the lower rate?

5 A Not necessarily.

6 Q Would there be a pull in that direction?

7 A There would be other factors to be considered in addition
8 to the comparison of bills.

9 Q But would the rate differential be a factor that would
10 be important in that consideration?

11 A It would be one of the factors that I am sure customers
12 would take into consideration.

13 Q What other factors would customers take into consideration?

14 A Well, I would think that there would be a number of
15 other factors.

16 Certainly reliability of service would be considered,
17 the experience that the customer has had with a
18 particular utility, whether he feels that he was
19 treated properly by the representatives of that utility
20 would be another factor.

21 There may be other factors as well.

22 Q Would the rate differential be one of the more important
23 of the factors that you have identified?

24 MR. LANSDALE: Objection.

25 THE COURT: Sustained. It is

1 Moore - cross

2 argumentative. He testified to it, Mr. Norris.

3 BY MR. NORRIS:

4 Q Mr. Moore, are you familiar with the practice of any
5 other utility companies in the State of Ohio, either
6 gas or electric, with respect to having uniform rates
7 throughout their service area?

8 A I would have been when I was directly involved in the
9 rates element, but I have little recollection as to
10 what they are or what they are today at this time.

11 Q Let me just ask you then to give me whatever
12 recollection you have on this question.

13 Is it a fact that certain utility companies in the
14 State of Ohio follow a different business practice
15 than that followed by CEI of having uniform rates
16 throughout the area?

17 MR. LANSDALE: If he knows. Overruled.

18 A My recollection is that at least one company in Ohio did
19 have different rates in some portions of its territory
20 than in other portions of its territory.

21 Q What company was that?

22 A I believe that was Ohio Edison.

23 Q What about the Columbia Gas Company? Are you at all
24 familiar with the rates charged in different areas
25 by the Columbia Gas Company?

Moore - cross

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2 A I don't believe I have ever reviewed their rate
3 schedules.

4 Q Mr. Moore, has the City of Cleveland, to your knowledge --
5 strike that.

6 Have you participated in rate cases that involve
7 CEI's request for rate increases?

8 A I have provided staff assistance for some of the cases.

9 Q Have you ever been in attendance at the hearings
10 with respect to those cases?

11 A Yes.

12 Q And has the City of Cleveland ever appeared, to your
13 knowledge, in various PUCO rate cases in opposition to
14 rate increase requests by CEI?

15 A Yes.

16 Q And to your knowledge have personnel from Muni Light
17 been involved in some of the PUCO proceedings in
18 opposition to the rate increase request by CEI?

19 A I believe so.

20 Q Are you familiar with the -- strike that.

21 During the time that you were in the Rate
22 Section, did the rates charged for the -- by the
23 Painesville Municipal System come to your attention
24 from time to time?

25 A Yes.

Moore - cross

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Q And is it accurate that for the period of your experience in the Rate Section, that the Painesville Municipal System typically charged rates lower than CEI's rates?

A I don't remember accurately, Mr. Norris.

Q Has competition from the City of Painesville, to your knowledge, ever had any impact of any kind on CEI's rates?

A I don't think I know one way or the other.

Q What about the competition provided by the Cleveland Municipal Light Plant? Has that competition ever had any impact of any kind on CEI's rates?

A Are you thinking of a particular time?

Q Just during your experience in the Rate Section, Mr. Moore?

A I don't recall any discussions in which the level of Muny rates influenced the level of a proposed CEI schedule change.

Q Well, my question was not restricted to an existing Muny rate.

I believe my question was whether or not the competition from Muny Light has ever at any time, to your knowledge, had any kind of impact on CEI's rates?

Moore - cross

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2 A I just don't recall that it has or that it hasn't.

3 Q What about the City of Cleveland's opposition to CEI's
4 rate increase request in the PUCO? Has that opposition
5 ever had any impact on CEI's rates?

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

8 THE COURT: Yes.

9 - - - - -

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

12 MR. LANSDALE: The City of Cleveland
13 is acting in a governmental capacity.

14 To ask this witness whether the City's attempt
15 to regulate CEI's rates or propose its rates
16 before the Public Utility Commission and the
17 Supreme Court of Ohio I suggest is completely
18 irrelevant.

19 If the witness knows anything about it --
20 obviously there is no way to tell.

21 This is an area in which I have had a lot of
22 personal experience, and I know we have settled
23 cases at times, and we have litigated cases, and
24 this has nothing to do with this case, and I object.

25 MR. NORRIS: The stipulation that

Moore - cross

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2 was read contained a sentence that specifically
3 stated that that stipulation was not intended to
4 suggest one way or the other that the City's
5 opposition to CEI's rate increase requests were
6 related to the operation of the Municipal Light.

7 MR. LANSDALE: Exactly, but it is also
8 stipulated that the City was acting in its
9 governmental capacity.

10 MR. NORRIS: That is right.

11 I am asking this witness to indicate whether
12 that has had any impact of any kind on the setting
13 of the CEI rates.

14 THE COURT: Read the question.

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

17 THE COURT: I will sustain the
18 objection.

19 {End of bench conference.}

20
21 THE COURT: You may proceed, Mr.
22 Norris.

23 BY MR. NORRIS:

24 Q Mr. Moore, --

25 MR. NORRIS: Mr. Schmitz, would you

Moore - cross

hand Mr. Moore Plaintiff's Exhibit 799, please.

{After an interval.}

Q Mr. Moore, can you identify Plaintiff's Exhibit 799?

A Yes.

Q What is it, please?

A It is an internal memorandum from a CEI employee to me, dated April 25, 1973, the subject, "MELP Estimated RC and Devalues."

Q Did you have occasion to discuss the contents of this memorandum with Mr. Kemper, the author?

A I believe so.

Q And am I correct that you had asked Mr. Kemper to estimate the reconstruction new and reconstruction new less depreciation values for the Muny site as of 1972; is that correct?

A I believe so.

Q And what was the estimate that Mr. Kemper came up with as to that value as of December 31, 1972?

A The memo indicates the estimated RCND is \$90 million.

Q You say the memo indicates that.

Do you have any recollection as to what the difference would be that is set forth in the memorandum?

A I don't have any independent recollection at this time.

Q What is the RCND, please. Explain what those letters

Moore - cross

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2 mean.

3 A That is a method of evaluating, particularly utility
4 property that was used during this period of time by
5 the Public Utilities Commission of Ohio as part of the
6 basis of the rate setting process.

7 Q Mr. Moore, why did you ask Mr. Kemper to make an
8 evaluation of Muny Light's system as of the end of
9 1972?

10 A I don't recall at this time. I didn't ask for this
11 particular request.

12 Q Can you recall anything about it?

13 A Not in detail.

14 Q Can you recall anything about it, even though not in
15 detail, but just in generalities?

16 A I would only be guessing at the reason for the request.

17 Q What do you recall about that, whether detailed or
18 not detailed?

19 MR. LANSDALE: I object.

20 THE COURT: Overruled.

21 A My recollection is that we were attempting to estimate
22 what the value of the facilities were of the Muny
23 system.

24 Q Had somebody asked you to do that, Mr. Moore?

25 A I presume so.

Moore - cross

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2 Q And who had asked you to do that?

3 A I don't have any idea now.

4 Q Was that person in CEI that asked you to do that?

5 A I am sure.

6 Q And you don't have any recollection who that person was?

7 A No.

8 Q Who is John Bostwick?

9 A He was an engineer from the Civil and Mechanical
10 Engineering Department.

11 Q Referring your attention to the second page of this
12 exhibit, Mr. Moore, what valuation did you and Mr.
13 Kemper place upon the big unit, the 1967 unit, the
14 No. 6 and No. 11, the 85 megawatt unit at the Munny Light
15 Plant.

16 What value did you put on that unit?

17 A These are Mr. Kemper's work papers.

18 It appears that the RCND value at the end of the
19 year 1972 for that unit, which is identified as the
20 1967 unit at Lake Shore, it appears to be approximately
21 14 or 15 million dollars.

22 Q Did you in your discussions with Mr. Kemper about this,
23 did you disagree with him with respect to his
24 conclusions?

25 A I remember that there was some question in my mind

1 Moore - cross

2 about an estimate, whether it was made at this time or
3 some other time, I don't recall, but there was some
4 question about the, about some aspect of evaluation,
5 and I think that was indicated on a different memorandum.

6 Q : Well, before we get to that different memorandum, I
7 address your attention kindly to Paragraph 3 of this
8 memorandum that states:

9 "The 1967 unit percent condition" -- and I pause
10 there. Kindly explain what is meant by the "1967
11 unit percent condition".

12 A That relates -- that percentage relates to the estimated
13 value of the equipment at the time compared with
14 comparable equipment new.

15 Q Then addressing your attention back to Paragraph 3,
16 which states:

17 "The 1967 unit," and am I correct that did refer
18 to the Myny Light 85 megawatt unit?

19 A Yes.

20 Q "The 1967 unit, percent condition, is estimated to be
21 about equivalent to our Eastlake Unit 1-3."

22 Now, pausing there; what was meant by "our
23 Eastlake unit 1-3"?

24 A We have a generating station in Eastlake.

25 There were a number of generating units at that

Moore - cross

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2 location.

3 This apparently refers to the first three units.

4 Q And then the next sentence, Mr. Moore, states:

5 "John Bostick said these were about equivalent,
6 and that this MELP unit is better than our Avon Lake
7 Unit No. 6 and 7."

8 Which unit was being referred to there as the
9 "Avon Lake Units 6 and 7"?

10 Do you have a generating station at Avon Lake?

11 A Yes.

12 Q And No. 6 and No. 7 are boiler-generator units at the
13 Avon Lake station; is that correct?

14 A That is correct.

15 Q And those are the units that are being referred to in
16 the last sentence; is that correct?

17 A Yes.

18 MR. NORRIS: Mr. Schmitz, would
19 you hand Mr. Moore Plaintiff's Exhibit 798 and 797,
20 please.

21 {After an interval.}

22 Q Now, addressing your attention to Plaintiff's Exhibit 798,
23 is this the additional memorandum that you referred to a
24 moment ago?

25 A Yes, I believe it was.

1 Moore - cross

2 Q Now, what was the change that Mr. Kemper was making --
3 I am sorry, strike that.

4 Would you identify Plaintiff's Exhibit 798, please.

5 A Yes. The first sheet is a short handwritten memorandum
6 from Mr. Kemper to me, and the subject is, "Revised
7 MELP RCN and RCND Value," and the date is April 26, 1973.

8 Q Just briefly, Mr. Moore, what was the change that Mr.
9 Kemper was making in this follow-up memo of the next
10 day April 26?

11 A The estimated RCND value was increased.

12 Q And what was it increased to, Mr. Moore?

13 A Approximately \$93 million.

14 Q And did you have discussions with Mr. Kemper about that
15 at that time?

16 A I apparently had discussions with him between April 25
17 and 26 regarding this initial memo.

18 Q Insofar as you know, the numbers that Mr. Kemper came
19 up with was acceptable to you at that time?

20 A That was his best estimate at the time.

21 Q Well, was it acceptable to you at the time insofar as
22 you recall?

23 A As a result of the change, I wasn't aware of any other
24 problems with the estimate.

25 Q Addressing your attention now to Plaintiff's Exhibit 797,

Moore - cross

would you kindly identify that for the record.

A Yes. This is another memo from Mr. Kemper to me, dated August 7, 1974, and the subject is "MELP Estimated RCNLD Value as of June 30, 1974."

Q And is the RCNLD the same conceptionally as the other RCND?

A Yes.

Q And what was the RCNLD value that Mr. Kemper arrived at in Exhibit 797, if you will?

A This estimation is about \$98 million.

Q Addressing your attention to the second page of this exhibit, the fourth line, which states:

"1967 unit and Lake Shore."

Q What is the RCND value that Mr. Kemper assigned in this August 7, 1974 memorandum?

A The estimate of RCND value for the 1967 unit is approximately \$16 million.

Q And that is approximately \$2 million greater than the estimate that had been made in the earlier analysis of April of 1973; is that correct?

A No.

Q Well then, would you kindly turn to the earlier exhibit, Mr. Moore, Plaintiff's Exhibit 799, and my notes indicate that you indicated a \$14 million valuation -- 14 or 15

Moore - cross

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2 • million dollars, excuse me, valuation for the 1967 unit;
3 is that what your testimony was?

4 A With respect to the estimate made, the first estimate
5 made on April 25, 1973.

6 Q And actually isn't the number 14,800,000?

7 A Yes.

8 Q And in the follow-up memo, the next day, that number
9 doesn't change?

10 A That is correct.

11 Q And now, looking at the memo that you have in front of
12 you, Plaintiff's Exhibit 797, that number has risen from
13 14,800,000 to 16 million?

14 A Yes; an increase of \$1.2 million.

15 Q And do you have any idea what accounted for that
16 \$1.2 million increase in the interim between April
17 1973 and the time the letter memorandum was prepared?

18 A I note that the book value of the unit increased by
19 \$1.2 million.

20 Q And is that carried through into the RCND value?

21 A Through another technique that is used to determine
22 RCND value, yes.

23 Q What was the increase, the total value of the entire
24 system?

25 Wasn't it about a \$5 million increase from 1973

Moore - cross

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2 to 1974?

3 A Yes.

4 Q Do you have any information as to what accounted for
5 that \$5 million increase in the estimated value between
6 1973 and 1974 for the Muny Light System?

7 A Not without reviewing the data.

8 MR. NORRIS: Mr. Schmitz, would you
9 hand the witness Plaintiff's Exhibit 564.

10 {After an interval.}

11 Q Can you identify Plaintiff's Exhibit 564?

12 A Yes.

13 Q What is it?

14 A A memo from me to Mr. Loshing, dated December 20, and I
15 am not sure of the year.

16 It is not completely legible. It is 1970 something.

17 MR. NORRIS: I believe counsel
18 would stipulate that it is 1971?

19 MR. LANSDALE: I agree.

20 Q Would you accept that, that it is 1971?

21 A Yes.

22 Q Now, what is the subject matter of the memo, if you please?

23 A "Painesville MELP."

24 Q CEI had been interested in acquiring the Painesville
25 System; is that correct?

1 Moore - cross

2 A Yes.

3 Q And Mr. Loshing had asked you to make an estimate of
4 the value of the Painesville System; is that correct?

5 A Yes.

6 Q And you made a response to him in the first paragraph
7 of this memorandum, and it states:

8 "Eight to nine million dollars, based on present
9 CEI rate, and twelve to thirteen million dollars based
10 on proposed CEI rates."

11 Is that correct?

12 A Yes.

13 MR. NORRIS: Mr. Schmitz, would you
14 hand Mr. Moore Plaintiff's Exhibit 372.

15 {After an interval.}

16 Q Can you identify -- well, I will wait.

17 {After an interval.}

18 A Thank you.

19 Q Mr. Moore, Plaintiff's Exhibit 372 is a 19-page exhibit
20 prepared by you in 1973; is that correct?

21 A Yes.

22 Q And in this document, am I correct that you were
23 projecting Muny Light's income statement out into the
24 future for some period of time?

25 A Yes.

Moore - cross

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2 Q And how far out into the future were you projecting
3 Muny Light's statement?

4 A The statements include the years 1973, 1973, and 1974.

5 Q By the way, Mr. Moore, did you make such income
6 projections with respect to the Painesville Municipal
7 System also?

8 A I might have, but I don't recall.

9 Q Looking again at Plaintiff's Exhibit 372, there are
10 figures at the back of this exhibit.

11 Are those your figures -- work sheets, I guess I
12 should call them.

13 Are those your work sheets?

14 A Yes, they are.

15 Q What was the purpose of your projecting Muny Light's
16 income statement out into the future through 1974,
17 Mr. Moore?

18 A This in fact -- I don't specifically recall the purpose.

19 It would be to see what the future held for Muny
20 one year out.

21 MR. NORRIS: Mr. Schmitz, would you
22 please hand the witness Plaintiff's Exhibit 2.

23 {After an interval.}

24 Q Mr. Moore, could you identify Plaintiff's Exhibit 2?

25 A This is an internal memorandum from a company employee to

Moore - cross

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me, dated December 22, 1972.

Q And Mr. Moran was the author of that memorandum?

A Yes.

Q What part of the company does he work in?

A The Treasury Department.

Q And am I correct that you had asked him to make an analysis of Muny Light's future financing possibilities?

A I believe I had asked him to review information contained in a city ordinance.

Q What city ordinance had you asked him to review?

A Ordinance No. 2104-72.

Q Did that ordinance deal with Muny Light's future financing possibilities?

A The statement is that that ordinance authorized the sale of \$9.8 million of temporary electric light and power plant and systems subordinate mortgage revenue bonds.

Q What about the rest of the sentence? In your reading doesn't it say, "To finance MELP operations"?

A Yes.

Q So is it a fair statement that this ordinance -- isn't it a fair statement that you had asked Mr. Moran to make an analysis of the information contained in this ordinance with respect to the future financing possibilities of Muny Light?

Moore - cross

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2 A I only asked Mr. Moran to look at the wording in the
3 ordinance. I did not ask him to do anything further
4 than that.

5 Q What was the purpose in asking him to look at the
6 wording in the ordinance?

7 A I was generally interested in knowing what kind of
8 provisions were contained in this proposal, and I was
9 not an expert in dealing with this type of material at
10 all, so I asked someone who was more familiar with
11 financing than I was.

12 Q And Mr. Moran was more familiar with financing than
13 you were?

14 A Yes.

15 Q Now, addressing your attention to the last two paragraphs
16 of this memorandum, Mr. Moore, would you take a minute
17 to read those last two paragraphs.

18 A Yes.

19 {After an interval.}

20 Q Am I correct that Mr. Moran in these last two paragraphs
21 is discussing a technicality in the ordinance which he
22 described as being "worth checking"?

23 A I don't see those words, but I think that is the sense
24 of it.

25 Q Addressing your attention to the first line of the

1 Moore - cross

2 next-to-the-last paragraph on that page --

3 A Yes.

4 Q -- and the technicality that Mr. Moran was making
5 reference to was the technicality that might require
6 the retirement of the \$2 million worth of bonds from
7 the preceding year out of the Muny Light's revenues
8 rather than out of any new capital financing?

9 Is that an accurate summary of the
10 next-to-the-last paragraph describing that technicality?

11 MR. LANSDALE: Objection. May I
12 approach the bench?

13 THE COURT: Yes.

14 - - - - -

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

17 MR. LANSDALE: Outside of the question
18 of relevance, the sentence itself says that they
19 should be payable and secured in the same manner as
20 the others and not otherwise, with the exception
21 that they may be redeemed with the proceeds of the
22 sale of bonds in anticipation of which they were
23 issued, and you asked him if it wasn't true that
24 this sale -- that they could be redeemed from
25 Muny revenues and not from the bond.

Moore - cross

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2 MR. NORRIS: Just look at the next
3 sentence.

4 MR. LANSDALE: I don't care what the
5 next sentence says. You called his attention to
6 that paragraph and you tried to limit this to the
7 payment of revenues and not out of the bond in this
8 issue; whereas, it says that they may be paid out
9 of the sale of other bonds, and I suggest it is an
10 unfair question that suggests the wrong answers.

11 I don't know what the purpose is, but I would
12 make every attempt to hold you to accuracy.

13 THE COURT: That is my question:

14 Where are we going with this examination?

15 I have been trying to follow this examination
16 for about the last half hour.

17 MR. NORRIS: Two purposes, your
18 Honor.

19 I want the jury to know the extent to which
20 CEI tracked each and every step that Munny Light
21 took, and in this particular matter, the two
22 paragraphs that I referred to, the last two
23 paragraphs, and both paragraphs, if they are
24 fairly read, it is obvious that CEI was planning
25 a way to stop Munny Light's operating revenues.

Moore - cross

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2 They were looking for a technicality to do that.

3 THE COURT: Wait a minute. You
4 always interject your conclusions as to what
5 something says -- "it is obvious that."

6 That is the jury's function. Again, let's
7 get back to my question.

8 My question is, where are we going with it?

9 Is there something wrong for a competitor
10 to track a competitor's operation?

11 Obviously both sides were doing the same
12 thing here.

13 MR. NORRIS: I direct your attention
14 to the last paragraph. Well, if you read that.

15 THE COURT: The last paragraph --

16 MR. NORRIS: I direct the witness's
17 attention to that as well.

18 THE COURT: I will read it.

19 MR. NORRIS: The care and precision
20 with which even here they are saying, "Let's
21 check with the legal department to see if we
22 can't support that interpretation."

23 That is a fair inference of what this
24 memorandum said.

25 THE COURT: Let me ask you this.

1 Moore - cross

2 This is a memo from a fellow by the name of
3 T. R. Moran, and as I understand, it was from
4 the Treasury Department, and whose assistance
5 this witness has requested concerning interpretation
6 of Ordinance 2104-72, and a memo was written to him.

7 Now, we get back to the same procedure that
8 you people insist upon following, namely, having
9 this gentleman read into the record, or comment
10 upon something that somebody else has written.

11 Now, if you are desirous of introducing into
12 evidence the testimony of Mr. Moran who wrote
13 this and to examine him as to what he meant here,
14 you are perfectly free to do that.

15 MR. NORRIS: I am putting it to
16 this witness in the sense that he had discussed
17 this with Moran.

18 THE COURT: That is not the
19 context within which this is offered.

20 There is nothing in the testimony so far
21 as to any discussions.

22 My notes show that he received -- wait a
23 minute. Let's go back.

24 He identified Plaintiff's Exhibit No. 2,
25 that it was a memo to him from Moran dated

Moore - cross

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2 December 22, 1972, concerning the interpretation
3 of Ordinance No. 2104-72, which relates to a
4 9.8 million dollars bond issue for financing
5 Muny Light, and that refers to Paragraph No. 1.

6 From there on there is nothing concerning
7 any discussions with Moran, and all you are
8 doing -- well, read the last question back.

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

11 THE COURT: You see what you are
12 doing?

13 MR. NORRIS: May I please put this
14 on the record?

15 THE COURT: Yes.

16 MR. NORRIS: I was simply, in this
17 question, I was trying to get an understanding
18 from the witness what he understood the technicality
19 was that is described in the last two paragraphs.

20 The last sentence of the memorandum makes
21 the suggestion to the recipient that the Legal
22 Department should be asked for an opinion.

23 I wanted to ask this witness what he did with
24 that suggestion, and that was my purpose, and I
25 don't know what his answer is going to be.

Moore - cross

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2 THE COURT: I will sustain the
3 objection. You may proceed. Your exceptions are
4 noted. Let's proceed.

5 MR. NORRIS: All right.

6 {End of bench conference.}

7 - - - - -

8 THE COURT: You may proceed, Mr.
9 Norris.

10 BY MR. NORRIS:

11 Q Mr. Moore, what, if anything, did you do after receipt
12 of this memorandum from Mr. Moran, Plaintiff's Exhibit 2?

13 A I don't know.

14 Q Do you see the -- well, was there a suggestion Mr. Moran
15 made to you in the closing paragraph of this memorandum?

16 A Yes.

17 Q And what was that suggestion?

18 A Do you want me to read it?

19 Q Yes.

20 A "I suggest that the Legal Department be asked for an
21 opinion on this interpretation."

22 Q Was the Legal Department ever asked for such an
23 interpretation, to your knowledge?

24 A I don't know.

25 Q You never asked them yourself, did you?

Moore - cross

1
2 A I don't know.

3 Q You don't know if you didn't ask them yourself?

4 MR. LANSDALE: Objection.

5 THE COURT: Overruled.

6 A That's correct.

7 MR. NORRIS: Mr. Schmitz, would you
8 please hand Mr. Moran Plaintiff's Exhibits 175 and
9 174?

10 {The Clerk complies.}

11 Q Looking first at Plaintiff's Exhibit 175, Mr. Moore,
12 this is another memorandum that you wrote, is that right?

13 A Yes, sir.

14 Q And this time, this memorandum goes to whom?

15 A To Mr. Rudolph and Mr. Ginn.

16 Q And what were the offices held by Mr. Rudolph and Mr.
17 Ginn at the time of the writing of this memorandum in
18 1973?

19 A I'm not positive.

20 Q Have you got any idea?

21 A I think they may have been president and executive
22 vice president, but I'm not sure.

23 Q Thank you. And you were making -- you were reporting on
24 an analysis that you had made, is that correct?

25 A Yes, I was.

Moore - cross

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2 Q And your analysis, was that of Muny Light's fuel clause
3 ceiling, is that right?

4 A That's the title of the memorandum.

5 Q What is the "fuel clause ceiling" that you were
6 analyzing?

7 A The fuel clause ceiling is a provision that was in the
8 Muny Light rate schedule that was adopted in 1971,
9 which placed an upper limit or ceiling on the amount
10 of increase that the rate could be increased through
11 the escalation of cost of fuel.

12 Q Was there a proposal at this point in time, Mr. Moore,
13 that that ceiling be eliminated?

14 {Pause.}

15 A Read the question back, please.

16 {The pending question was read by the
17 reporter.}

18 THE COURT: Proposal by whom?

19 MR. NORRIS: Any proposal, your
20 Honor.

21 I'll rephrase the question.

22 Q Was there any proposal that you were aware of that might
23 have resulted in the removal of the ceiling on Muny
24 Light's fuel clause?

25 A I believe so.

Moore - cross

Q And what did you conclude would occur with respect to additional revenues that Muny Light would realize if, in fact, the fuel clause ceiling were to be reduced?

A I don't understand the question.

Q Addressing your attention to the first sentence of your memorandum, which reads:

"If the ceiling on Muny's fuel adjustment is removed without --" underlined without --"-- any other technical changes, MELPs annual revenues would be increased by \$1.8 million {15 percent}." is that correct?

A That's accurate.

Q Do I understand from that, Mr. Moore, that the consequence of removing Muny Light's fuel clause ceiling, at least according to the analysis that you made at this point in time, would have resulted in additional revenues for Muny Light up on the order of \$1.8 million a year?

MR. LANSDALE: Your Honor, please, I object.

THE COURT: Approach the bench.

- - - - -

{Bench conference ensued on the record as follows:}

1 Moore - cross

2 there will be a \$1.8 million {15 percent} increase.

3 You didn't ask him that question to begin with.

4 MR. NORRIS: Your Honor, I beg to
5 disagree.

6 THE COURT: Mr. Norris, I do not
7 wish to engage in dialogue with you.

8 I'm going to rule on the form of the question,
9 I'm not going to tell you any more that you may
10 proceed, that you may proceed as to substance and
11 not as to form. I'm going to take each of the
12 questions individually.

13 I don't know why you people don't take a
14 little lesson from Mr. Hjelmfelt. I mean, he
15 conducts the investigation -- I mean, the
16 interrogation without any problem at all.

17 But I'm going to rule on it one question at a
18 time.

19 Sustained as to form.

20 Now, if you can't phrase the questions
21 properly, that's your problem.

22 {End of bench conference.}

23 - - - - -

24 THE COURT: Sustain the objection
25 as to form, Mr. Norris, and I again request that

Moore - cross

you please ask proper questions.

BY MR. NORRIS:

Q Mr. Moore, addressing your attention to this same memorandum, Plaintiff's Exhibit 175, you have told us that you made an analysis of the possible removal of the Munny Light fuel clause ceiling, is that correct?

A Yes.

Q What was the result of your analysis?

A That if the light plant didn't do anything other than remove the ceiling, that the Munny revenues would be increased by \$1.8 million, which was more than the reported estimate of the revenue increase, and that revenue increase was estimated at \$500,000.

THE COURT:

You see how simple it

is now, Mr. Norris, when you ask a proper question that's designed to elicit an answer? You don't confuse the witness, and the witness gives you an answer.

BY MR. NORRIS:

Q Mr. Moore, was it somewhat unusual for you to be writing memoranda directly to the president of the company?

A Yes.

Q Why were you writing to the president of the company at

Moore - cross

- 1
- 2 this time?
- 3 A Because we were in the middle of rate litigation in
4 Columbus; I was requested to analyze this information,
5 and I believe other parties who would have been in the
6 regular chain of command were occupied in Columbus.
- 7 Q Would the additional \$1.8 million in annual revenues,
8 had that been received by Muny Light, have done
9 anything to have stepped up the level of competition
10 between the two systems?
- 11 A No.
- 12 Q Would it have put Muny Light in a position to have --
13 strike that.
- 14 Would it have improved Muny Light's position to
15 better compete to have an additional \$1.8 million per
16 year?
- 17 A I don't think so.
- 18 Q You don't think so?
- 19 A No.
- 20 Q Would you turn to Plaintiff's Exhibit 174?
- 21 {The witness complies.}
- 22 Q What is that exhibit?
- 23 A This is a memorandum dated July 30th, 1973 from myself
24 to three other company employees.
- 25 Q What is the title of the memorandum?

Moore - cross

1
2 A "Proposed MELP Schedules".

3 Q Is this the result of another analysis that you made?

4 A Yes.

5 Q What was the nature of that analysis?

6 A This memo contains an analysis of the provisions of
7 a proposed rate schedule for the light plant which had
8 been passed by the Cleveland Board of Control in July,
9 1973.

10 Q What conclusions did you reach in that analysis, Mr.
11 Moore?

12 A I don't see any conclusions stated in the memo.

13 Q Well then, what is the memo -- if there are no conclusions
14 in the memo, is this just a discussion of your analysis?

15 A This is just a comparison of the proposed rates with the
16 existing rate provisions, just states changes.

17 Q Do you know whether the City Council approved the
18 Board of Control action subsequent to the date of this
19 memorandum?

20 A I believe it did, through a specific ordinance.

21 Q Addressing your attention to the fifth paragraph, Mr.
22 Moore, don't you set forth a conclusion in that
23 paragraph?

24 {The witness reading silently.}

25 A There is a statement there.

Moore - cross

1
2 Q Well then, would you read that statement, please?

3 A If the fuel adjustment is permitted to operate without
4 arbitrary intervention, MELP revenues would be
5 increased by \$1.4 million per year {12 percent}."

6 Q So your testimony is that that is a statement but not a
7 conclusion?

8 MR. LANSDALE: Objection.

9 THE COURT: Sustained.

10 Mr. Norris, be it a statement or conclusion,
11 you've read it. Now let's not go off on a tangent.

12 Q Mr. Moore, I think you have in front of you Plaintiff's
13 Exhibit 708, is that correct?

14 MR. NORRIS: If not, Mr. Schmitz,
15 will you kindly hand it to him?

16 A I don't believe so.

17 {Exhibit handed to the witness by the Clerk.}

18 THE COURT: What number are we
19 talking about?

20 THE CLERK: 708.

21 {The witness reading silently.}

22 Q Have you had a chance to look at that, Mr. Moore?

23 A May I have a minute?

24 Q Surely.

25 {The witness continues to read silently.}

Moore - cross

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2 Q Mr. Moore, we have earlier discussed studies that you
3 have done looking at the dollar value of Muny Light,
4 as well as studies that you had done with respect to
5 the value of the Muny property, and I would ask you to
6 identify, if you will, this memorandum, Plaintiff's
7 Exhibit 708.

8 A This is a memorandum from me to Mr. Loshing, dated
9 June 16, 1970.

10 Q And is it a fair statement that in this memorandum,
11 you are discussing the possible projected use of the
12 Muny generation capacity in CAPCO?

13 A The reference would be if -- if this capacity were
14 on the CEI system, that there would be or could be an
15 impact on CEI in the future.

16 Q What kind of an impact might that produce if CEI were
17 to have the Muny Light generation on its system?

18 A The memorandum suggests that CEI's share of a unit
19 might be reduced -- would be reduced by an amount.

20 Q And what is that amount?

21 A Approximately \$18 million.

22 MR. NORRIS: Thank you.

23 Your Honor, I am moving to a different
24 subject. I'm aware of the noon hour, and I didn't
25 know what your pleasure was?

1 THURSDAY, OCTOBER 2, 1980; 1:40 P.M.

2
3 THE COURT: Call the jury.

4 {The jury enters the courtroom.}

5 THE COURT: You may proceed.

6 Mr. Norris.

7 - - - - -

8
9 G E O R G E M O O R E,

10 resumed the stand and testified further

11 as follows:

12
13 CROSS-EXAMINATION OF GEORGE MOORE {Resumed}

14
15 BY MR. NORRIS:

16 Q Mr. Moore, do you know what percent of -- approximately
17 what percent of CEI's load in the early 1970's was in
18 the industrial category?

19 A I don't think I do.

20 MR. NORRIS: Mr. Schmitz, would
21 you hand the witness Plaintiff's Exhibit 352,
22 please?

23 {The clerk complies.}

24 Q Can you identify that exhibit, Mr. Moore?

25 A Yes.

Moore - cross

1

2 Q Will you turn to the last page of that exhibit?

3

{The witness complies.}

4

Q Is that something that you also can identify?

5

A Yes.

6

Q There is a date in the lower left-hand corner of that

7

page, Mr. Moore. Would that permit you to testify as

8

to approximately when the last page of that exhibit was

9

prepared?

10

A Well, there's a date on that piece of paper, but it's

11

after the date of the memorandum.

12

Q I understand that. And what is the date in the lower

13

left-hand corner of the last page of the memorandum?

14

A January 20, 1972.

15

Q And the subject matter of that last page deals with, I

16

think you called it, bill comparisons, is that what

17

you called it?

18

Q The last page?

19

A Yes. That is entitled "Electric Operating Expenses

20

Compared to 1970."

21

Do you see that? Isn't that what you referred to

22

this morning as a "bill comparison"?

23

A No.

24

Q What was it that you referred to as a bill comparison?

25

A A bill comparison would have been comparing the rate

Moore - cross

1

levels or the bills for a given size customer.

2

3 Q I see. All right. Well, I stand corrected.

4 A For more than one utility.

5 Q Well, then, looking again at the last page, this is

6 an operating expenses comparison between Muny Light

7 and CEI; is that correct?

8 A Those numbers are divided out that way, yes.

9 Q Is it accurate that this was a document prepared

10 within CEI?

11 A I believe so.

12 Q Would it have been compared, Mr. Moore, within your

13 rate section?

14 A I would expect so.

15 Q Would you have had anything to do with the preparation

16 of that document?

17 A I may have done it, but I don't recall specifically.

18 Q When documents of this kind were prepared, the year

19 from which the data was gathered had to necessarily

20 be some period of time prior to the date of the

21 preparation of the document; is that correct?

22 A Yes.

23 Q Would you think that this is a reasonable relationship,

24 using 1970 data in a comparison made in January of 1972?

25 Would that seem to be a reasonable time differential

Moore - cross

1
2 from your standpoint?

3 A Yes.

4 Q I will put this on the overhead screen.

5 Mr. Moore, there is on the overhead screen now the
6 last page of Plaintiff's Exhibit 352, and I address
7 your attention to the middle block of data and on the
8 left-hand column the word "industrial."

9 Could you indicate whether or not the 44 percent
10 figure that is set forth in the far right-hand column
11 would be a representation of the approximate load of
12 CEI as far as the "industrial" category is concerned?

13 A Mr. Norris, the columns are headed "Sales, Kilowatt
14 Hours," and "Load" usually refers to kilowatts as opposed
15 to kilowatt hours.

16 Q Well, could I address your attention, please, to the
17 last -- excuse me. There are two paragraphs set forth
18 at the bottom of this page, Mr. Moore, and the first
19 one talks about load, and I simply want an interpretation
20 of that.

21 "This comparison must be interpreted carefully as
22 the percentages show CEI has much of its load in the
23 'Industrial' category."

24 What I was seeking was: What approximate
25 percentage of CEI's load was in the "Industrial" category?

Moore - cross

1

2 A The way I was using the term "load" is not represented
3 here. What is represented would be a share of the
4 kilowatt hours.

5 Q So that --

6 A And --

7 Q I'm sorry. Go ahead.

8 A I guess I'm finished with that.

9 Q Well then, if I understand your testimony, the 44
10 percent that is set opposite "Industrial," I should
11 understand that to mean that 44 percent of CEI's
12 sales in the year 1970 were in the Industrial category;
13 is that accurate?

14 A That appears to be what this represents, yes.

15 Q Do you have any way of -- well, what would you estimate
16 the percent of sales made by CEI in the Industrial
17 category would have been during the years 1971 to 1975?

18 A Before I would answer that I would want to look at the
19 data. I don't really know offhand.

20 Q Would you have any way of knowing whether it would be
21 greater than or less than the figures in 1970?

22 MR. LANSDALE: Objection.

23 THE COURT: Sustained. He just
24 said he doesn't know, Mr. Norris, but he would
25 like to see the figures. I don't know what could

1 Moore - cross

2 be more explicit.

3 Why are you asking him to guess?

4 May we proceed?

5 BY MR. NORRIS:

6 Q Addressing your attention, Mr. Moore, to the last
7 sentence, which states, "However, in the production
8 category, the comparison is valid and demonstrates the
9 enormous benefits which can be obtained through
10 economies of scale and use of modern equipment."

11 Could you kindly point out what comparison it
12 was you were referring to in that sense?

13 A The production category would be the first line of
14 tabulation.

15 Q Then which numbers should we look at to understand
16 the comparison that you were referring to?

17 A The columns headed "Per Kilowatt Hour," which would be
18 the second and fourth columns.

19 Q Looking at the second column, Mr. Moore, that is data
20 that relates to Muny Light; is that correct?

21 A Yes.

22 Q What does the .013309 per kilowatt hour mean?

23 A It appears to be the result of the division of the
24 expense of \$6,700,000 in the first column by the total
25 kilowatt hours sales in, below the per kilowatt hour

Moore - cross

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column, in the middle of the page, a number of 500 and 10 million kilowatt hours.

Q And am I correct that in the production category, each kilowatt hour produced in this year by Muny Light cost 1-1/3 cents, is that correct?

A Per kilowatt hours sales?

Q Yes, is that correct?

A {The witness nodded his head in the affirmative.}

Q And then for CEI, the comparative number is about a half a penny for a kilowatt hour sales, is that correct?

A That's what the data indicates, yes.

Q And could a small utility like Muny Light have enjoyed the economies of scale and use of modern equipment through coordinated operation and development?

A I don't think I can answer that question, Mr. Norris.

MR. NORRIS: Mr. Schmitz, would

you hand Mr. Moore Plaintiff's Exhibit 371, please?

{The Clerk complies.}

Q Can you identify that document for me?

A Yes.

Q What is it, please?

A The first page of the document is a memo from me to Mr. Lansdale; the date is -- appears to be July 3rd,

Moore - cross

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1974.

Q What's the subject matter?

A "Request re CEI versus MELP customers and percentage".

Q The next two pages are work sheets, Mr. Moore.

Do those happen to be your work sheets?

A I believe so.

Q Addressing your attention then to those work sheets, the figures on these work sheets show percent of customers in Cleveland served by CEI during the period 1951 through 1973 fluctuating between 78.61 percent and 80.1 percent, is that correct?

THE COURT:

May I have that

question read back, please?

{The pending question was read by the reporter.}

A Percentages are not shown for each of the years that you mentioned.

MR. NORRIS:

Your Honor, I would

request the witness be asked to respond to that question. I think that it can be answered yes or no.

THE COURT:

Approach the bench,

gentlemen.

- - - - -

1 Moore - cross

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

4 THE COURT: Read the question back.

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

7 "Q Addressing your attention then to those
8 work sheets, the figures on these work sheets show
9 percent of customers in Cleveland served by CEI
10 during the period 1951 through 1973 fluctuating
11 between 78.61 percent and 80.1 percent, is that
12 correct?"}

13 THE COURT: Now read the answer.

14 {The last answer was read by the reporter as
15 follows:}

16 "A Percentages are not shown for each of the
17 years that you mentioned."}

18 THE COURT: The answer may stand.
19 You may follow it up with another question.

20 I'm sure, Mr. Norris, we would proceed much
21 more expeditiously and your interrogation would
22 be much more probative if you would just ask
23 simple questions instead of trying to put words
24 in the witness's mouth.

25 MR. NORRIS: I'm not trying to do

Moore - cross

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that, your Honor.

THE COURT: Well, you certainly are. You have been doing it all along. That's where we run into the trouble.

MR. NORRIS: In this case, your Honor, I think that I made a mistake.

THE COURT: All right.

MR. NORRIS: I was looking at this, and I should have said "1965."

THE COURT: I can't help what you should have said.

MR. NORRIS: But I'm not trying to put words in the witness's mouth.

THE COURT: You certainly are. With each one of the questions you are, Mr. Norris, and I have brought this to your attention throughout. If you would ask questions, you would be better off. Albeit you can lead, but you get into incorporating in these questions characterizations, conclusions, and inuendos, and the witness can't respond.

MR. NORRIS: I'll rephrase the question, your Honor.

THE COURT: Very well.

1 Moore - cross

2 {End of bench conference.}

3 - - - - -

4 THE COURT: The answer may stand,
5 Mr. Norris. It was a responsive answer because
6 that is what the figures show.

7 BY MR. NORRIS:

8 Q Addressing your attention to the same work sheet, Mr.
9 Moore, during the period 1966 through 1973, what do you
10 find to be the low percentage and what do you find to be
11 the high percentage with respect to the percent of total
12 customers served in Cleveland by CEI?

13 A The low percentage occurs in 1966, and the percentage
14 is 78.61 percent.

15 The high percentage occurs in the year 1972, and
16 the percentage is 80.10 percent.

17 Q Thank you.

18 THE COURT: What was the low
19 percentage again?

20 THE WITNESS: 1966, 78.61 percent.

21 THE COURT: And the high percentage
22 was in what?

23 THE WITNESS: 1972.

24 THE COURT: All right. I have the
25 percentage. 80.10.

1 Moore - cross

2 MR. NORRIS: Mr. Schmitz, would
3 you kindly hand the witness Plaintiff's Exhibits
4 2605, 2730, 2734, and 2729.

5 BY MR. NORRIS:

6 Q Mr. Moore, are you familiar with Plaintiff's Exhibit
7 2605 and the material set forth therein?

8 MR. LANSDALE: May I approach the
9 bench, your Honor?

10 THE COURT: Yes.

11 - - - - -

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

14 MR. LANSDALE: Your Honor, --

15 THE COURT: I don't have the
16 exhibits yet.

17 2605, 2730 --

18 MR. LANSDALE: 2605 is what I'm --

19 MR. NORRIS: It is this big
20 book, your Honor.

21 MR. LANSDALE: It would be a great
22 thick one. It is a great thick exhibit. It is
23 possibly that fourth book down.

24 THE COURT: I have it here.

25 2605.

1 Moore - cross

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MR. LANSDALE: Yes.

This, if your Honor please, is the same exhibit that Mr. --

THE COURT: Is this the exhibit?

MR. LANSDALE: Yes. It is the same exhibit that was used with Mr. Bingham. It contains a conglomerate, partly rate schedules, partly rates and regulations, without any division for anything, extending from 1970 to 19 -- I don't know what this one is. 1978.

I submit that it is unreasonable to hand this great big glob of stuff to this witness and ask him is he familiar with it.

1 Moore - cross

2 THE COURT: Maybe he just wants
3 him to hold it. I don't know. He hasn't asked
4 a question yet.

5 MR. NORRIS: What I'm going to
6 do, your Honor, and Mr. Lansdale, I'm going to ask
7 him to address himself to these pages, which are
8 simply 9-A and -B, describing the company
9 facility, and I'm going to put that up on the
10 screen so he doesn't have to go wading through the
11 book.

12 MR. LANSDALE: In all good
13 conscience, why don't you just ask him this
14 rather than ask him if he is familiar with -- what
15 is that, a thousand pages?

16 MR. NORRIS: I think being the
17 senior rate engineer, he is probably familiar
18 with these rate schedules, rules and information.

19 MR. LANSDALE: If you think a witness
20 who has the expertise approaching this guy is
21 going to be asked in generalities, you have got
22 another think coming.

23 MR. NORRIS: Well, I think --

24 THE COURT: Gentlemen, please.
25 Go back. There is nothing before me. I am not

Moore - cross

going to rule on it.

{End of bench conference.}

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