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Volume 17 (Part 4)

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

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{Thereupon, at 4:10 o'clock p.m., court was
adjourned until Tuesday, August 4, 1981, at
9:00 o'clock a.m.}

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

Transcript

Tuesday, August 4, 1981

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1980

1 TUESDAY, AUGUST 4, 1981, 9:40 O'CLOCK A.M.

2
3 LAW CLERK KURDZIEL: Your Honor, this is
4 City of Cleveland versus the Cleveland Electric
5 Illuminating Company, Civil Action No. C75-560.

6 THE COURT: Are you prepared to
7 proceed?

8 MR. NORRIS: Your Honor, if it
9 please the Court, because of some of the
0 representations that were made during the July
1 13th chambers conference on the instructions,
2 there were comments made by Mr. Lansdale about
3 Berkey and about Northeastern, a couple of recent
4 cases -- well, not all recent -- but we respectfully
5 disagreed with the points of view that were
6 expressed at that time, and so we have this
7 morning filed a Second Supplemental Trial Brief
8 that we would like to bring to the Court's
9 attention.

0 THE COURT: Very well. Thank you.

1 The Court will review it.

2 Bring in the jury.

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

THE COURT: Good morning, ladies and gentlemen of the jury.

Incidentally, I did call GSA, and hopefully they will remedy your situation in the jury room and get you sole cold air in there.

- - - - -

WARREN D. HINCHEE
resumed the stand and testified further as follows:

THE COURT: You may proceed.

REDIRECT EXAMINATION OF WARREN D. HINCHEE {Resumed}

BY MR. NORRIS:

Q Good morning.

A Good morning.

Q Mr. Hinchee, yesterday at the close, I was putting questions to you with respect to Mr. Lansdale's cross-examination as to your November 10, 1971 report to the Mayor's Task Force, and that is attached to PTX-2938 which I think you have in front of you if you

Hinchee - redirect

need to refer to it.

Now, Mr. Lansdale drew to your attention that on page 2 of that report in November, 1971, you were identifying contributions made by Muny Light to the City in lieu of taxes.

Can you state to the jury what the total amount of contributions made by Muny Light in lieu of taxes were set forth in your November, 1971 report?

MR. LANSDALE: I object, if your Honor please.

THE COURT: Approach the bench.

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

MR. LANSDALE: I am -- this is reading the exhibit, and --

MR. NORRIS: It is preliminary.

You asked him questions about the use of those data and whether or not he was misrepresenting to Council, and I'm trying to rehabilitate.

THE COURT: Gentlemen, that's what we spent all afternoon yesterday doing is reading into the record testimony.

Hinchee - redirect

And, frankly, in reviewing the testimony last night, I didn't see any great amount of probative matter that was elicited during the entire redirect examination.

I don't know what you are going to ask him.

Read the question back.

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

"Q Now, Mr. Lansdale drew to your attention that on page 2 of that report in November, 1971, you were identifying contributions made by Muny Light to the City in lieu of taxes.

"Can you state to the jury what the total amount of contributions made by Muny Light in lieu of taxes were set forth in your November, 1971 report?"}

THE COURT: 20,800 -- what is the purpose of it?

MR. NORRIS: It is a preliminary question.

THE COURT: To what?

MR. NORRIS: To things:

The source of that data, and then --

THE COURT: The source of the data

Hinchee - redirect

has already been established.

MR. NORRIS: And then it is also preliminary to redirect on Mr. Lansdale's suggestions and succeeding line of questioning that he used the same data to misrepresent to City Council in June of 1972.

THE COURT: Why don't you go directly to those questions instead of repeating into the record that which is not -- this was brought out on your direct examination, it was gone into at length on cross-examination, it gets -- I watch the jury, and they're getting tired of this reading.

MR. NORRIS: It was only brought out on cross, your Honor.

THE COURT: Let's, -- gentlemen, please. Ask him the direct questions that you are interested in.

Let's proceed.

{End of bench conference.}

- - - - -

THE COURT: You may proceed.

BY MR. NORRIS:

Q Mr. Hinchee, what was the source of the \$2,300,000

Hinchee - redirect

figure that you stated in your November, 1971 report to City Council as being Muny Light's direct contribution?

A Well, records of the Division and the annual report.

Q And what specifically -- how did you make the calculation of two million three?

Is it set forth on that page?

A It is set forth on page 2 in a complete detail.

Q Now, Mr. Lansdale also called your attention at 11,888 and 11,889 of the transcript to a report that you submitted to City Council seven months later on June 28, 1972.

Do you recall that?

A Yes, I do.

Q Now, that should be your table, which is CEI-284.

MR. NORRIS: Mrs. Richards, would you give it to the Judge.

{After an interval.}

Q At page 11,889 of the transcript Mr. Lansdale quoted a sentence from page 3 of this 1972 report as follows:

"The real fact is that in 1970 the Division of Light and Power returned 21 percent of gross revenues to the General Fund as contributions in lieu of taxes."

Do you recall that?

Hinchee - redirect

A Yes, sir.

Q Now, at page 11,892 and 11,893 regarding the 1972 report, Mr. Lansdale asked you the following:

"Q Then you did know the results of the operations of Muny Light and the effect of the changes in the rates and the like by the time that you reported to counsel on June 28, 1972, did you not?

"A I did know.

"Q You did know?

"A Yes.

"Q You failed to tell counsel that fact, although you were telling them about 21 percent of gross revenues returned to the General Fund; that is correct, isn't it?

"A I did not have the updated information to give to Council."

My question is, in your June, 1972 report, did you state to City Council the same \$2,300,000 figure as being a contribution by Muny Light during 1971 in lieu of taxes?

A No, I did not.

Q Did you state some other figure for City Council in your June, 1972 report as being a contribution in lieu of taxes?

A Yes.

Hinchee - redirect

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Q What figure?

A \$1,530,294.

Q Is that figure set forth in your June, 1972 report?

A Yes.

Q Where?

A On page 7 of that same report.

Q Read what is stated with respect to what you stated to Council.

A The whole paragraph reads:

"In view of my request for short-term interim financing, the Finance Director decided to relieve some of the drain on the Division of Light and Power by reducing the amount of payments in lieu of taxes.

"As a result, in the fiscal year 1971, the Division of Light and Power returned only \$1,530,294 in lieu of taxes to the City, still a very far cry from being a burden to the City."

Q And what accounted for that eight hundred some thousand dollans difference between the figure you stated in 1971 and the figure you stated in 1972?

A Well, the relief from payments on the general obligation bonds.

Q Do you still have PTX-2938 in front of you?

A Yes.

Hinchee - redirect

Q And that was your January, 1972 report from the new Director of Utilities; Mr. Kudukis; is that correct?

A Yes.

Q Now, on the first page of that report to Director Kudukis, PTX-2938, you indicated that "Muny Light is losing approximately 140 accounts per month directly due to a weakness in the present organization."

Do you recall that?

A Yes.

Q Was this internal problem they have cited in this memorandum the sole reason that Muny Light was losing 140 accounts per month?

A No, it was not.

Q What were some of the other factors?

A Well, the CEI had a free-wiring program, and they called it the Muny Displacement Program. And they had actively sent out a group of salesmen in the field to solicit Muny customers.

Q At 12,358 and 12,359 of the transcript you testified that after you arrived in March of 1971, you made an investigation and determined that no engineering meetings for the permanent interconnection had taken place between CEI and Muny Light.

Do you remember that testimony?

Hinchee - redirect

A Yes, sir.

Q Who were the Muny Light engineers that you discussed this with?

A Mr. Matthews, Mr. Erickson, and Mr. Gillis, and Mr. Wetzell.

Q And at page 12,359 you stated that from the information you received, discussions with CEI had taken place, but no engineering-type discussions.

Do you recall that?

A Yes.

Q Did you or your staff make any specific request of CEI for engineering studies pertaining to the permanent interconnection?

A Yes, we did.

Q What specific requests were made of CEI?

A Well, Mr. Erickson made a request of CEI to bring engineering information that he might have developed with him to the April 23 meeting when he was setting up the meetings.

MR. LANSDALE:

Objection.

THE COURT:

Approach the bench.

- - - - -

{The following proceedings were had at the
bench:

Hinchee - redirect

MR. LANSDALE: He is testifying about what a dead man said.

You asked him what he asked him, and you are telling me what a dead man said. I object.

MR. NORRIS: He instructed Mr. Erickson to set up the meeting, and I am asking him --

MR. LANSDALE: That is not the testimony.

THE COURT: I will sustain the objection.

{End of bench conference.}

- - - - -

THE COURT: I have sustained the objection. The jury will disregard the question and the answer.

BY MR. NORRIS:

Q Did you make any specific requests yourself to CEI for engineering studies that might have been performed with respect to the permanent interconnection?

A Yes, I did.

Q And what request did you yourself make?

A Well, at the meeting, April 23, I asked the engineers from CEI who were present to give me any information

Hinchee - redirect

or data that they had developed in relation to permanent synchronous interconnections with the City.

Q And who were the CEI people to whom you made that request?

A The people present at the meeting were Mr. Meister and Mr. Sener, as far as the engineering group was concerned, I believe.

Q Now then, did you receive any response to your request?

A Yes. Mr. Sener responded by saying that there had not been any real engineering taking place, and that studies had not been made; however, there were some concepts that he felt could be considered, and he proceeded to show me what those concepts were.

THE COURT:

Mr. Norris, this

testimony seems vaguely familiar to me, and it is repetitious. I think we have been over it once and possibly twice. Let's not be repetitious, please.

Proceed.

BY MR. NORRIS:

Q Leaving that meeting, Mr. Hinchee, and jumping a year later, after the FPC had entered the March, 1972, order for the temporary intertie between CEI and Muny

Hinchee - redirect

Light, Mr. Lansdale drew your attention to a letter from Mr. Sener dated April 12, 1972, and it is CEI Exhibit 1163, and he also drew your attention to a roll of drawings that are marked CEI Exhibit 1164.

MR. NORRIS: Mrs. Richards, would you give those drawings to the witness, please.

Q {Continuing} Do you recall that Mr. Lansdale was asking questions about this letter and these drawings?

A Yes, I do.

Q Now, I would like to have you look at those drawings, CEI Exhibit 1164.

MR. NORRIS: And Mrs. Richards, could you help the witness unroll that.

{After an interval.}

BY MR. NORRIS:

Q And without going through all of those drawings, Mr. Hinchee, would you indicate what those drawings represent.

A Yes. They indicate and represent the location of the underground facilities of CEI in the area where the pole line was to be constructed.

Q Now, did these drawings -- did these drawings give you the information that you needed to plan that pole line?

A No, they did not.

Hinchee - redirect

Q In what respects did they not?

A Well, they indicated schematically and with some dimensions the approximate locations of underground facilities, but they were not precise and we couldn't verify those locations.

Q Thank you.

MR. LANSDALE: Would you take the drawings back, Mrs. Richards.

{After an interval.}

BY MR. NORRIS:

Q Mr. Hinchee, at 12,401 Mr. Lansdale put questions to you concerning the agreement made with CEI at the July 8 meeting.

At 12,403 he drew to your attention PTX-2860, which were your minutes of the July 8 meeting.

Do you have that in front of you?

A Yes.

Q Now, you testified in response to a question from Mr. Lansdale that one of the agreements reached at the July 8 meeting was that the engineers from CEI and Muny Light would meet to begin the engineering studies for permanent interconnection.

Where is it referred to in your minutes?

A It is referred to on the third page of the minutes.

Hinchee - redirect

and it is Item No. 3, "CEI engineers will meet with the City engineers during the week of July 12 to begin the engineering studies for permanent power supply interchange point."

Q You also testified that at this meeting CEI agreed to make available to you background information relating to meter readings and billing computations, and so forth.

Don't bother reading it, but where is that agreement set forth in this PTX-2860?

A That is Item No. 4.

Q Was there any agreement that the billing dispute would be resolved before the engineers commenced their engineering studies for the permanent interconnection?

A No, sir.

MR. LANSDALE: Objection.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. LANSDALE: He testified that there was an agreement about the payment at that meeting. He testified very clearly that -- what CEI's obligation with respect to the payment was --

Hinchee - redirect

that it was the subject of an agreement, and now you are asking him whether there was an agreement. That has been resolved.

THE COURT: Mr. Lansdale, I have reviewed my rules of evidence, and the changed rule is that either party may impeach any witness, and either party may impeach his own witness.

MR. NORRIS: That is not an impeachment. Read the question back. It is a different question.

THE COURT: Don't argue with me. I dislike arguing with you. If you have something to put on the record, please put it on the record, and I will permit you to put anything you want on the record, and it will be preserved for the Court of Appeals.

I can characterize any way that I am desirous of characterizing any testimony of any witness, and I can comment, not only to you at the bench, but to the jury as to the credibility of that witness, and I must say, the credibility of this witness has a great deal to be desired, and if you are desirous of impeaching him, you are free to do so.

Hinchee - redirect

Apropos of the same subject as to the repetitious nature of the testimony, I have gone through my notes here, and you are going over the identical same matters that you went over on direct examination.

MR. NORRIS: I would like to put a statement on the record.

THE COURT: Go ahead.

MR. NORRIS: I am unaware of any question -- I may be wrong, but I am unaware.

THE COURT: It has been known that you have been wrong before on your recollection of the record.

MR. NORRIS: I have also been right.

THE COURT: I haven't found one yet.

MR. NORRIS: I will point them out.

Now, this question, was there an agreement that the billing dispute, the metering information, and the resolution of that matter had to be finalized before the engineers commenced their meeting, that is the question, and it is not inconsistent with any of the testimony.

THE COURT: As I recollect the

Hinchee - redirect

testimony, one of the conditions was, as a matter of fact, meetings from the FPC, and so forth, that all outstanding invoices be made, and that the parties would at a subsequent time, if they were desirous of pursuing their litigation, be bound by the results of that litigation, and if the defendant was required to make refunds, they would be made either directly or in the form of credits.

Now, that is the testimony. I don't care what you want to ask him. I have overruled the objection. He can impeach his own witness.

MR. NORRIS: I would like to make another statement.

Just so the record is clear, I disagree with the Court's characterization because there was no agreement.

THE COURT: I could care less. The record speaks for itself.

MR. NORRIS: May I make the statement?

THE COURT: Yes.

MR. NORRIS: I disagree with the Court's statement that there was any such agreement

1 Hinchee - redirect

2 at the FPC, and indeed these two witnesses, James
3 and Hinchee, testified that the only agreement
4 made at the FPC was an agreement to go back and
5 try to reach an agreement, and they did it July
6 8th, and it was not an agreement that all the bills
7 had to be paid before the interconnection.

8 What the agreement was was that the City would
9 make a payment on a payment schedule that was
10 agreed to, and I disagree with the Court's
11 characterization.

12 THE COURT: All right. Overrule
13 the objection.

14 {End of bench conference.}

15 - - - - -
16 THE COURT: Read the question back
17 to the witness.

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

20 "Q Was there any agreement that the
21 billing dispute would be resolved before the
22 engineers commenced their engineering studies
23 for the permanent interconnection?"

24 MR. NORRIS: Would you read that
25 again? I think that -- I didn't hear it all.

Hinchee - redirect

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

"Q Was there any agreement that the billing dispute would be resolved when the engineers commenced their engineering studies for the permanent interconnection?"}

MR. NORRIS: It was "before" not "when."

THE COURT: Well, don't take issue with the court reporter.

Rephrase your question, please.

BY MR. NORRIS:

Q Mr. Hinchee, at the July 8, 1971 meeting, was there any agreement between the City and Muny Light that the billing dispute had to be resolved prior to the time the engineers commenced their engineering for the permanent interconnection?

A No, that was not part of the agreement.

Q And what was the date that was agreed that the engineering work would be completed on the permanent interconnection?

A By August 1st, 19 --

THE COURT: Again, Mr. Norris, this is repetitious, and I showed you in my notes

Hinchee - redirect

where we have gone over this before.

I would ask, again, please do not be
repetitious of testimony that is already in the
record.

MR. NORRIS:

Thank you, your

Honor.

BY MR. NORRIS:

Q Mr. Hinchee, why did the City make its second payment
on August 13th if the engineers' work had not been
completed by August 1st?

A Well, to demonstrate good faith, and to continue to
try to encourage CEI to come across with the
engineering meetings.

Q At Transcript 12,461 to 12,463, you and Mr.
Lansdale were discussing that Muny Light generation
history chart, PTX-3030, and the other one, 3031; do
you remember that?

A Yes, sir.

Q Now, at that part -- that portion of the transcript,
you testified that the type of power which Muny
Light was getting over the load transfer service
from February of 1970 through the middle of May, 1972
was both maintenance and emergency power; do you
remember that?

Hinchee - redirect

A Yes, sir.

Q At Transcript 12,463, lines 9 and 10, you indicated that the end point for this type of arrangement, which included both maintenance and emergency power, was about the middle of May; do you remember that?

A Yes, sir.

Q All right.

Then at transcript 12,467 and -468, you and Mr. Lansdale had discussion about contract and agreement and understanding; but then after that, he asked you the following question:

"Whether you call it an understanding, a contract, a concensus, or an agreement, there was some kind of a mutual -- there was some kind of a deal to mutually arrive at an understanding that there would be maintenance power, wasn't there?"

And you answered, "Yes."

Do you recall that?

A Yes.

Q All right.

Then the next day, the Court read a stipulation that referred to an FPC order dated May 30, 1972, at which time the FPC established a rate for the load transfer service, and at the bottom of page 12,563,

Hinchee - redirect

Mr. Lansdale asked you the following question:

"And that --" May 30th FPC order -- "-- is the basis of the change in the color as of May 30th, 1972, in the top portion of your chart on there, PTX-3031, is it not?"

And you said "Yes" to that question.

- Do you recall that?

A Yes.

Q And do you care to explain your answer that you gave Mr. Lansdale to that question?

A Yes.

That was not correct, and I had been confused between the number of FPC hearings and the number of orders that were issued.

I have since had a chance to review the situation and determine the basis on which the May 15th date that I cited was brought forth.

Q Now, what was the basis for the indication that you put on PTX-3031 as to the date after which Muny Light could no longer get maintenance power from CEI; what did you base that on?

A The FPC issued an order after CEI had made a series of extensions voluntarily, and then said they would no longer voluntarily extend --

Hinchee - redirect

Q Extensions of what?

A The extensions of service from the load transfer points.

And then CEI had said they would no longer extend those services, and this was around October 1, and then -- no longer voluntarily extend.

So the FPC then reviewed the matter, took it under advisement, and ordered that the load transfer points remain in place, and did issue a further order on December 16th --

Q Of what year?

A Of 1971.

{Continuing} -- saying that the load transfer points must be maintained in place through -- for five months, which would take you through May 15th, 1972.

And that was the order on which I based my recollection of the May 15th date.

Q Is PTX-1530 on the table in front of you?

{After an interval.}

A Yes.

Q Would you look at PTX-1530?

A Yes, sir.

Q Is that the order that you're referring to?

A Yes, it is.

Hinchee - redirect

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

THE COURT: Yes.

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

MR. NORRIS: I would request the
Court to read Stipulation 245.

{Mr. Lansdale reading the stipulation
silently.}

MR. LANSDALE: I have no objection to
that.

MR. NORRIS: Thank you.

{End of bench conference.}

- - - - -
THE COURT: Ladies and gentlemen
of the jury, Stipulation No. 245 reads as follows:

"From time to time, CEI extended the date for
termination of the load transfer service. On
July 8, 1971 CEI offered to extend the effective
date of the notice of termination until July 19,
1971. On July 22, 1971, CEI informed the City
that it would not object to extending the load
transfer service until August 2, 1971. CEI made

Hinchee - redirect

further extensions of the load transfer service. On October 1, 1971 Washington counsel for CEI formally informed the Federal Power Commission that CEI would not object to extending the load transfer service from October 4, 1971 to October 18, 1971. Subsequently, CEI extended the load transfer service termination date until December 17, 1971 beyond which date CEI refused to make further voluntary extensions of the load transfer service."

MR. NORRIS:

Thank you, your Honor.

BY MR. NORRIS:

Q Mr. Hinchee, at page 12,555, Mr. Lansdale asked you whether or not after the entry of this order that Judge Krupansky has just made reference to, the order of the FPC, whether or not the City still refused to pay in accordance with the CEI billings, and you then responded:

"Well, I don't know whether it --" the City --
"-- refused to pay or not, but it didn't pay."

My question to you, Mr. Hinchee, is:

Why didn't the City pay those bills after the FPC order of December, 1971?

A Well, the City was appealing the order, and the issue

Hinchee - redirect

of the correct charges was a matter of litigation in the courts.

Q At transcript 12,566, you testified, Mr. Hinchee, in response to a question from Mr. Lansdale, that subsequent to May, 1972, CEI never offered to provide maintenance power; do you recall that?

A Yes, sir, I do.

Q Mr. Lansdale then asked if you ever made any request to CEI for maintenance power, and you responded, "Yes, sir."

Do you remember that?

A Yes.

Q And then at lines 20 to 24 on that same page, 12,566, you testified that there was an ongoing effort on the part of the City to still try to get CEI to negotiate; do you recall that?

A Yes, sir.

Q On page 12,567, Mr. Lansdale asked you if you found any written evidence of these requests to CEI for maintenance power, and you said that you could not recall any such written request; do you remember that?

A Yes.

Q Now, to whom in CEI did you personally make your request for maintenance power after May, 1972?

Hinchee - redirect

A Mr. Howley.

MR. LANSDALE: Object.

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. LANSDALE: I object on the ground that this is not redirect.

He already testified on direct that he made oral requests.

I asked him if he made any written requests; he said "No."

Now, you ask him to whom did he make the request?

MR. NORRIS: I think it's responsive to the question.

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

{Mr. Murphy hands a transcript to Mr. Lansdale.}

MR. LANSDALE: Well, he actually testified to this and said there were no written requests.

MR. NORRIS: Mr. Lansdale, you're

1 Hinchee - redirect

2 not looking at the same page I read from.

3 MR. LANSDALE: It doesn't make any
4 difference; this is redirect.

5 THE COURT: Gentlemen.

6 Mr. Norris, again, all we're really doing is
7 you are reading the record.

8 MR. NORRIS: Mr. Lansdale has
9 asked questions about these kinds of requests, and
10 I'm going back over the same ground that Mr.
11 Lansdale dealt with.

12 THE COURT: That doesn't permit you
13 toread a whole sequence of questions and answers
14 and then ask the substance of the question, which
15 could have been asked in the initial instance.

16 Again, we go back to the same technique which
17 was objectionable during the first trial, and
18 you're resorting to the same tactics now, and I'm
19 going to ask you to please desist and ask proper
20 questions, if you know how.

21 Let's proceed.

22 {End of bench conference.}

23 - - - - -

24 THE COURT: Sustain the objection.

25 You may proceed.

1 MR. NORRIS: No further questions.

2 THE COURT: Redirect.

3 And, Mr. Lansdale, --

4 MR. LANSDALE: Yes, sir.

5 THE COURT: -- please -- I should
6 say this is "recross" -- please limit your
7 recross-examination to the redirect.

8 MR. LANSDALE: Yes, sir.

9 - - - - -

10
11 RE-CROSS-EXAMINATION OF WARREN B. HINCHEE

12
13 BY MR. LANSDALE:

14 Q Mr. Hinchee, is it now your testimony that the CEI
15 agreed to go ahead with engineering studies and the
16 work towards a permanent synchronous interconnection
17 even though it wasn't being paid?

18 A I'm sorry, --

19 THE COURT: Read that question
20 back.

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

23 A No, sir.

24 Q Is it your testimony -- is it your testimony that at the
25 times you say they were supposed to go forward with the

1 Hinchee - recross

2 engineering on May 12 and the like, that the City --
3 CEI was being paid for its power?

4 A Yes, sir.

5 Q Thank you.

6 MR. NORRIS: May I approach the
7 bench?

8 THE COURT: Yes.

9 - - - - -
10 {The following proceedings were had at the
11 bench:}

12 MR. NORRIS: You inadvertently said
13 "May 12," the record will show "May 12," and I
14 think you meant "July 12."

15 I just wanted to bring that to your attention.

16 MR. LANSDALE: All right.

17 I'll correct that.

18 {End of bench conference.}

19 - - - - -
20 BY MR. LANSDALE:

21 Q Mr. Hinchee, Mr. Norris points out that in my question
22 to you I said "May 12." I intended to mean -- I
23 intended to say "July 12," and I think that is what
24 you understood in your answer, is it not?

25 A I think July 8th was what I was really thinking of, the

Hinchee - recross

July 8th meeting.

Q I thought it was July 12 they were supposed to go ahead with their talks?

A July 12 was when the engineering talks were scheduled.

Q In any event, it's your testimony that they were not willing to go forward unless they were being paid; this is correct, is it not?

A That's correct.

Q And it's your position that as of July 12th they were being paid for this?

A Yes, sir.

Q And is it your testimony that they were being paid in full for their energy?

A Well, again, Mr. Lansdale, "in full" depends on whose point of view you're looking at, and I think they were being paid more than in full when they were being paid \$400,000 at a clip, but there was opportunity during the schedule of payments to review the bills and then come up with what a correct payment would be on the last payment.

Q Mr. Hinchee, do you really believe that the CEI had any burning desire to furnish a synchronous interconnection to Muny Light in 1971 or '72?

A No, sir.

Hinchee - recross

I think they avoided it as much as possible.

Q You think they did not want to give Muny Light a synchronous interconnection, didn't you?

A I think they studiously avoided it.

Q And will you tell me, Mr. Hinchee, why you think that CEI should have been willing to proceed to give you a synchronous interconnection -- a synchronous interconnection when you believed they didn't want to do it when they were being paid the bills that they thought were fair and just; can you give me a single reason for that?

A Mr. Lansdale, I can't tell you what CEI's reasons were for anything.

THE COURT: Read the question back, please.

{The last question was read by the court reporter.}

THE COURT: Now, read the answer back.

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

THE COURT: That's not responsive to the question, Mr. Hinchee.

Would you like the question read back?

Hinchee - recross

Please listen to the question.

Read the question back.

{The last question was reread by the court reporter as follows:

"Q And will you tell me, Mr. Hinchee, why you think that CEI should have been willing to proceed to give you a synchronous interconnection -- a synchronous interconnection when you believed they didn't want to do it when they were being paid the bills that they thought were fair and just; can you give me a single reason for that?"}

A I can't answer the question then.

If my previous answer wasn't your answer, then you would have to break those series of questions down into individual questions, Mr. Lansdale.

MR. LANSDALE: May I request Mr. Murphy to put on the screen Exhibit -- what is the number?

MR. MURPHY: 1046.

MR. LANSDALE: -- 1046.

{Mr. Murphy complies.}

BY MR. LANSDALE:

Q The period that you're talking about, Mr. Hinchee, --

THE COURT: Whose exhibit is this?

Hinchee - recross

MR. MURPHY: CEI's Exhibit, your Honor.

BY MR. LANSDALE:

Q The period that you're talking about is in 1971 in the January-February-March-June-July period, at which time the balance owed by MELP on CEI's billings were -- I can't quite read that from here -- a million and three quarters or only about a million six hundred thousand at that date -- but for our purposes, it doesn't make much difference -- and my question to you, Mr. Hinchee, is:

In view of your belief that CEI did not desire to furnish a synchronous interconnection to Muny Light, will you explain to me why you supposed that they should be willing or even anxious to go ahead and do the work to produce a synchronous interconnection when they weren't being paid, in their view, for what they were already giving you?

A Mr. Lansdale, I think the issue of payment had to do with incorrect bills rendered by CEI, with improper meter readings, with violation of the terms of the ordinance, and that was one matter.

And the matter of synchronous interconnection was a separate matter, and it was viewed so by the City,

Hinchee - recross

and I don't think the two were related in any way except through CEI's requests that these payments be made.

Q I can't -- I want to pause for a minute.

You keep telling us again and again, Mr. Hinchee, that these payments were not in accordance with the ordinance.

Were you in the room when his Honor read the stipulation agreed upon by the parties the other day to the effect that the Court of Common Pleas and the Court of Appeals of Cuyahoga County had decided, after testimony at a hearing, that the billings of CEI and the contractual arrangement of January 20th was in accordance with the ordinance; were you here when that was read?

A That isn't what I understood it to be.

Q I didn't ask you that.

My question is:

Did you hear that stipulation, and are you aware of it?

A I heard the stipulation, but I don't recall that that was the exact stipulation.

Q What do you think the stipulation was, Mr. Hinchee?

A Well, I can't recite it right now, Mr. Lansdale.

Hinchee - recross

It's in the record, but that was not my reflection of it.

Q All right.

Now, Mr. Hinchee, it's your testimony that the question of a synchronous interconnection between Muny Light and CEI and CEI's willingness to go ahead was regarded by the City as a separate matter from the question of paying the balances, is this your testimony?

A Yes.

Q And it is your view that the CEI should have been willing to go ahead and provide this synchronous interconnection and the engineering studies looking toward it irrespective of whether, in their view, they were being paid; that's your statement?

A That's my statement.

Q And what was the quid pro quo for this, what was the trade off? What did CEI get out of it, being a good fellow?

A Mr. Lansdale, CEI had agreed to do this in 1970 and they had not done it.

And that was all part of the expectation of the City was that -- along with the load transfer points -- was that the engineers would proceed with a more

Hinchee - recross

suitable type of power connection between the two utilities.

And so CEI had not performed what they had agreed to perform earlier in this time period.

Q CEI had agreed to pay in the January 20th, 1970 contract, hadn't it --

MR. LANSDALE: I beg your pardon?

MR. MURPHY: The City.

Q -- I mean the City had agreed to pay, hadn't it?

A The City had agreed to pay in accordance with the 161-70 ordinance.

Q I beg your pardon, Mr. Hinchee.

I'm referring to the letter agreement -- the letter contract of January 20th, 1970, decided by the Federal Power Commission and by the courts both, to be the contract between the City and CEI. In that letter, in that same letter, CEI agreed to work towards -- to do the work towards a synchronous interconnection, and in that selfsame letter, the City agreed to pay, didn't they?

A Yes, I think they did.

Q All right. Thank you.

Now, Mr. Hinchee, from February, 1970 until the date of your discussions that you're talking about in

1 Hinchee - recross

2 July, CEI had been furnishing over load transfer points --

3 THE COURT: July of what year?

4 MR. LANSDALE: July, 1971.

5 Q {Continuing} -- February of 1970 until July of 1971,
6 CEI had been furnishing energy to Muny Light for two
7 purposes, according to your chart, for emergency
8 purposes and for maintenance purposes.

9 We are agreed on that, are we not?

10 A Yes.

11 Q Now, if -- and by the amount of power that they could
12 transfer over that interconnection was limited by the
13 capacity by the interconnection, wasn't it?

14 A Yes.

15 Q And this was a fairly small amount -- I've forgotten --
16 but around 20 or 25 KVA, an approximation?

17 A That's in the ball park, yes.

18 Q Now, had there been a synchronous interconnection of the
19 type that was later energized in 1975 with a capacity
20 of 100 megawatts, I believe, there would be no way,
21 would there, unless CEI pulled the switch, for CEI to
22 limit the amount of energy that Muny Light took --
23 could take over that interconnection, am I correct in
24 that?

25 MR. NORRIS:

 Approach the bench?

Hinchee - recross

THE COURT: Yes.

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{The following proceedings were had at the bench:}

MR. NORRIS: I fail to see how this is within the scope of the redirect.

MR. LANSDALE: This gentleman has testified that we agreed, in spite of the contractual arrangements, to go forward with an interconnection which he thinks is a separate matter, and I think I'm entitled to develop the craziness of that testimony.

THE COURT: Are you desirous of responding?

MR. NORRIS: I just -- I object because it goes beyond the redirect.

THE COURT: Overruled.

{End of bench conference.}

- - - - -

THE COURT: Rephrase that question, please.

BY MR. LANSDALE:

Q Mr. Hinchee, with a synchronous interconnection between Muny Light and CEI, there is no way for CEI to limit the

Hinchee - recross

amount of energy which Muny Light can take over that interconnection unless it simply pulls the switch, disconnects the connection, is that not correct?

A No, I don't think that's entirely correct.

In its simplest form, it's correct.

Q Tell me why it isn't entirely correct?

A Well, the way you take power off an interconnectin is by several things.

One is by matching the voltages of the system, and -- systems -- and if you match the voltages, you can effectively control how much power you take at any given time.

So relays could be simply an order that -- relay protection would be set so that if you exceeded a certain amount of power flow, then there would be an automatic opening of a breaker.

Say somebody, you know, didn't notice that the exchange had gone beyond what it was supposed to be, or in the event maybe the City was pushing power back into the Cleveland Electric Illuminating System, -- the power could go either way over synchronous interconnection -- and those things had to be watched out for.

But there are a number of controls for this

Hinchee - recross

purpose; and the relay and the attendant breaker -- circuit breaker, that relay control was just part of the total apparatus.

Q I have a -- it seems to me we've been through this before, Mr. Hinchee.

The relay operation disconnects, doesn't it?

A Certainly.

Q And that's the way you control it.

And my question was:

There is no way to control it unless you disconnect it or cut the power off?

A No, that's not the way you control it; that's the way you limit it; but that's not the control.

Q I beg your pardon.

My question to you was:

If Muny Light wants to take it, there's nothing that CEI can do with a synchronous interconnection to prevent Muny Light from taking all the energy it wishes over the interconnection short of cutting -- of disconnecting it, and that's a true statement, isn't it?

A Yes, you can set a limit that way.

Hinchee - recross

Q I beg your pardon?

A Yes, you can set a limit that way.

Q Set a limit what way?

A By presetting power flow over the interconnection into your control mechanism.

Q And if the thing is preset by a control mechanism, it results in a disconnection of the interconnection, does it not?

A That would be correct.

Q And if a system such as Muny Light is taking energy at the rate of 60 or 70 megawatts over the interconnection, and the interconnection is disconnected, whether intentionally or by operation of the relay, what happens to the Muny Light System?

A Well, I don't know. It would be dependent on a number of variables depending on what generation Muny Light had on it at the time and how quick they would be able to pick up the load. There would be a sudden demand on the system to make up that power, whatever it was.

Q Mr. Hinchee, during 1970, Munny's load at a maximum rate had 90 some odd KW peak demand?

A Yes.

Q If you are taking 60 or 70 megawatts over an interconnection, that leaves 30 or so that Muny Light

Hinchee - recross

is generating?

A Mr. Lansdale.--

Q Is it or isn't it?

A Yes. Your figures are misleading.

THE COURT:

Read the question.

{Question read.}

THE COURT:

Do you understand the question?

THE WITNESS:

Yes, and those figures are misleading.

Q Well, maybe they are, Mr. Hinchee, but bear with me.

And if you have a disparity like this, it is almost certain that Muny Light's system will completely black out if the 60 or 70 megawatts is suddenly disconnected?

A If those were the conditions.

Q Well, what is misleading about my question?

A First of all, you are not dealing with the real facts.

Muny only added 20 to 25 megawatts over the load transfer points, and you are doubling that. You are making a "what if" game with the figures, instead of sticking with the actual figures that were operable at the time.

Q I am certainly -- I certainly am taking a "what if"

Hinchee - recross

thing, and my question related to the synchronous interconnection and what the possibilities were with a synchronous interconnection and not a load transfer point.

Now, Mr. Hinchee, getting back to the point of departure of this whole business; I think you and I can both agree, can we not, that if CEI were perceived as permitting a blackout of the entire Muny System by reason of failure to supply emergency power, they would have one heck of a public relations problem; wouldn't they?

A I don't know about CEI's public relations problems.

Q But we do know that CEI had no desire to furnish a synchronous interconnection to Muny Light in the year 1971; we agreed on that, didn't we?

A No; we are not agreed on that.

Q I thought you told me that you were of the opinion that CEI did not desire to give Muny Light an interconnection in 1970.

A Mr. Lansdale, they didn't do it, but they never reiterated at any time that they were not able to do it. They all said we are agreeable upon some conditions.

Q If you paid your bills, then they were agreeable?

Hinchee - recross

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2 A Yes.

3 Q That is right.

4 Now, Mr. Hinchee, you testified that -- you
5 pointed out to us the amount of what we defined as
6 routine capital expenditures in the year 1970 to 1973.
7 averaged fairly close to a million dollars, which was
8 the figure that we agreed on on direct examination,
9 and that you actually made that investment.

10 Did you understand my interrogation of you to
11 suggest that you had not made such investment?

12 A I thought that was our position, yes.

13 Q My question to you, and I want to repeat this, in view
14 of that, was that I suggested to you that in the
15 years -- and I was particularly dealing then with 1971
16 and 1972 -- that Muny Light did not have sufficient
17 revenues from its operation to make its routine
18 capital expenditures and its debt service and in
19 addition to satisfy its obligations, its payables,
20 particularly to CEI and East Ohio Gas and others.

21 You don't have a disagreement on that point?

22 A That that was your point?

23 Q Yes.

24 A I think that is correct.

25 Q All right; and Mr. Hinchee, what we call "routine

Hinchee - recross

capital expenditures" -- withdraw that.

We have here in the courtroom this house pipe that you ordered from Muny Light.

When you install one of those on a house in order to pick up a new customer or take one away from CEI, or what have you, that is a capital expense, is it not?

A Yes.

Q And this is an illustration of the kind of things that are in this routine capital expenditures that we have talked about?

A Yes.

Q And in order to stay in business, Muny Light has to provide those things just the same as it provides the wages to its workers and operating expenses, doesn't it?

A Yes.

Q Thank you.

THE COURT:

It is 10:45.

Ladies and gentlemen, suppose we take our morning recess.

Please, during the recess, keep in mind that you are not to discuss the case, either among yourselves or with anyone else. Please keep an open mind until you have heard all of the evidence and the Court's instructions on the law and the

Hinchee - recross

application of the law to the facts, and until such time as the matter is submitted to you for your ultimate decision. Thank you.

{Recess taken.}

THE COURT: Please be seated.
Call in the jury, please.

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

THE COURT: Please be seated,
ladies and gentlemen. You may proceed.

BY MR. LANSDALE:

Q Mr. Hinchee, would you refer to the fact that Muny Light at year end 1970, in accordance with Plaintiff's Exhibit 2162, had an earned surplus of almost \$29,500,000, and in spite of this, when compared to the amount of bonds outstanding, that that is what you based your determination that Muny Light was in sound financial condition on direct examination? Have I correctly represented your testimony?

A No, I don't think so.

Q Tell me more.

A I think I said in relation to the assets of the operation, that the equity of the Municipal plant was

Hinchee - recross

substantially in excess of 54.2 percent.

Q That is what you based your conclusion that it was in sound financial condition?

A One of the things.

Q What else?

A Well, I testified that I looked at the way that the City had paid its debt service over the past years, and whether it had any delinquencies in that regard, and I took a look at the reserves created for debt service, and I looked at the amount of inventory on hand, over \$2 million of inventory, and I looked at the opportunities for increasing revenues if the City would show that the revenues needed to be increased.

I also looked at the construction work in progress, major construction over 5.6 million, and funds available for some of that, and I looked at the other construction in progress, the other capital improvements, and there was 1.3 million of that.

I also looked at Moody's bond rating, which is a financial institution that rates utilities and other businesses across the country, and I believe the rating was Double A.

Q Mr. Hinchee, I believe you indicated to me that, dwelling on this \$29 million surplus, that that was

Hincbee - recross

like somebody's equity in their house, and it represented a resource available for use to pay bills with; is that a fair statement?

A You could obtain money against that equity.

You could borrow. There were assets that could even be sold if you needed to, but primarily you would borrow against that if you needed to.

Q This surplus \$29 million does not represent cash?

A No. I didn't say it did.

Q And in point of fact, it represents investment in property and plant made from earnings in the past years of Muny Light's history, does it not?

A Yes, sir.

Q And in order to realize any cash from -- withdraw that.

In order to realize cash from the sale of any part of the property which you mentioned represented by surplus, of course Muny would have to stop using that particular property sold, wouldn't it?

A I suppose so.

Q And of course if it is sold, sold any very great proportion of that investment represented by that surplus figure, it would have to go out of business, wouldn't it?

A Yes. I believe CEI offered us \$85 million for it.

Hinchee - recross

Q And then Muny would be out of business then, in which event?

A Yes.

Q And, Mr. Hinchee, in sum, whatever figure appears in the surplus accounts of the balance sheet of the utility or any other business, it really is only worth as much as it will earn; isn't this so?

A No, I don't think that is so. I think that represents a real assess with a real value, not necessarily as much as for that for which it could be sold.

Q You either have to sell it in order to realize cash in respect of this property, leaving aside borrowing for the moment, and you either have to sell it for scrap, or you have to earn money by the use of it in business, one or the other, do you not?

A Yes, other than borrowing, that is what you do.

Q And in order to borrow on it, you have to show that you can earn on that property additional property against which you have borrowed enough money to pay the debt service on the new borrowing, do you not?

A Certainly.

Q Thank you.

Now, Mr. Hinchee, along the same line, you dealt with the \$2 million borrowed on the bond anticipation

Hinchee - recross

notes in 1971, and I want to, as a preliminary, ask you a couple of questions about that:

If I have -- if I received cash from somebody of \$1,000, and I invest that in a \$1,000 bond, and the kind of cash disbursement and expenditure that is shown on page 2163 -- excuse me, on page 31 of Plaintiff's Exhibit 2163, and that kind of a cash thing; if I receive \$1,000 from somebody, and I go and buy a bond of \$1,000, that will show, according to that tabulation at page 31 of Exhibit 2163, it will show cash received of \$1,000 and cash spent for investments of \$1,000, wouldn't it?

A Mr. Lansdale, I don't see those figures on this sheet.

Q Of course you don't.

A Let's use the figure on this sheet, so I can answer your question in fact and not in theory.

THE COURT: Please, Mr. Hinchee, listen to the question and respond to the question if you can. Listen to the question.

MR. LANSDALE: I will rephrase the question.

Q Mr. Hinchee, on that page the accountants or the controller for Muny Light shows the receipt of cash money, does he not?

Hinchee - recross

A Yes.

Q And he shows it from several sources and some from the sale of energy, 2 million for the receipt of bonds, and a million eight hundred some odd thousand dollars for cashing in investments, and there may be other things, but they show that kind of thing in the cash received column, does it not?

A Yes.

Q And in the cash disbursements column it shows, "Payroll," and various items of expenses, and it shows the investment of funds as so much money?

A Yes, sir.

Q You told me that the \$2 million above in cash received from bonds could be found in the three million six hundred some odd thousand dollars in the disbursements for investment, did you not?

A Yes.

Q All right.

Now, before we get to that specific table, I want to ask you these questions, and following that same format.

If Muny Light receives \$1,000 from cash somewhere, and it invested this in a bond for \$1,000, it would show the receipts of \$1,000 and disbursements of \$1,000?

Hinchee - recross

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A Yes.

Q Now, if I sell that bond and get cash, I am going to show another \$1,000 up there, am I not, because I am receiving some more cash?

A Yes.

Q And if I then take that \$1,000 and reinvest it in another \$1,000 bond, I will show an additional disbursement down here, will I not?

A Well, if you wanted to go through the exercise.

Q That is what the brokers call "churning an account," do you understand that?

A No, sir.

Q It is where you sell and buy, and you sell and buy all in the same year with the same \$1,000, and in your account for cash received and cash disbursed you may reflect many thousands of dollars of cash received and many thousands of dollars of cash disbursed, but it is all a single \$1,000?

Do you follow what I am getting at?

A No, sir. In accordance with what the City does --

Q Well, I am about to ask you that.

You get the idea, do you not?

A Well, I never heard of it before.

Q Well, it is logical, isn't it?

Hinchee - recross

A No, I don't think so.

Q All right.

Now, Mr. Hinchee, I want to invite your attention to the fact that -- page 31 of Exhibit 2163 -- that among other things shows as cash received a million eight hundred forty-nine thousand and two million dollars in notes.

Now, this cash received, a million eight hundred forty-nine thousand, they call it "Conversion of Investments," don't they?

A Yes.

Q The sale of the notes, they just call "Sale of Notes," but both represent the receipt of cash, do they not?

A Yes.

Q Now, down below we have in the disbursements, "Conversion for Investments," and do you see that?

A Yes.

Q And that figure is \$3,696,000.

Now, Mr. Hinchee, you have told me that this 2 million is down in here {indicating}?

A Yes.

Q Where does the million eight come from?

A Well, I think you would have to look at the previous year's conversion for investments. There would be

Hinchee - recross

some investments carried over.

Q All right. That is exactly what I wanted you to say.

Now, Mr. Hinchee, the proposition that I put to you was that this \$2 million which went into the Revenue Fund in 1971 was all spent in 1971, and that was the proposition that I made to you.

- And I will ask you this question:

That if this \$2 million was invested and found -- and is in this figure down here {indicating} and remains there through the year-end, the 3 million 696, and remained there until the year-end, then we should find it somewhere in the accounts for the year 1972, should we not?

A Well, I would think so.

Q All right. Now, Mr. Hinchee, in trying to figure out the response to my suggestion that all this money was spent in 1971, did you go further in your study of those accounts other than this simple comparison of the receipts and disbursements on page 31 of the 1971 financial statement?

A Well, yes.

I continued to read the financial statement, and I pointed out on page 3 that the investment on the \$2 million earned for the City \$37,000 in something

Hinchee - recross

like three months, and that was from August until the end of the year.

Q All right.

Let's deal with that immediately.

I see that page in the introductory letter which Mr. Caruso or whatever it was wrote, and he speaks of income from other investments, and he says:

"The earnings from the sources would have been reduced \$37,000 if it were not for the immediate investment of the proceeds received in the sale of \$2 million in notes."

Now, this is sort of an approximation.

Now, if you will look back at page 31, that selfsame cash reconciliation, you will see that the revenue found received in interest -- received in interest on investment, \$28,722.71, and my little hand calculator says that that is 1.4 percent.

Now, Mr. Hinchee, will you go along with that figure -- I see Mr. Pandey is here keeping up with you.

Will you go along with the figure that the \$28,700 earned is approximately 1 percent on \$2 million, 1.4 percent?

A Well, but I don't know that that was the earnings on the \$2 million, and I tend to discredit this. I don't

Hinchee - recross

know the details of how these accounts are arrived at, and how the background information is used.

You would have to get someone from the City that does the accounting to testify to that.

Q Haven't you been consulting with Mr. Harkins and others who do that sort of thing?

A I have not had any opportunity to look at the background data, and I don't know if it exists at this point.

Q In any event, page 31 shows that in interest on investments during the year 1971, the Revenue Fund received \$28,722, didn't it?

A That is correct.

Q Right; and there is nothing else in the cash received in the Revenue Fund which talks about interest except that entry, is it?

A Unless it is a reclassification of funds below. And that could be -- and I don't know the meaning of that per se, but I believe that that could be interest earned in the conversion, this investment for conversion, and returned as a reclassification.

Q You are just speculating?

A That is right. I don't really know.

Q You have an entry that says, "Interest from investments," don't you?

Hinchee - recross

There is a specific entry that says, "Interest from investments"?

A But I think that is related to specific investments and not necessarily this account that we are talking about.

THE COURT: Mr. Hinchee, please listen to the question and please answer the question.

Read the question.

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

"Q You have an entry that says, 'Interest from investments,' don't you?"}

THE COURT: Is there such an entry?

THE WITNESS: Yes.

THE COURT: Proceed with the next question.

BY MR. LANSDALE:

Q All right.

Now, Mr. Hinchee, if we go to the year 1972, which is Plaintiff's Exhibit 2164, and did we give you that one?

A Yes; I have it here.

Hinchee - recross.

Q Page 9, and it says at the top of the page:

"Note: proceeds on the sales of the City of Cleveland, Electric Light and Power Division, subordinated mortgage revenue, bond anticipation notes, was deposited in Fund 104, Light and Power Revenue Fund by way of receiving Warrant 789944," and it is dated August 13, 1971.

Do you see that?

A Yes.

Q Now, if you look at page 18 -- look at page 33, Mr. Hinchee -- yes, page 33. I gave you the wrong page.

On that page are the cash receipts and disbursements covering Bond Fund 204 and Bond Fund 203, and you will see the footnote that says, "The sale of \$2 million of notes on August 13, 1972, not included in the above cash balance," the beginning cash balances; and that is to say, the beginning of year 1972 and ending year 1971.

"This money was deposited in Fund 104, Light and Power Revenue Fund, by way of receiving Warrant 689944," and it is dated August 13, 1971.

It is the same thing, so we know that the \$2 million from those notes is not in the beginning balance, cash or otherwise, from the bond fund account.

Hinchee - recross

Now, Mr. Hinchee, if you will turn back in that same exhibit -- do you agree with me on that?

A No, sir.

Q You don't?

A No, sir. You are referring to Bond Fund 204, and that note is attached to Bond Fund 204.

Q And 203, Mr. Hinchee.

A -- and 203, and it does not show anything related to 204, and that is what we are talking about.

Nobody said that the notes went into 203 or 204.

Q You misunderstood my question.

It is not contained in either bond fund.

I am not going to leave you dangling there. We agreed that the cash is not found in the beginning balance in 1972 of the bond fund; did we agree on that?

A Yes.

Q All right. Now, if you look back to page 72 --

THE COURT: Of what?

Q -- look back to page 18, pardon me. I am looking at 1972.

Look at page 18, and you will see that there is a line that shows the current assets, 1972, and 1971, comparatively speaking.

It shows that in 1971, "Current assets, cash on

Hinchee - recross

deposit with the City Treasury, \$135,000 plus."

Do you see that?

A Certainly.

Q "Investment, zero."

In 1971 the same two figures were \$88,585 for cash and 296,928 for investments.

Now, Mr. Hinchee, I know that that is not labeled "Revenue Funds," but if you will look back to the corresponding entry in 1971, which is Plaintiff's Exhibit 2163, for the same comparative balance sheet figures, and that would be page 16 of Exhibit 2163, and you will see there that the entry on the current assets for 1971 --

A I am sorry, Mr. Lansdale. I don't see what page you are looking at.

Q 16.

A Of what document?

Q -- of 2163, which is the 1971 annual report.

Please keep your place with page 18 out of the 1972 report.

Now, look at the 1971 report, comparative balance sheets, and it shows, "Cash on deposit with the City Treasury Revenue Fund, \$88,585," and that is the selfsame figure that I read to you which is shown for

Hinchee - recross

1971 in the exhibit 21b, your comparative balance sheet, and it corresponds to the same amount in 1972 of \$135.

Do you follow me?

A Yes.

Q "Investments {Revenue Fund}" which are shown on page 1b of 21b3, shows the investment in Revenue Fund in 1971 to be \$296,928, and in 1972, the corresponding figure, corresponding to the \$296,928 is zero.

Do you follow me?

A Yes.

Q And I suggest to you, Mr. Hinchee, that the two million appears nowhere in the beginning balances of the annual report for 1972, and I suggest to you that it necessarily follows that it was spent in 1971, and I ask you if that is not the fact?

A No, I don't think that is the fact.

Q All right, sir.

Now, I realize that you haven't studied these figures, and that it may be unfair to put you on the spot right here, so we will come back to this after the noon hour, and I will go to something else, if you would be willing to tell me why you say that isn't so. Would you try again after lunch?

Hinchee - recross

A Mr. Lansdale, I would like to have a copy of your question, if I may, so I can respond to the question if you want me to do so after lunch.

THE COURT: Certainly. The court reporter will furnish a copy.

{After an interval.}

BY MR. LANSDALE:

Q All right.

In the meantime we will go to something else.

MR. LANSDALE: Will you please see that Mr. Hinchee has Plaintiff's Exhibit 3239.

{After an interval.}

Q You discussed this exhibit yesterday, I believe, and it happens to be page 424 of CEI's Form 1 filed with the Federal Power Commission for the year 1970; am I correct?

A Yes.

Q And this discloses -- you were using this for showing the transactions with Union Carbide, I believe, were you not?

A Yes.

Q Now, Mr. Hinchee, this page that you have given us here is called "Interchange Power," is it not?

A Yes.

Hinchee - recross

Q And interchange power refers to exchanges of power both ways by utilities or other entities connected synchronously, does it not?

A Yes.

Q And of course this may have -- these interchanges may be under very varied circumstances, depending upon the exact nature of the interchange and the agreement between the parties?

A Yes.

Q And were you intending to suggest that the transaction with Union Carbide was similar to the sale, to the sale by CEI to Muncy Light of power over the load transfer points during the years 1970 and 1971?

A No, sir. The sale was dissimilar.

Q The sale was dissimilar?

A Yes.

Q And the conditions of the sale were dissimilar, were they not?

A Yes.

Q Were you intending to suggest that a fair price for the load transfer points should be the same or similar to the price disclosed by this transaction here?

A No, I wasn't.

Q Well, what are you intending to suggest then by reference?

Hinchee - recross

A I was just citing the facts in reference to the type and similarity between the City's conditions and the conditions at Union Carbide and what the City would have expected and would expect to actually be done through a point of interconnection.

Q Are you saying that the City's situation was similar to that of Union Carbide?

A Certainly.

Q In what respect?

A Well, it would have been almost identical had CEI allowed an interconnection.

The load transfer points prohibited this type of arrangement between the utilities.

Q Mr. Hinchee, you are going off into the wild blue yonder.

I want to know why the Union Carbide situation was similar to that of Muny Light?

A Several reasons:

Both were power generation entities, and both had distribution systems, and both had -- both were isolated from any other utilities.

Both were under conditions effectively controlled by CEI.

Q Mr. Hinchee, Union Carbide has interconnected with CEI

Hinchee - recross

for many years?

A It was isolated from anybody by CEI, yes, sir.

Q Well, Mr. Hinchee, we have handed to you copies which we have designated as CEI Exhibit 1267-A and -B, which are the two pages immediately preceding that shown by Plaintiff's Exhibit 3239.

A Now, when Muny Light was receiving -- the transaction between CEI and Muny Light in 1970 and 1971 was a sale of power for resale, was it not, the sale made by CEI of power to Muny Light for resale?

A Well, now, that is a different ball game, Mr. Lansdale.

MR. LANSDALE: May I have the question read?

{The pending question was read by the reporter.}

A The sale by CEI to Muny was for emergency and maintenance power, and Muny Light was in the business of selling power and, of course, it did sell that power; but there is a separate contract and type of contract that you enter into as to when you go for sales for resale as opposed to what happened between CEI and the Municipal System.

Hinchee - recross

Q Did Muny Light purchase power from CEI?

A Yes, sir.

Q Certainly did.

And it resold that power to its customers, did it not?

A Some of it.

Q Well, except for line losses, it sold it to its customers, didn't it?

What do you mean "some of it"?

A Except for its own needs; yes.

Q And if you will look at 1267 and -- 1267-A and -B, those are the pages which cover during 1970 CEI's purchases for resale, that is to say, its purchased power transactions?

A I'm sorry, I didn't hear that question.

THE COURT:

Read the question back.

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

BY MR. LANSDALE:

Q Is that correct?

A Yes, Mr. Lansdale; but --

Q And --

A -- CEI had contracts with other utilities for emergency power and maintenance power, which could not be reflected

Hinchee - recross

in this sale for resale recapitulation.

MR. LANSDALE: May I have the question
read, if your Honor please?

THE COURT: Read the question -
back, please.

Listen to the question, Mr. Hinchee, and
answer the question.

{The question was reread by the court
reporter as follows:

"Q And if you will look at 1267 and --
1267-A and -B, those are the pages which cover
during 1970 CEI's purchases for resale, that is
to say, its purchased power transactions?"}

THE COURT: Is that what these
documents reflect?

A This refers to sales for resale, yes.

THE COURT: Place your next
question.

BY MR. LANSDALE:

Q And the cost of that power to CEI is shown in the
right-hand column, is it not, of CEI Exhibit 1267-B?

A Yes.

Q And it's 1.28 mills from Ohio Edison, and 1.183 from
Ohio Power?

Hinchee - recross

A Well, I see another item --

THE COURT:

Mr. Hinchee, please

listen to the question and look at Defendant's Exhibit 1267-B, which is referred to in the question, and answer the question if you can.

If you can't, fine.

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

"Q And it's 1.28 mills from Ohio Edison, and 1.183 from Ohio Power?"}

A I see those two prices set forth, along with a third price.

Q Mr. Hinchee, if you'll just be patient, I'll cover the whole sheet.

And I've been advised that I put my question to you at 1.2 mills and 1.18 mills, whereas it's actually 1.28 cents and 1.18 cents, the head of the column says "cents," do you agree with me on that?

A Yes.

Q You are very anxious to tell me about the small transaction at the top of the page, 4.31 cents, and that's 4.31 mills, is that right?

A Yes.

Q What is it you wanted to tell me about that?

Hinchee - recross

A I don't want to tell you anything about it, Mr. Lansdale, except it's there.

I haven't seen these sheets before.

Q I thought I detected an anxiety to be sure the jury heard it. I want to know --

THE COURT: Let's proceed with the question.

A Well --

Q -- that says --

THE COURT: Gentlemen, you see, this is the problem we get into when you go beyond the question in your answer, you get into dialogue like this, gentlemen.

So if the witness will listen to the question and respond to the question, perhaps we won't have these problems.

Please go ahead.

BY MR. LANSDALE:

Q Now, this item that you're talking about of substantially less cost to CEI than the 1.2 cents and 1.18 cents, there is a footnote there, isn't there, see what that says:

"This is CEI's share of the operation and maintenance expense and fixed charges for Sammis No. 6

— Hinchee - recross

unit and related transmission facilities."

You can tell from that, can you not, this is not a straight purchase and sale of power, but it's a rather different kind of transaction; is this a fair statement?

A Yes, sir.

Q All right.

Mr. Hinchee, I want to explore the mystery of the street lights.

When you testified that Muny Light maintained certain CEI street lights, you weren't intending to suggest, were you, that these were street lights installed and owned by CEI, were you?

A May I have the question back, please?

THE COURT: Please read the question back.

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

A At the time I made that statement, Mr. Lansdale, I hadn't had a chance to check the contract between CEI and the City; and in a contract was that introduced subsequently, and it speaks for itself.

There are various combinations of supplies and services enumerated in the contract; now, I don't know which one you're talking about.

Hinchee - recross

THE COURT: Please read the question back.

{The question was reread by the reporter as follows:

"Q Mr. Hinchee, I want to explore the mystery of the street lights.

"When you testified that Muny Light maintained certain CEI street lights, you weren't intending to suggest, were you, that these were street lights installed and owned by CEI, were you?"}

THE COURT: Do you understand the question, Mr. Hinchee?

If you don't understand the question, --

THE WITNESS: I understand the question, but I don't think I can answer it without referring to the contract.

THE COURT: Well, does your counsel have a copy of the contract?

He handed it to me yesterday, PTX-3238.

MR. NORRIS: I only have one copy.

MR. LANSDALE: 3238, please.

THE COURT: Well, ladies and gentlemen of the jury, it is now noon, which is a good time for us to recess for lunch and give the

Hinchee - recross

lawyers an opportunity to go to lunch and perhaps
examine these documents, and we can start anew at
1:30.

Ladies and gentlemen, please keep the Court's
admonition in mind.

With that, we will return at 1:30.

Thank you.

{Luncheon recess taken.}

1 TUESDAY, AUGUST 4, 1981; 1:45 O'CLOCK P.M.

2
3 THE COURT:

Please be seated.

4 Call in the jury.

5 {The jury was reseated in the jury box and
6 the trial resumed as follows:}

7 THE COURT:

You may be seated.

8
9
10 RECROSS-EXAMINATION OF WARREN D. HINCHEE {Resumed}

11
12 BY MR. LANSDALE:

13 Q Mr. Hincbee, at the noon break we were on the question
14 of street lights, and my question to you is, is there
15 any case in which Muny Light repairs or maintains
16 street lights owned and installed by the Cleveland
17 Electric Illuminating Company?

18 A I don't know of any.

19 Q You don't know of any.

20 And when you referred to Muny Light as repairing
21 the street lights, CEI street lights, you were referring
22 to, I believe, the number is approximately 700 out of
23 24,000 which the City of Cleveland has installed and
24 owns but CEI supplies only energy?

25 A Yes, for which CEI supplied the energy; that is correct.

Hinchee - recross

Q Supplies only energy. There is no instance in which CEI has supplied the street lights themselves; that it does not maintain them under the rate contract with the City?

A I am not certain about that, Mr. Lansdale.

There is a schedule -- some of the ownership and installation is divided between the City and CEI, and I am not sure about the breakdown on that, but it is set forth in the schedule.

Q I know that, and in the contract that you furnished to me as a basis for your statement that you maintained street lights --

A Yes.

Q -- and I asked you this question before the break, and you told me you had to look at the contract for it.

Have you looked at it?

A Yes.

Q I ask you if it is not the fact that there is no instance in which street lights owned by the CEI and has been installed by CEI in which the City of Cleveland, whether through Muny Light or otherwise, does the maintaining and repairing of it?

A I said previously, I don't think so.

Q All right; thank you.

Hinchee - recross

Mr. Hinchee, I asked you a question before the break, and you asked to have it written out, and I have a -- I understand you did get it written out, and the question was as follows:

"And I suggest to you, Mr. Hinchee, that the \$2 million appears nowhere in the beginning balances of the annual report for 1972, and I suggest to you that it necessarily follows that it was spent in 1971, and I asked you if this isn't the fact.

Have you had a chance to see if you can find the beginning balances, Mr. Hinchee?

A Yes, I have.

Q Tell me where they are.

A If you will refer to PTX-2163 --

Q That's 1971.

A All right.

Refer to 2164 then, and on page 17 of that document, you'll see Funds Reserved for Plant Expansion, U.S.

Government Securities, and at the end of 1971, which is also the beginning of 1972, \$2,550,000 in that account.

Q Mr. Hinchee, -- and it shows that that account decreased during 1972 by \$2 million?

A Yes.

Q Mr. Hinchee, there were additional bonds issued during

Hinchee - recross

1972, weren't there?

A Yes, there were.

Q Street lighting bonds, I think, and these are -- that is these two million?

A No, Mr. Lansdale.

I would refer you then to --

Q Let's look --

A -- page 8 of this same document we're looking at, and the explanation -- the title is the same "Funds Reserved for Plant Expansion," on page 8 is an explanation", and it says, "Funds Reserved for Plant Expansion, Bond Funds.

"The Funds Reserved for Capital Improvements as of January 1, 1972 total \$3,301,958.

"There were receipts to this fund during 1972 of \$3,032,313. The receipts consisted of \$32,313 earnings from investments, and \$3 million proceeds from July 13th, 1972 sale of street lighting improvement notes.

"The notes were sold pursuant to Ordinance No. 727-72 passed May 22nd, 1972."

"The expenditures from these funds during 1972 totaled \$2,890,442.

"The cash balance at year's end, including investments, totaled \$3,443,830."

Hinchee - recross

Q Mr. Hinchee, didn't we firmly establish this morning that these \$2 million that we were talking about were not in the bond funds, don't you recall that this selfsame statement has at page 33 --

A No, Mr. Lansdale, I don't recall.

Q Just a minute, please.

{Continuing} -- has at page 33, there is a note to the bond notes, the sale of \$2 million notes not included in the above beginning cash balance; you see that, don't you?

A Certainly.

Q And over here on page 8, it says, "Funds Reserved for Plant Expansion Bond Funds," and that's what you were just now referring me to as to this \$2 million?

A Hyphen Bond Funds, Mr. Lansdale, both together.

Q I'm sorry, I don't read it that way.

This is in the letter -- these somewhere in the tabulation show all of the receipts into that fund were from the sale of street lighting improvement notes, were they not?

Let us look, Mr. Hinchee, at the 1971 item for the same thing.

{After an interval.}

Q You see that in --

Hinchee - recross

THE COURT: What page is it, now?

MR. LANSDALE: This is page 15 of

Exhibit --

THE COURT: 2163.

MR. LANSDALE: 2163.

BY MR. LANSDALE:

Q In 1970 -- in 1970 -- pardon me -- from 1970, beginning of the year 1970 to the end of the year 1971, that funds reserved for plant expansion increased by \$1,116,000; you see that, do you not?

A Yes, Mr. Lansdale, but your dates are incorrect.

That's the end of 1970 until the end of 1971.

Q It will be from the end of 1970 until the end of 1971?

A Yes.

Q During the year 1971, it increased \$1,116,000, and if you look over into the same page, and you will find that beginning --

THE COURT: What exhibit?

MR. LANSDALE: The corresponding

page, page 17 on 2164.

Q -- and you will see there that the \$1 million 301 is shown at the bottom of the page for 1971, the selfsame figure you read on the preceding exhibit, and the corresponding figure for the end of 1972 is very

1 Hinchee - recross

2 close to the same, 3 million 443.

3 And the \$2 million was put into the Revenue
4 Fund, Mr. Hinchee, and I suggest to you that in the
5 cash balances you still do not find the \$2 million
6 beginning in 1972.

7 A No, Mr. Lansdale.

8 Q The only thing you can point to is the fund
9 referred to as "Plant Expansion - Bond Fund"?

10 A No, "Funds Reserved for Plant Expansion."

11 The expansion is under Plant Expansion - Bond Fund,
12 which explains the two separate items together, but
13 this is the best I can do for you as far as accounting
14 is concerned.

15 The \$2 million is shown specifically as being added
16 in 1971 as a U.S. Government security, and it is shown,
17 if you look at the next page, as being decreased -- I am
18 sorry -- decreased in 1972.

19 Q When you said the "next page," what page are you talking
20 about?

21 A All right.

22 We started with a report of 1972; correct? --

23 We started with page 17.

24 Q All right.

25 A -- and we showed.

Hinchee - recross

THE COURT: Page 17 of what exhibit? Oh, that is December 1, 1972?

THE WITNESS: Yes; that is the exhibit.

THE COURT: All right.

THE WITNESS: It is 2164.

THE COURT: All right.

A {Continuing} And we showed a beginning balance. You see we are going our accounting in reverse. We are showing the beginning balance in 1972 of \$2,550,000 invested in U.S. Government securities, and then we are showing that that drew down into the year of 1972 to \$550,000, and that is when the \$2 million was withdrawn from the securities and spent.

Now, if you go back to the previous report, PTX-2163, you will find that at the beginning of 1971, U.S. Government Securities were \$547,250, and they were increased to \$2,550,000, and if you go to page 7 of that report, you then have the analysis which applies to this report.

The analysis here is on page 7, and it is Item 3, and it says, "Funds Reserved for Capital Improvements as of January 1st, 1971, a total of \$2,415,833."

Q Mr. Hinchee, I am just going to go through this once

Hinchee - recross

more.

MR. NORRIS:

I object. The witness

wasn't through.

THE COURT:

Have you finished?

THE WITNESS:

No, sir, I haven't.

THE COURT:

Please finish your

answer.

A {Continuing} There were receipts of \$2,024,322.

The receipts consisted of earnings from mortgage revenue bond money investments, and the \$2 million proceeds from the August 13, 1971 sale of notes.

Q Where are you reading from?

A The middle of the page, on page 7, in PTX-2163.

The receipts consisted of \$24,322 earnings from mortgage revenue bond money investments, and \$2 million proceeds from the August 13, 1971 sale of notes pursuant to Ordinance No. 1187-71, past June 28, 1971.

Expenditures from the bond funds during 1971 totaled \$1,138,246, and the cash balance at the end of the year, including invested funds, \$3,101,559.

Q Well, earlier this morning you told me there was \$37,000 of earnings from that.

I suggested that the cash contributions showed

Hinchee - recross

\$28,000, and now this talks about \$24,000 from the standpoint of interest earned; however, Mr. Hinchee, just once more, in 2163, page 15, "Funds Reserved for Plant Expansion consist of two items; one, funds invested in Government securities, and the other one is cash." So that the total funds reserved for plant expansion is the summation of both of them.

In 1970 and 1971 the summation of those two figures increased \$886,000, and in 1972, going to 2164, page 17, the summation of these two figures remains virtually level, only \$141,000 increase -- not decrease, but increase, and I submit to you that nowhere in the Revenue Funds is there shown an increase in the beginning balance of 1972, and you know of no place except in the area that you have been telling me of funds reserved for plant expansion bond fund; right?

A No, Mr. Lansdale, the explanation was under "Plant" -- whatever the title was -- "Bond Funds."

Q All right.

A But if you look on page 17, that is the funds reserved for plant expansion which is part of the item that is included in the explanation on the other page, on page 8, I believe, it is.

Hinchee - recross

Q All right.

Mr. Hinchee, you read us an item, an opinion by one of the City lawyers about the general obligation bonds, both for street lighting purposes and those for the combustion turbines, to the effect that the General Fund was responsible for those items.

And you were referring to the debt service of which the Muny Light Plant was relieved by an ordinance in 1971; is that correct?

A May I have the question read back?

THE COURT: Read the question.

{Question read.}

A Yes.

Q Now, I have been trying to figure out the significance of that.

What do you claim for that?

A I am sorry. I don't understand the question.

Q I mean, what do you claim for the fact that the City of Cleveland's General Fund was responsible for the debt service on its general obligation bonds issued for the purposes, either of street lighting carried out on Muny's books, or the combustion turbines?

A Mr. Lansdale, to the best of my recollection, early in my testimony I indicated that certain things needed

Hinchee - recross

to be done to improve the cash flow of the Division, and one was to stop paying on the debts which were not legally the obligation of the City, and I pointed this out, these general obligation bonds out, to my supervisor, and he took it up with the Finance Director, and it went through the City Council, and everyone in the City agreed that this was not a debt of the Municipal Light Plant, and they would be relieved of it temporarily until they had established their financial recovery.

Q You are talking about the legality, Mr. Hinchee.

Let's take the combustion turbine, the bonds issued for the combustion turbines. You don't have any doubt that the debt service on those bonds is part of the cost of rendering service for the consumers who used the electricity from the plant? Do you have any doubt about that?

A No.

Q And similarly, do you have any doubt that the debt service on the street light bonds are necessarily a part of bringing the street lights to the City of Cleveland?

A No; I don't have any doubts about that.

Q You don't have.

Hinchee - recross

Now, Mr. Hinchee, we come to this emergency power and maintenance power, whatever, and you suggested that you were resting that change on the Federal Power Commission order of December 16, 1971.

By the way, -- well, withdraw that question, and let me ask this:

- You indicate the transition from maintenance to emergency power to emergency only at May 30th, 1972, on that chart, 3031, do you not?

A Yes.

Q And that coincides, does it not, in time at least, with the May 30th, 1972 order of the Federal Power Commission, which substituted its order and a new rate for the original rate schedule known as the FPC No. 7, which was the letter contract between the City and Muny Light; is that correct?

A Yes.

Q And the letter contract, or the understanding or the consensus, however you term it, did provide for the furnishing of maintenance power, and I think we have established that?

A Yes.

Q And the Federal Power Commission order, however, was limited to emergency service?

Hinchee - recross

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A That is correct.

Q Insofar as this requirement was concerned.

And do I understand you correctly, you are sharply distinguishing between the interconnection that you were seeking from the Federal Power Commission for emergency purposes only and that which you were seeking from CEI as a matter of agreement for services beyond emergency only?

Do I understand that to be your position?

A Yes; there was a difference.

Q And of course the character of the interconnection, whether synchronous or non-synchronous, that you were seeking has nothing to do with that aspect of the case, does it?

What I am trying to find out from you is that the question of whether this is for emergency only or whether it is for a lot of other things depends upon a matter of contract and not on the physical characteristics of the interconnection; is that correct; am I clear in my question?

THE COURT:

Rephrase that question.

Mr. Lansdale. I am not too sure he understands what you mean.

Q You are seeking from the Federal Power Commission an

Hinchee - recross

order directing CEI to enter into a synchronous interconnection, were you not?

A Yes, sir.

Q But so far as the Federal Power Commission was concerned, you were seeking directly only -- you were seeking only to use that for emergency purposes?

A That is correct.

Q But you were asking CEI to provide a lot of additional service -- well, whether it is a lot -- you were seeking for additional kinds of service over that selfsame interconnection?

A Yes.

Q There isn't any difference in the physical characteristics of the interconnection between using it for emergency purposes and using it for something else, economy interchange, or wheeling, or what have you; the interconnection is all the same?

A It should be.

Q From a physical standpoint, all right.

Now, you wanted the emergency service to provide reliability, I take it?

A Yes.

Q And the other source of things that you wanted from CEI, wheeling Buckeye power, and wheeling PASNY power,

Hinchee - recross

and maintenance service, and economy interchange, and all that was directed toward reducing the cost to Muny Light of its power; is that a fact?

A Yes.

Q And did you look forward to a situation whereby as a result of these -- of getting PASNY power and Buckeye power and all of the rest of the array of things that you were demanding from CEI, that you would ultimately provide you with power at a cheaper cost than that which CEI could obtain?

A Well, Mr. Lansdale, to answer your question, it is just prudent management to obtain power for distribution on your system at the least possible cost from any source that you can obtain it from.

Q I absolutely agree with you.

My question to you is, is that what you were seeking to do?

A Well, it certainly would have been one of the things, yes.

Q And was it your judgment that as a result of securing such things as PASNY power, and being able to engage in economy interchange, after you had gotten your property maintained properly, that the results would be a cost of power to Muny Light which would necessarily

Hinchee - recross

be less than the cost of power to CEI?

A No, Mr. Lansdale, I don't recall that I even knew what the cost of power was to CEI.

I was simply concerned in getting the power for the Muny Light Plant at the least possible cost to Muny Light, and if it turned out to be less than CEI's cost, that was good, and if CEI -- then they could shop around and do the same thing.

Q Now, Mr. Hinchee, let's find out whether you knew or could have known this.

PASNY power -- how did PASNY power, which has no fuel cost in it, compare in cost with any sort of power available to CEI?

A I really don't know.

I don't know whether CEI was getting any hydropower from sources that it had or not, but it would be comparable, I suppose, if you were getting hydropower.

Q You know full well that CEI has no hydropower, don't you?

A No, I don't know.

Q Will you accept that it does not?

MR. NORRIS:

May we approach the

bench?

- - - - -

Hinchee - recross

{The following proceedings were had at the bench:}

MR. NORRIS: I have tried to hold my objections, but you are going so far into anticipating your own defenses about the cost of power to CEI, and I think that that is really going way beyond the scope of the direct examination, and I interpose an objection at this time.

MR. LANSDALE: Well, I thought that you had gone into his purposes and made a sort of big deal, attempting to distinguish between what he was seeking from the Federal Power Commission and what he was seeking from CEI, and I think I have the right to develop the reasons for his making the distinction. That is my point.

THE COURT: You certainly went into this.

MR. NORRIS: Well, I went into that, but the thing I am raising now is that Mr. Lansdale is really putting in what his defense materials will be, say that they had no obligation to provide wheeling for power that they didn't have access to, and that is what it sounds like to

Hinchee - recross

me:

MR. LANSDALE: I don't have any
burden of proof on this.

MR. NORRIS: That is why it sounds
as though you are going beyond the redirect
examination.

THE COURT: Obviously he is not
going beyond the redirect examination as is
reflected by my notes, and I am sure that if
this witness would observe the Court's admonitions
and listen to the questions and answer the questions,
instead of being so evasive, we could conclude
this examination, but it takes four and five
questions to get an answer -- plus the admonition --
for the Court to get a direct answer from this
witness to a simple question, and I am not going --
until he starts answering questions directly, I am
not going to limit the cross-examination.

It is just that simple, and we have been
going through this for eight days, and I have never
in my entire career seen such an evasive witness.

MR. NORRIS: I would like to put on
the record that I state once again that his Honor
and I have a very basic disagreement, because I am

Hinchee - recross

hearing the same questions and answers, and I do not agree with the Court's characterization.

THE COURT: I wouldn't expect that you would.

You may put your statement in the record. I have given you my opinion, and I am telling you that if I can give this opinion to the jury, I certainly can give it to you, and that is just my observation, and I have seen many witnesses over the years, and this is beyond me.

Some of these questions are just simple questions on collateral issues that may not lead to the substantive issue of this case.

MR. NORRIS: Well, I certainly have a different reading of the record than your Honor.

THE COURT: I will overrule the objection. I am getting tired of this. Let's go.

{End of bench conference.}

- - - - -

THE COURT: Read the question back.

{The record was read by the court reporter

1 Hinchee - recross

2 as follows:

3 "Q You know full well that CEI has no
4 hydropower, don't you?

5 "A No, I don't know."

6 BY MR. LANSDALE:

7 Q Well, Mr. Hinchee, it could be true that CEI has no
8 hydropower -- withdraw that.

9 Perhaps I should clear this with you as to your
10 definition of it.

11 Do you regard a pump storage plant as hydropower?

12 A Yes, I do.

13 Q Is there a substantial difference in the cost of
14 energy from a pump storage plant and that from a
15 hydro such as the PASNY in Niagara?

16 A There probably is; doesn't have to be.

17 Q Doesn't have to be?

18 A No.

19 Q Mr. Hinchee, do you understand how a pump storage
20 plant works?

21 A I certainly do.

22 Q And that is, that the water is pumped uphill into a
23 reservoir by the expenditure of a base load at the
24 plant in evening hours and then is released to come
25 back downhill at -- to deal with peak demand for

Hinchee - recross

energy; does that describe a pump storage operation to you?

A Yes, it does.

Q And there is no way that the pump storage plant can be any cheaper than the cost of generating the base load operation of the plant pumping it uphill from a fossil-fueled generator, is there?

A Well, I can answer it like this, Mr. Lansdale:

It depends on what cost you're assigning to the hydro.

You see, when you pump the hydro back up the hill, you're using equipment that is at the lowest period, usually between midnight and 8:00 o'clock in the morning, and you have the apparatus running anyhow, so I don't know how you would distribute your cost; but you can distribute them one way and you show them to be cheaper, or you can distribute it another way and show it to be more expensive.

Q Are you telling me that these costs are just how you move figures around on a book, is that what your testimony is?

A That's the way it comes out.

Q All right, Mr. Hinchee, I'll -- I'm sorry, I can't deal with that kind of a view, so I will go to something

Hinchee - recross

else.

Do you find, Mr. Hinchee -- withdraw that.

If the Muny Light purchases power from CEI at a rate subject to regulation by the Federal Power Commission, the cost of that power to Muny Light is the total cost of it to CEI as determined by the Federal Power Commission or as permitted by the Commission, would you agree with this statement?

A No, I don't.

Q You don't?

A No.

Q All right.

Mr. Hinchee, you said that -- on redirect, you called attention to CEI Exhibit 284, which was your report to Councilman Gaul, in which you pointed out to him that by reason of the deduction of the expenses of Muny Light by reason of the relief of Muny of sinking fund obligation, what you had denominated as Muny Light's contributions to the City in lieu of taxes was reduced to a million five hundred and some odd thousand dollars; do you remember that?

A Yes, sir.

Q You did not -- you did not also -- withdraw that.

At or about that time, however, you had a new

Hinchee - recross

street light rate ordinance, did you not?

A Yes.

Q And this, of course, reduced what you had determined -- what you referred to as Muny Light's contributions in lieu of taxes by another \$500,000 on an annual basis, did it not?

A No, I don't think so.

Q What did it reduce it by?

A Best of my recollection, I corrected your figure yesterday to \$394,000.

Q Mr. Hinchee, the \$394,000 figure that you were referring to was the contribution -- was the amount of money that Muny was relieved of in payment to the sinking fund for debt service for the street light bonds, right?

A Yes, that's correct.

Q I come back again to your estimate -- and you gave it to us the other day -- your estimate of the additional revenue to Muny from the change in street lights was about a half million dollars on an annual basis, was it not?

A Yes, I think that's probably correct.

Q So your million and a half figure to Councilman Gaul in 1972 should have been reduced by another \$500,000, should it not?

Hinchee - recross

A No, sir.

Q Why not?

A Well, I can't specifically answer that, Mr. Lansdale, because I do not have the figures that were used to derive the million five hundred thousand.

The only thing I have is the explanation in that report, and I think that the figures are good, but I can't tell you what went into those figures ten years later.

MR. LANSDALE: I have no further questions.

THE COURT: Redirect.

I should say re-redirect.

- - - - -

FURTHER REDIRECT EXAMINATION OF WARREN D. HINCHEE

BY MR. NORRIS:

Q Did you pay your bills to CEI in accordance with the agreement reached with CEI in 1971?

A Yes, I did.

Q What agreement are you referring to that was reached between Munny Light and CEI?

A I'm referring to the verbal agreement reached at the

Hincbee - redirect

meeting on July the 8th, 1971, and I'm referring to my notes memorializing that meeting, and I'm referring to Director James' letter which set forth the payment schedule on July the -- on July the 15th, I believe.

Q Would you identify the PTX numbers for those two last documents that you have identified?

{After an interval.}

Q Do you have those in front of you?

A I don't know what the PTX numbers are, sir.

{After an interval.}

BY MR. NORRIS:

Q I address your attention to PTX-2860.

A I have that.

Q I ask you, is that one of the documents that you're referring to?

A Yes.

That is the minutes of the meeting on which was set forth what was agreed at the meeting.

Q And I address your attention to PTX-1516.

Do you have that in front of you?

A Yes.

Q Is that Director James' letter that you're referring to?

A Yes, it is.

Hinchee - redirect

MR. NORRIS:

No further questions.

THE COURT:

Thank you, Mr. Hinchee.

You may step down.

THE COURT:

Call your next witness.

MR. WEINER:

Your Honor, the City

would like to call Mr. Meehan, James Meehan.

J A M E S. J. M E E H A N,

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

DIRECT EXAMINATION OF JAMES J. MEEHAN

BY MR. WEINER:

Q Good afternoon.

A Good afternoon.

Q Please state your name and address.

A My name is James J. Meehan.

I live at 40 Arlington Circle, Wickliffe, Ohio.

Q Are you married?

A I am married.

Q Will you please tell us your educational background?

A Educational background, I graduated in 1926 from
Cathedral Latin High School.

1927-28 I attended Case School of Applied
Sciences.

After that, I studied several courses in steam
power to secure the stationary engineer's license.

I later took a course in thermodynamics.

Q When was that, Mr. Meehan?

A This was between 19 -- in 1936 I took the

1 Meehan - direct

2 thermodynamics.

3 Q What is the study of thermodynamics?

4 A Thermodynamics is the scientific study of turning heat
5 energy into mechanical energy.

6 Q And have you been employed by the City of Cleveland?

7 A I was employed by the City of Cleveland in 1934. I
8 started to work at Westerly Sewage as a chemical house
9 operator.

10 From there, I was transferred to Fairmount
11 Pumping Station as a booster pump operator.

12 Later in that year, I came back to Kirtland Pumping
13 Station, where I took care of Fairmount Pumping
14 Station, Kirtland Pumping Station, Muny Light, I was
15 in charge of clean water controls.

16 Q Do you recall when that was, approximately?

17 A That was in the latter part of 1934.

18 Q Then what did you do?

19 A From there, I became a power plant apprentice,
20 approximately 1939, and then boiler operator in
21 1940 at Fairmount Pumping Station.

22 In the latter part of 1941, I was transferred to
23 Muny Light as a boiler operator.

24 Q How long did you serve in that capacity?

25 A The capacity there I served until 1942, when I was

1 Meehan - direct

2 transferred to the office of the Superintendent at
3 Muny Light as one of his assistants.

4 Q Who was the Superintendent at that point?

5 A Superintendent at that time was John A. Friend.

6 Q What was your next position with the City of Cleveland?

7 A I was promoted in the same capacity, working with the
8 Superintendent of Muny Light to a Second Assistant
9 Engineman.

10 In 1950 I was promoted to be First Assistant
11 Engineman, still working under John A. Friend.

12 Q How long did you do that job?

13 A I did that for about a year or so.

14 In 1951, I was promoted to be the Chief
15 Engineer after the death of John Friend in charge of
16 the operations of the plant.

17 Q How long were you in charge of the operations of the
18 plant?

19 A I was in charge of the operations of the plant until
20 1964, when I became the Superintendent of Generation.

21 Q How long did you hold the job as Superintendent of
22 Electrical Generation?

23 A I held that job from 1964 to 1971, when, under Mr.
24 Hinchee, I was taken downtown to serve as his
25 assistant in the office.

Meehan - direct

Q How long did you serve as such assistant to Mr. Hinchee?

A I served from 1971 until I retired on April 1st, 1973.

Q Are you presently employed?

A I am presently a retired civil servant.

Q What were your duties as Superintendent of Electrical Generation in the period 1964 to 1971?

A I was -- at that time, I was in charge of the entire operation, entire maintenance and generation of electricity.

Q That was for Muny Light?

A For Muny Light.

Q And who was -- to whom were you responsible?

A Responsible to the Commissioner of Light and Power.

Q Mr. Meehan, were you present at Muny Light in the position of Superintendent when Boiler No 6 and Turbine No. 11 were installed?

A I was there during the construction and the start up of No. 6 and No. 11 turbine.

Q And do you recall approximately when that unit was installed?

A The unit was started in the latter part of January of 1967.

1 Meehan - direct

2 Q What training took place at Muny Light with respect to
3 the start up of Boiler No. 6 and Turbine No. 11
4 during that period?

5 A It's the policy of the City of Cleveland that any new
6 equipment is installed, the operator that was going
7 to take care of this equipment would be properly
8 instructed.

9 At this time, General Electric came in and issued
10 instruction books and a service engineer to train our
11 men, which took a period of, I believe, about 30 days.

12 Riley Stoker who installed the boiler had a
13 serviceman come in and he, in turn, instructed the
14 men to operate this boiler.

15 Q How did you, as Superintendent, select the personnel
16 who would work on this new unit?

17 A We selected the best men possible.

18 The men, after their training under the two
19 gentlemen involved, were well qualified to operate
20 this equipment.

21 MR. WEINER: Pat, would you put
22 on the board there Plaintiff's Exhibit 2653,
23 if you would.

24 {Mrs. Richards complies.}

25 MR. WEINER: Thank you.

1 Meehan - direct

2
3 BY MR. WEINER:

4 Q Mr. Meehan, can you see that from where you are sitting?

5 A Yes, I can.

6 Q Can you please describe what that exhibit is?

7 A That is a cross-section from the front of the boiler
8 through the center of the boiler to the back of
9 No. 11 -- No. 6 boiler.

10 Q Could you describe the major elements that go into
11 that boiler, please?

12 A Major elements in this boiler, in this section we have
13 water wall tubes {indicating}.

14 The upper section, we have a superheater --
15 primary superheater, then we have the reheat superheater.

16 Over in this section we have heat water heaters,
17 air heaters {indicating}.

18 Down in this lower section here is where the
19 ash falls into the ash pit, and this we take out of the
20 plant.

21 Over on my left here is the coal pulverizer, which
22 pulverizes the coal and brings it to the boiler into
23 these burners.

24 Fans in this position here are called forced air
25 fans that supply the air over into this point

1 Meehan - direct

2 {indicating} and also into the burners.

3 The fan here takes the coal, pushes it in through
4 the burners and, coupled with the other air, the
5 coal is lit, and that supplies the fire that heats
6 this water and definitely turns it into steam.

7 Q While you're up there, would you just point out where
8 the mills are -- where a mill is, rather, and --

9 A A mill is right here {indicating}.

10 There are two mills on that boiler.

11 Q What were their functions?

12 A Their function is -- a mill is a revolving drum loaded
13 with steel balls that pulverizes the coal, and the air
14 goes into the mill and pushes the coal out of the mill.

15 Q Thank you.

16 You may be seated.

17 {The witness resumes the witness stand.}

18 BY MR. WEINER:

19 Q Directing your attention to the period when that unit
20 was first run, Unit No. 6 and No. 11, were there
21 design problems with the boiler that you encountered?

22 A We did have design problems in 1967 and in 1968.

23 The first, in 1967, in the rear wall of the
24 boiler where tubes were welded to a cross channel.
25 That channel was in the boiler to support the wall

1 Meehan - direct

2 to keep it square.

3 For some reason or other, these tubes pulled
4 loose from the channel, caused a leak, and that leak
5 put the boiler out of service.

6 Later on, in 1968, on the one side of the boiler,
7 west side of the boiler, a like problem was created.

8 Now, in my opinion, this could have been
9 prevented if the membrane that joins the tubes together
10 had been welded to the channel rather than to the
11 tubes. In that manner, any malfunction would have
12 pulled the weld from the channel and not caused a leak
13 in the boiler.

14 Q Mr. Meehan, did you have any problems with the mills?

15 A We did have a problem with the mills, that the coal
16 would be a little damper than normal, it would plug
17 up going into the mill.

18 Burns & Roe got together with Riley and did
19 redesign the end of one of the mills. This helped
20 but didn't correct the problem.

21 Q Was there any problems with the coal equipment on
22 this unit?

23 A Sir?

24 Q Were there any problems with the control equipment
25 on Boiler No. 6?

Meehan - direct

A We did have problems with the controls of the coal burners.

The coal burner was supported by an oil torch which was put in by Peabody Company. These torches did not properly operate and Peabody came in and corrected the problem.

Q Those were all with respect to No. 6.

With respect to No. 11, the turbine, what problems did you have with that at initial start up?

A After testing the No. 11 turbine for about two weeks, they decided they would put it on the line.

While they had it on the line, No. 2 bearing heated up from 160 degrees, it's operating temperature, to 200 degrees, which took it out of service, and we found out that the bearing was wiped.

Q What does that mean?

A Wiping a bearing means that the smooth surface of the babbitt which the shaft revolves in had been damaged, probably checked, or part of the babbitt had melted away.

Q Did you have any subsequent problems with those bearings?

A We did have trouble later on with the bearings, where General Electric would come, check the bearings -- we had vibration -- and they would check the bearings and

• Meehan - direct

either load the bearings down heavier to keep it down into the spindle more.

So we do not -- I do not know what caused the trouble.

Q Mr. Meehan, have you had occasion prior to testifying today to review some of the plant records that show you what happened in the plant back in the period of '67 and '71?

A Yes, I have.

Q And on the basis of your review of those records, do you recall what happened to Boiler No. 6 in March of 1969?

A With all of our trouble with leaks and everything else, we had a leak in the front wall of the boiler above some coal burners.

This leak, after we took it out and it was inspected, it was decided there could have been scale in the tubes which caused the leak.

Now, --

Q I'm sorry, I didn't mean to interrupt you.

A At that time, we hired Dow Chemical to come in and acid clean the boiler, and we repaired the leak.

Q What kind of repairs were made to Boiler No. 6 in May of '69?

A After running the boiler in 1967 and in 1968 without

1 Meehan - direct

2 any planned outages, it was decided in May that we would
3 take the boiler out of service and have Riley Stoker
4 come in and inspect the boiler and make any repairs
5 necessary at that time since they hadn't been able to
6 make any kind of planning before that.

7 They worked on fans, the mills, the burners, and
8 several other things on the boiler at that time.

9 Q While you were Superintendent, Mr. Meehan, did you
10 have occasion to ever meet with employees of the CEI
11 Company?

12 A I have attended meetings on several occasions with
13 employees of CEI.

14 Q Do you recall any such meetings around the period
15 when these repairs to Boiler No. 6 were being made?

16 A During May of 1969, we did have a meeting with two
17 gentlemen from CEI.

18 Q And do you recall what the purpose of that meeting was?

19 A The purpose of that meeting on our stand was to get an
20 interconnection or some back-up service; and they kept
21 insisting on us that they would get us some transfer
22 service.

23 Q And do you recall where that meeting was held?

24 A That meeting was held in the office of Norm Erickson,
25 the Chief Electrical Engineer at the Department of

1 Meehan - direct

2 Public Utilities.

3 Q He was a co-employee of yours?

4 A He was an employee of the City of Cleveland.

5 Q Who else attended that meeting?

6 A That meeting was attended by Commissioner John Fakult,
7 Norm Erickson, an electrical engineer, Phil Matthews,
8 another electrical engineer, and myself.

9 Q Where was that held?

10 A That was held in the Department -- the Department of
11 Public Utilities.

12 Q What was the interest of Muny Light at that meeting?

13 What did Muny Light want?

14 A Our insistence at that time was to get an interconnection.

15 Q What was CEI's attitude?

16 A CEI would not listen to our talk about interconnection,
17 but it kept insisting that they could get us some
18 transfers.

19 Q I may not have asked you this, Mr. Meehan, but do you
20 recall who was present there on behalf of CEI?

21 A A gentleman by the name of Sener, and another gentleman
22 by the name of Lester.

23 Q Had you met them prior to that meeting?

24 A I believe I had met them at other meetings, I'm not
25 sure.

1 Meehan - direct

2 Q Now, returning back to the plant, if you would, Mr.
3 Meehan:

4 Do you recall what happened to Boiler No. 6 in
5 the period of November and December of 1969, some
6 six months later?

7 A During the November deal, I believe it was about the
8 8th of November, if I remember properly, the boiler
9 sprung a leak early in the morning.

0 This was around 7:00 o'clock in the morning. We
1 decided that rather than take it out, since the leak
2 wasn't so bad, we would run it through till 9:30
3 that night.

4 We took it out of service at 9:30 that night and
5 did some work on the boiler and repaired the leak and
6 put the boiler back in service on the 21st of November.

7 About a week later, we had another leak in the
8 boiler, which we took the boiler out of service,
9 repaired the leak, and put it back in service.

0 Then the boiler run fairly well during the start
1 of December.

2 On the 21st of December, the boiler sprung another
3 leak, which we took the boiler out and repaired it on
4 December 23rd.

5 While we were putting the boiler back in service, --

1 Meehan - direct

2 the turbine in service, we discovered a very small leak.

3 At that time, since Christmas was only two days away,
4 we decided we would run the boiler, see if we could get
5 by the Christmas vacation.

6 At about 2:30 on Christmas Day, it sprung a large
7 leak and put the boiler out of service, practically all
8 of our service in the City.

9 Q Was that the Christmas outage?

10 A That was the Christmas outage.

11 Q And how long did it take to get the boiler back in
12 service?

13 A We worked -- went to work on the boiler the next
14 day and put it back in service on the 26th of
15 December.

16 Q And what happened the next month, in January of 1970,
17 Mr. Meehan?

18 A In January of 1970, we seemed to be going along fairly
19 well with No. 6 and 11.

20 The only trouble we had was with wet coal.

21 Also during that period of time we worked on
22 Boilers 1 to 5; and in the latter part of January, if
23 I remember the dates correctly, we received an okay,
24 that we would have in February some transfers from
25 CEI.

1 Meehan - direct

2 Q Do you recall the repairs generally that you made to
3 the system during the month of January, 1970,
4 particularly the boilers?

5 A The boilers:

6 No. 1 boiler, we repaired some leaks.

7 No. 2 boiler, we removed slag and also some leaks.

8 No. 3 was heavily slagged, which we removed the
9 slag, and we repaired a mill drive shaft which had
10 broken during that month.

11 No. 4 boiler, we had a continual buildup of
12 slag, which we had to cut a hole in the front of the
13 boiler to get in and remove the slag.

14 No. 5 boiler at that time was a start --
15 superheater trouble.

16 At that time, we removed the superheater tubes since
17 we didn't have the time to take the boiler out over a
18 period of time, and we had to take the tube and cut it
19 off and plug the tubes.

20 If we would have had the proper time, we could
21 have replaced that superheater tube or even patched it.

22 Q Mr. Meehan, let me direct your attention to several
23 months later then, to May of 1970:

24 Do you recall what happened to Boiler No. 6 at that
25 point?

Meehan - direct

Q In May of 1970, we had an economizer tube leak.

This leak put the boiler out of service, and in the ensuing time that it was gone out of service, our operator tried to transfer the load from No. 11 turbine to other turbines. And being a holiday, it was quite a problem due to the fact that the load was not as high as we generally would have.

The ensuing issue was that we lost all of the service and we went black, which meant there was no AC power being generated at all.

Q What effect did that have on Turbine No. 11?

A Well, Turbine No. 11 came down to a standstill; not having any AC power, and also due to the fact that we didn't have any DC power either due to some malfunction in the operation of the pump, we wiped all of the bearings out of the machine.

Q What does that mean?

A That means that we had to call the General Electric man in and take the turbine apart and remove the spindles or any other part of the turbine, take the bearings out and send them out to be rebuilt.

Q At that point of that failure in May of 1970, what would have been the effect of having an interconnection with CEI?

1 Meehan - direct

2 A If we would have had an interconnection at that time,
3 we would have had --

4 MR. LANSDALE: Object, if your

5 Honor please.

6 THE COURT: Just a moment.

7 Approach the bench.

8
9 {The following proceedings were had at
10 the bench:}

11 MR. LANSDALE: Your Honor, I let
12 pass your inquiry about 1969, but what claim do
13 you have that is supposed to be an interconnection
14 in 1970, synchronous interconnection?

15 MR. WEINER: Well, --

16 MR. LANSDALE: I am -- I have a
17 serious objection.

18 MR. WEINER: Well, we have in the
19 record a request of CEI made by the City in 1969,
20 as early as 1969, for an interconnection.

21 We have a second request in 1969.

22 We have a third request in 1969, to which
23 Mr. Meehan just testified to.

24 MR. LANSDALE: My understanding is
25 that there is no claim made for this and there

1 Meehan - direct

2 couldn't be because of the statute of limitations,
3 and I object.

4 MR. WEINER: No, there is no

5 claim -- there is a claim that requests for
6 interconnection were made prior to the
7 statutory period.

8 It's very relevant to the question of
9 whether or not the interconnection with CEI and
10 Muny Light was an essential thing for Muny Light
11 at that time.

12 There is no way that the generation equipment
13 of Muny Light could have served as adequate backup
14 during the problems that Mr. Meehan has just
15 described without the interconnection. There
16 wasn't any adequate backup, and there have been
17 plenty of requests.

18 MR. LANSDALE: So what?

19 MR. WEINER: So what?

20 That is very important, it's key --

21 THE COURT: Key to what?

22 You're not making any claim for damages except
23 from July 1st of 1971 to July 1st of '75.

24 MR. WEINER: That is only because
25 the statute of limitations prevents a claim from

1 Meehan - direct

2 being made earlier.

3 But just because there is no claim for
4 mandatory damages, does not take the

5 interconnection out of the case.

6 The issue is what the condition of the
7 plaintiff was at a certain time, and the effect
8 that action has on that condition is relevant
9 whether you're asking for damages or not, because
10 it goes to the whole issue of whether the
11 interconnection request essentially -- was an
12 essential facility or not.

13 Without an interconnection, the plant did
14 not have any adequate backup.

15 I mean, I agree that we are limited to a
16 refusal; but it does not go to the question of
17 what the plaintiff would have been in '71 if
18 their actions had been different based on our
19 actions as of June --

20 THE COURT: I'm not following
21 you. I really am not following you, Mr. Weiner.

22 MR. WEINER: If I'm not making
23 myself clear, maybe I can go back and do it one
24 at a time.

25 We asked for an interconnection in 1966; it

1 Meehan - direct

2 was not granted.

3 We asked for an interconnection in 1969.

4 Now, let's take that one for a second.

5 If the permanent interconnection had been
6 granted, --

7 THE COURT: What was the duty, to
8 give an interconnection in 1966 or any time back
9 there?

10 MR. WEINER: Well, that's the law.

11 MR. LANSDALE: What's the law?

12 MR. WEINER: There is a duty to
13 give an interconnection. That's a jury question,
14 whether or not there is a duty --

15 THE COURT: Just like with
16 wheeling PASNY power.

17 We'll let the jury go.

18 I still don't follow you.

19 Ladies and gentlemen of the jury, why don't
20 we take our afternoon break.

21 Please, during the recess, do not discuss
22 the case either among yourselves or with anyone
23 else; keep an open mind until you have heard all
24 of the evidence, the Court's instruction on the
25 law, and until such time as the matter is given

1 Meehan - direct

2 to you for your final deliberation and judgment.

3 You're free to go.

4 {The jury left the courtroom, and the
5 following further proceedings were had on the
6 record at the bench.}

7 - - - - -

8 MR. LANSDALE: Are we through?

9 THE COURT: No.

10 I haven't ruled on this yet.

11 Again, I'm sorry, I don't follow you, what
12 your argument is, Mr. Weiner?

13 MR. WEINER: The argument is in
14 1966 the City of Cleveland asked for an
15 interconnection, which was not granted.

16 In 1969 we asked at least twice for an
17 interconnection, which was not granted.

18 If those interconnections had been granted,
19 come 1971 when this generator problem happens,
20 there wouldn't have been the effect on the Muny
1 Light Plant as there was because the
2 interconnection would have taken hold and the
3 power would have flown, and there wouldn't have
4 been any wiping the bearings or this trouble
5 with the Turbine. 11.

1 Meehan - direct

2 Now, --

3 MR. LANSDALE: May I ask a question
4 there?

5 Is it claimed that we're liable because the
6 interconnection was not in place to perform this
7 service for you in 1970, is that the claim?

8 MR. WEINER: Are you liable?

9 MR. LANSDALE: Yes.

10 MR. WEINER: You're responsible for
11 not having an interconnection in place, that's
12 right.

13 MR. LANSDALE: And what flows from
14 that?

15 MR. WEINER: What flows from that?

16 MR. LANSDALE: I said, what flows
17 from that?

18 MR. WEINER: The
19 of the damages hasn't been made, but a lot flows
20 from that.

21 Now, I mean, the legal point I was making,
22 your Honor, you asked me the duty, was the duty
23 the same as the duty they had in the damage period.

24 Now, there is a long history between these
25 two people, and we understand that we are limited

1 Meehan - direct

2 to seeking damages from July 1 forward.

3 THE COURT: What is the duty?

4 MR. WEINER: Well, the duty, as

5 Otter Tail recognized, and Gainesville Power
6 recognized, and the Hecht case has recognized,
7 the duty is to grant an interconnection, a
8 synchronous interconnection because it is an
9 essential facility; and without that
0 interconnection, a synchronous interconnection,
1 they cannot have adequate reserve and back up
2 their emergencies, to take care of the exact type
3 of problems that Mr. Meehan just recited to you.

4 THE COURT: Let me ask you this:

5 Are you claiming that all of these problems
6 that this gentleman has testified to were the
7 result of CEI's failure to give the interconnection?

8 MR. WEINER: No.

9 What we are claiming is that in 1970, when
0 this damage occurred to the turbine, had there
1 been an interconnection, as the City had requested
2 years prior that, in Mr. Meehan's opinion, and
3 subject to question, there wouldn't have been any
4 damage to the turbine because the interconnection
5 would have prevented that damage from occurring.

Meehan - direct

THE COURT: That isn't what he testified to.

MR. WEINER: Well, he testified that No. 6 sprung a leak in the economizer in May of 1970 --

THE COURT: Yes.

MR. WEINER: -- and by --

THE COURT: And it went out, and the system went black.

MR. WEINER: That's right.

And by going black and because there wasn't any DC power, the Turbine No. 11 wiped --

THE COURT: Yes.

MR. WEINER: It was a very serious consequence, very serious to have the turbine wiped out.

THE COURT: Obviously, it was inappropriate if it was a serious break, but my question to you is: Where is the CEI's involvement in that going out?

This man testified -- he goes back -- all the way back to the time Boiler No. 6 and Turbine No. 11 were installed in January, '67.

He testifies how he goes out and instructed

1 the people and selected the best men to serve.

2 And then he didn't say when, but the next
3 thing he testified of, due to a problem in
4 1967 and '68, boiler out of service in 1967 and
5 also out of service in '68, are you claiming
6 that that is a problem --

7 MR. WEINER: No, no, we are
8 not claiming that that is their fault; I'm
9 not claiming that the boiler going out in May is
10 their fault.

11 THE COURT: Tell me something,
12 which was coming into my mind as I listened:

13 What is the purpose of the testimony?

14 MR. WEINER: Well, the purpose of
15 it -- and you have to get the background to get
16 the background to get to what he was testifying
17 in May of 1970, is to show that when the turbine
18 goes out in 1970, the City does not have
19 adequate backup generation of its own to take
20 care of this major problem, but with an
21 interconnection, there wouldn't have been a
22 problem. The turbine wouldn't have wiped its
23 bearings, and there wouldn't have been the
24 damage to the turbine.

25 CEI did not cause the turbine to go out, and

it did not cause the damage.

THE COURT: Obviously, the whole series of March of '69, scale on the tubes, --

MR. WEINER: Right.

THE COURT: -- had to shut it down, --

MR. LANSDALE: May I ask a question?

THE COURT: CEI -- then he

testified he met -- he was at a meeting with CEI reps. while repairs were going on for backup service by an interconnection.

And then we get into this November period where the boiler sprung a leak, taken out of service on November 8th, out of service until November 21st, a week later, another leak.

That was repaired, operated for a short period of time, then went out of service again in December of 1969 when they had a small leak develop and they didn't want to fix the small leak, so then they got a large leak, and then the whole system went out.

Boy!

No. 4, No. 5 boiler, with slag, superheater, going on.

MR. LANSDALE: Your Honor, may I --

THE COURT: 1970, Boiler 6 tube

1 Meehan - direct

2 leaked, out of service.

3 MR. LANSDALE: May I understand, the
4 claim is that because we hadn't given them an
5 interconnection, more damage was caused than
6 otherwise would have been?

7 My question is:

8 How can we be charged in this case with
9 liability if the other -- even if one assumes that
0 we had the duty that is attributed to the statute
1 of limitations prevents you from recovering for
2 that stuff before July 1, 1971.

3 MR. WEINER: That's why we're
4 not seeking damages for it, Mr. Lansdale.

5 You remember, you raised this question in
6 chambers just before the start of this trial when
7 we suggested to the Court that the Essential
8 Facility charge that the Court gave at the close
9 of the last trial with respect to the wheeling
0 of PASNY power could be broadened to include it,
1 because the interconnection, just as much as the
2 failure to wheel, are both Essential Facilities
3 under that doctrine.

4 THE COURT: What is an Essential
5 Facility?

Meehan - direct

I mean, here we get into that same old argument.

This was not an Essential Facility. You had the generation capacity, you certainly did -- you were generating your own electricity; and you could have kept that generating facility by appropriating monies and spending monies in a condition where it would have operated this -- or you could have expanded it.

This is not an Essential Facility, not where you have existing facilities to meet your capacity.

MS. COLEMAN: Your Honor, --

THE REPORTER: I can't hear you.

MR. NORRIS: Make your point; he didn't hear you.

MS. COLEMAN: Generating is not a substantive or an interconnection, I agree with you 100 percent; but you are obviously misinterpreting the Doctrine of Essential Facility.

Your Honor, in Associated Press, it was otherwise, that people could have it used; and Amco would have had a warehouse downtown.

THE COURT: Yes, but --

MS. COLEMAN: The question was:

Meehan - direct

is the facility located in such place and of such benefit that it was an Essential Facility.

MR. WEINER: Well, I mean, Otter

Tail speaks of just their level, they had their own generation, too, but the Supreme Court --

THE COURT: Otter Tail is a slightly different fact situation than this.

MR. NORRIS: Your Honor, we would also urge that your Honor would look at the brief that we filed just this morning, because we are addressing the essential fact doctrine there which bears upon this testimony also.

THE COURT: Well, Mr. Norris, I regret to say that I have been in this courtroom since about 9:15 this morning, and I went out for lunch and I took about 40 minutes for lunch and I came back here; so if you can tell me when I had an opportunity to review that brief, --

MR. NORRIS: I'm not suggesting that you should have done it by now.

I'm just drawing to your attention that we argue the case law in there with respect to why an interconnection should be covered by the Essential Facility Doctrine, and I am just bringing

1 Meehan - direct

2 it to your attention.

3 THE COURT: I will be happy to

4 read it.

5 Let's take a brief break, and I'll peruse
6 your brief at this juncture.

7 MR. WEINER: It's just the
8 first part of it, your Honor.

9 {End of bench conference.}

10 {Recess had.}

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1 Meehan - direct

2 THE COURT: Please be seated.

3 Gentlemen, without passing on the issues as
4 to whether or not failure to give interconnection
5 during the damage period comes in with the
6 Doctrine of Essential Facilities, as I understand
7 the issue defined here, the City is claiming that
8 even though it does not seek damages against
9 CEI for the period prior to July 1, 1975 -- I
10 mean 1971, that it has the right to introduce
11 evidence as to the failure to give an interconnection
12 prior to that date to show the condition of the
13 plant on the commencement of the damage period.

14 Is that what you are telling me, Mr. Weiner?

15 MR. WEINER: Certainly at the
16 commencement, but also prior to the commencement,
17 in fact, of the damage period, but certainly in
18 terms of what the plant was in 1971, because
19 without that testimony -- all the actions of CEI
20 and all the actions of the City -- you can't take
21 the position of the City on July 1, 1971, in
22 an isolated vacuum and say this is the City in
23 1971 without looking back and finding out why the
24 City was where it was in July, July 1, 1971.

25 THE COURT: I disagree with you

Meehan - direct

there, because you are foreclosed from going into any of that since it is beyond the damage period. That is the whole purpose of the statute of limitations, that is the whole purpose.

I don't care if the condition of the plant on July 30th of 1971 was a blackout situation, and even though it may have been caused by the actions or the failure to act of the defendant, that is foreclosed by the statute of limitations, and it has absolutely no bearing on the case.

MR. WEINER: Damages are foreclosed as to the statute of limitations, but there is a difference between damages and the effect on something prior to it when you are not seeking -- when you are foreclosed by law of seeking damages.

THE COURT: Are you desirous of speaking to the issue?

MR. LANSDALE: No, sir. I am prepared to examine.

I do suggest sometime we ought to have an oral argument on this Essential Facilities Doctrine.

THE COURT: We are talking about the Essential Facilities Doctrine in two contexts:

Meehan - direct

One, outside of the damage period; and two, inside or within the damage period.

I am not discussing the issue that has been raised by the last question directed to this witness, and if I recall that question in substance it is that in the event that there had been an interconnection given by CEI prior to December of 1969, when they had the blackout, what in your opinion would that have precipitated?

MR. LANSDALE: My position on that is this:

I objected to that question then, and I object to it now, because it is not relevant whether CEI by its inaction or action caused this thing.

Now, the fact, the fact of the condition of the plant in 1971 may be relevant.

It is perfectly obvious we don't need the witness to say if they had a synchronous interconnection with somebody, then things would have been different, but to lay that in juxtaposition to laying the thing on CEI is entirely a different question.

THE COURT:

Well, the testimony of

Meehan - direct

course is that the events testified to by this witness -- and I don't think it is claimed by the City -- resulted from any action on behalf of CEI.

MR. WEINER:

That is correct.

Let me just point out Mr. Lansdale said we would not argue.

I am glad they don't argue, but I think it is important for the jury to know what the effect of that system would have been if there had been an interconnection in place in 1971.

THE COURT:

My question to you is the same question I asked before; what difference does it make? As I understand it, it comes up outside the damage period.

I am going to sustain the objection.

MR. WEINER:

Because none of those happened after July 1, 1971, whatever date you pick -- would have happened if the interconnection had been in place and it snowballed.

THE COURT:

You can take it from July 1 of 1971 and thereafter.

MR. WEINER:

What the effect of the interconnection would have been -- okay.

I would proffer the testimony of Mr. Meehan that

1 Meehan - direct

2 the effect of the interconnection at that point

3 was the turbine would not have been damaged, and

4 it would have been out of service for X number of

5 months because of that year, and that was May of

6 1970.

7 THE COURT:

The proffer may stand.

8 Bring in the jury, please. Bring in the jury and

9 we will address the Essential Facilities

10 Doctrine as it may or may not apply within the

11 damage period.

12 Needless to say, the Otter Tail case does
13 not involve a period of time outside the damage
14 period, as I read it.

15 - - - - -

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

18 THE COURT:

You may take your

19 seats, ladies and gentlemen.

20 You may proceed, Mr. Weiner, after the jury
21 is seated.

22 MR. WEINER:

Thank you, your

23 Honor.

24 BY MR. WEINER:

25 Q Mr. Meehan, before the break we were talking about the

Meehan - direct

damage on May 30, 1970, to Boiler No. 6 and Turbine No. 11.

With respect to Boiler No. 11, was the damage that was caused to that, was that capable of being repaired by your Muny Light personnel?

A Our personnel were fully capable of working on No. 11 turbine under the supervision of the General Electric service people whom we called in to supervise the repair of the machine.

Q What work was done?

A The serviceman came in and determined that the bearings were damaged and that we would have to open up the turbine, and at that time he took the cover off the turbine and took off the bearings of the entire machine and sent them to the General Electric service shop in Pittsburgh.

We also took out the high pressure spindle and the low pressure spindle and the generator rotor, which had damage to the journals, which would have to be repaired in Pittsburgh.

We couldn't do it in our plant. We don't have the equipment to handle such large material.

Q During the break the operational charts for 1970 and 1971 were put on the easel next to you.

Meehan - direct

Are you generally familiar with those two charts?

A I am.

Q Would you describe for us the operation of the power

plant of Muny Light during the summer months of 1970, after the May 30th outage.

A After the May 30th outage we tried to run all of the boilers as possible, one, two, three, four, and five, and number eight, nine and ten turbines, which are shown.

Where the color is on the chart, that shows the daily operations of the boilers and the turbines.

Each mark is blocked off into days, and it shows the operation of the equipment.

All right.

We have had that explained to us.

If you could concentrate on the summer months of 1970, and how Muny Light was carrying its load during that period.

A During the summer months we try to carry our generating load on 8, 9 and 10 turbines, and run No. 5 boiler, included with the load transfers shown down here {indicating}, and the space over there in the months of June, July and August.

Q What were the conditions of the five boilers that

Meehan - direct

remained?

A No. 1 boiler run fairly well. We tried to get No. 2 boiler out of service, but we continually had to put it back due to the fact that CEI had trouble with its mobile substation, and also at Collinwood north.

It would trip off the line, and we would have to put No. 2 back in service.

Q What do you mean "trip off the line"?

A Due to a malfunction, it would separate from our system and not generate power into our system.

Q Why did you have No. 2 off of the line?

A We were trying to have a general overhaul to the precipitators and the tubes, and we would clean out the slag and repair the boiler.

Q How about Nos. 3, 4 and 5?

A They operated fairly well except No. 5 we had trouble during the month of July with superheater trouble.

Q Mr. Meehan, did you have any klinker problems or slag problems?

A At that time we did have considerable klinker problems.

Q What is that?

A It is when the coal burns and it leaves a residue behind known as the ash, and then the ash goes up the boiler and is carried out towards the stack, which we

Meehan - direct

collect in the ash collectors, and the heavy ash falls to the bottom of the boiler, and it melts, and if it flows due to the low fusion, it flows to the ash pit, and we collect it and take it out of the boiler. If not, it slides onto the tubes of the boiler.

Q What is the relationship of the klinker to the tube?

A As the klinker forms over the bottom of the boiler, and we have a tube leak, that hits the klinker and forms sulphuric acid, which eats the outer surface of the tube, making it necessary to cut out part of the tube and put in a window in the top of the tube.

Q Mr. Meehan --

MR. WEINER: Pat, would you hand

Mr. Meehan Plaintiff's Exhibit 2905 and 2906, please.

{After an interval.}

Q Do you have those?

A I have them.

Q Could you identify Plaintiff's Exhibit 2905 for us?

A 2905 shows -- that shows a jackhammer in the boiler in which they are breaking off the klinkers or the slag in the bottom of the boiler to collect it in the ash pit.

Q Is that a picture?

Meehan - direct

A That is an actual picture.

Q When was it taken?

A 1970.

Q How about the other?

A The other shows the top of the klinker with a hole where a part of the klinker has been broken off and smashed down into the ash pit.

Q Mr. Meehan, what progress was being made in bringing back No. 6 and 11 during the summer of 1970?

A When we took out and uncovered the spindle and the bearings, we inspected all the other equipment in the boiler, and we found that the casing itself had not been damaged, and the inlet valves and the oil pumps and the various parts of the turbine were in good shape.

Q When was the next time you operated Turbine No. 11?

A During the month of October, the early part of the month, the spindle and generator rotor, along with the bearings, were returned to the plant, and under the supervision of the G.E. service engineer, it was ready for service on October 20, 1970.

Q Were you there?

A I was there.

Q How did it do?

Meehan - direct

A On October 20th we brought the machine up to speed and checked out different parts, and it looked all right.

We then shut it down, and on October 23 we brought it back up to speed again, and we put it on the line, which we had, I would say, about 20 megawatts on the turbine, and the turbine was running fine, but at that time, due to the fact we only loaded one mill on No. 6 boiler with coal, a drive shaft on the mill broke, and we had to take the turbine out of service.

Q How long did it take to repair that?

A Almost a week to repair it. It was ready to go on October 30th.

October 30th we started to bring the boiler up to service, but we found out we couldn't get any vacuum on the machine.

We decided that we would call a serviceman in from General Electric to find out from us, and he was to report on November 2nd, 1970.

Q Do you recall what happened on November 2nd, 1970?

A On that date General Electric, the General Electric man came in, and the vacuum was fine.

We brought the machine up to speed, and we put it on the line and loaded the machine up to about 25

megawatts.

Meehan - direct

megawatts.

It run that way for a period of over an hour, and then we had a little trouble with the vacuum, which the General Electric man went out to investigate, and during this period Irwin Daniels and myself were under the controls of the machine, and the machine started to go long, which meant the spindle was expanding faster than the casing, and we were in trouble.

Q What did you do?

A We tried to get the gas turbine, the gas turbines that were coming in, to put one on the line, and we had it on the line a couple of days before, and we had not been able to get it, and then it tripped the machine, and it took a period of about three minutes.

Q What happened as a result of that incident?

A The result was that it came down to a standstill, and it vibrated badly.

Q What does that mean?

A The machine was shaking.

Q What did you do?

A At that time the General Electric man decided that they better take the cover off the machine and inspect it and see what was causing the damage.

Meehan - direct

Q Okay.

What did they do with the machine?

A They lifted the cover off of the machine and found

No. 1 and No. 2 bearing was wiped.

Then they decided they would take the spindle out of the machine, both the high pressure and the low pressure, and return them to Lynn, Massachusetts, where they had more equipment to check the balance on the spindle.

Q Did you have a planned maintenance program for the various equipment that you had in Muny Light in 1970?

A Every year for the past years and including 1970, we would always plan in the middle of the year what we were going to do the following year, and we would get contracts with our suppliers, and they would come from General Electric, Riley Stoker, Foster Wheeler, and so forth.

Q And others?

A And others.

We would also hire a serviceman and the contractor would supply us with parts to repair the equipment.

Before the man left he would always tell us what we needed for the machine at the next outage.

Meehan - direct

Q Were you able to accomplish your maintenance program in 1970?

A In 1970, with the machines out of service, it was a case of self-existence.

We had the leaky tubes in the boiler, and it always created that emergency, and I would say the overall picture-- we had accomplished some things, but not all.

Q What about your routine maintenance program?

A We were able to accomplish that.

Q Well, No. 6 and No. 11 were out again in November and sent to Massachusetts.

How did Muny Light carry its load in that period from November of 1970 into the spring of 1971?

A We had the load on 8, 9 and 10 turbines, along with whatever load we could pick up on the gas turbines at that time, plus the load that we were getting from CEI on transfer of load.

Q How were the five boilers that remained, how were they doing?

A The five boilers, we were able to keep the five boilers into service until the start of 1971, and at that time it was determined that we could give the air pollution people some satisfaction by taking out No. 2 boiler and

Meehan - direct

installing an electric precipitator, and that we were to overhaul the boiler.

In the month of March we took out No. 3 also to put in an electric precipitator and overhaul the boiler.

Q Mr. Meehan, when No. 6 and No. 11 were operating, how did you load the four various turbines that Muny Light had?

A During this period of time when we had 6 and 11 and the old boilers, we would base load 8, 9 and 10 turbines, and carry the swing load on No. 11 turbine.

Q And what was the effect of carrying this swing load on Turbine No. 11?

A Actually, with light load it was not efficient, since No. 6 boiler and No. 11 turbine was capable of turning out 85 megawatts, and if you are carrying it down to 15 or 20, the turbine was inefficient, and the boiler itself, the controls on the boiler were not for such a light load, and we would have no control. We would have very poor control over the system and the temperature and the steam pressure.

Q Did it cause you any problems with slagging?

A Yes. At light loads the furnace being so large, the temperature in the boiler would not get high enough.

Meehan - direct

to cause the slag or clinkers to melt and run out on
the boiler.

MR. WEINER:

May I approach the

bench?

THE COURT:

Yes.

{The following proceedings were had at the
bench:}

MR. WEINER:

I would like to proffer
Mr. Meehan's testimony with respect to what the
effect of an interconnection would have had on this
low loading problem, and that the interconnection
would have prevented the type of problem that he
just testified to where the low loading caused
slag and inefficient operations.

MR. LANSDALE:

At what time?

MR. WEINER:

During 1970 and 1971,
until he left the plant in 1971.

THE COURT:

All right. Go ahead.

MR. WEINER:

I would proffer that
Mr. Meehan would be asked that question, and the
answer would be that the interconnection between
Munby Light and CEI would have prevented the type
of problems that low loading caused Turbine No. 11.

Meehan - direct

and that the turbine could have been run efficiently and the slag and other problems would not have occurred if there had been an interconnection.

MR. LANSDALE: I have nothing.

THE COURT: All right.

{End of bench conference.}

BY MR. WEINER:

Q Mr. Meehan, while you were Superintendent at Muny Light, did you have any labor management problems?

A We did not.

I had to deal with about 13 different unions, and each union was a craft within itself, and one union possibly would get into some confusion over whose work it was, and they were always settled among the men themselves, and we wouldn't have any trouble.

If we had an emergency, any union man would help the other union man.

Q Would you consider your key employees to be qualified?

A Yes.

Q And what is the effect of the operating conditions that you were working under, what effect did they have on the morale of your employees?

A The conditions that we had to operate under, where the

1 Meehan - direct

2 boilers would be in service and out again and all those
3 things, it did have an important morale effect,
4 naturally, on the men.

5 The men would work on a boiler, and they would
6 say, "Oh, what, again?" But the overall picture, the
7 men would never object no matter how hot the boiler was
8 to go back in the boiler and help repair that boiler.

9 Q Do you believe that the conditions of the plant
10 improved or went down in the years 1970 to 1971 until
11 you left the plant?

12 A I would say the overall picture of the plant did slip.

13 Q Why?

14 A Due to the fact that we had so much work that had to
15 be done in major overhauls, and we couldn't keep up
16 with the overhaul picture.

17 MR. WEINER: Thank you.

18 May I approach the bench one more time?

19 THE COURT: Yes.

20 - - - - -

21 {The following proceedings were had at the
22 bench:}

23 MR. WEINER: We would proffer that

24 Mr. Meehan would be asked and the answer would be
25 that if there had been an interconnection with the

Meehan - direct

system, that the plant would not have gone downhill during the period of 1970 and when he left in April of 1971.

THE COURT:

Okay. The proffer

may stand.

{End of bench conference.}

MR. WEINER:

No further questions.

Thank you, Mr. Meehan.

THE COURT:

You may proceed,

Mr. Lansdale, if you have any cross-examination?

MR. LANSDALE:

Yes.

CROSS-EXAMINATION OF JAMES J. MEEHAN

BY MR. LANSDALE:

Q Mr. Meehan, during the year 1970, Mr. Bergman was the Commissioner, was he not?

A That is right.

Q And as Plant Superintendent were you aware of the reports that he would make to the Director of Public Utilities with respect to the condition and operation of the plant?

A I was.

Meehan - cross

Q And I am referring specifically right now to CEI

Exhibit 434 -- which I ask that you give to the
witness, please, Kathy.

{After an interval.}

A All right. I have it.

Q This is his report of December 14, 1970, to Mr.

Gaskill, the Director of the Department of Public
Utilities, and I believe that you have seen this
report before?

A I have seen it, yes.

Q And you saw it at or about the time it was delivered
to Mr. Gaskill?

A I would say that I did get a copy.

Q All right, sir.

And I invite your attention to the first two
paragraphs of the third page of the report, which
deals with the outage that you have mentioned of May
30, 1970, and the outage of November 2nd, 1970, each
of which resulted in parts of the turbine being
returned to the General Electric Factory to work on
them; is that correct?

A Yes, sir.

Q And in both instances Mr. Bergman reports to Mr.

Gaskill that the "mishaps were due to operator error."

Meehan - cross

and do you see that?

A Yes, sir.

Q Now, with respect to the May 30 report, Mr. Meehan, the situation was that, I think you related, that when the station went down, when something caused the unit to trip off, that the load on the rest of the system was so great as to cause a complete blackout; is that correct?

A That is correct.

Q And this happened because the amount of the load that was being carried by the big unit, the 85-megawatt unit, was so large in proportion to that being carried by the other units on the system, that they were not able to pick up the slack when the big unit went down; is that correct?

A I would say that was correct.

Q Now -- and was the capacity of the other units such that they could, at least theoretically, have picked up the remainder of the load?

A It was.

Q And what was the reason why they couldn't pick it up then?

A Due to some kind of error. What I believe happened at the time, the voltage went down as the load was

1 Meehan - cross

2 transferred from No. 11 turbine to the rest of the
3 system. It was due to either the trip-out of the
4 line or just what, I can't answer you.

5 Q And basically you didn't upload fast enough?

6 A The method of doing it was that we would drop load
7 and transfer to any other machine.

8 Q All right, sir.

9 Now, the damage to the turbine, I think you
10 stated, was caused by lack of lubrication?

11 A That is correct.

12 Q And the way that turbine operates, there is -- when it
13 is in operation, there is an oil pump or the pump
14 operated on an AC current which supplies lubrication
15 to the bearings of the turbine continuously?

16 A That is not exactly correct.

17 The spindle itself has a pump directed to the oil,
18 and when it is in operation, it runs, and then there
19 is a pump in case of an emergency, a standby, an AC
20 pump.

21 Q I see, and of course when the whole system went black,
22 the AC power failed, did it not?

23 A That is correct.

24 Q And wasn't that the direct cause of the lack of
25 lubrication?

Meehan - cross

A That would be the direct cause of the lack of lubrication to the spindle.

Q There was also, however, a backup pump run by DC

current from the battery system maintained in the station for the emergencies, was there not?

A There was.

Q And this pump was supposed to cut in automatically if anything happened to cause the AC pump to discontinue; is that correct?

A That was the correct method, yes.

Q Yes, sir; and the reason it didn't come in and automatically come in was because the station personnel had disconnected it due to a malfunction; that is correct, is it not?

A That is correct, except they were supposed to be able to put that switch into service and bring the pump in, but due to some reason or other, during all this trouble, going back, they didn't put it in.

Q It could have been operated manually?

A That is right.

Q The reason it malfunctioned to begin with and had been disconnected was because the calibration was out of adjustment; isn't that so?

A For some reason or other in the past month before that

Meehan - cross

the pump did come in for some unknown reason, and by coming in continually like that, it run down our batteries, and during the month of January the low DC power on the controls of the No. 6 boiler tripped the machine off the line.

Q That is right; and so for that reason you disconnected the automatic feature of that pump and relied on the manual?

A That is correct.

Q And from January to May you did not have anybody to do the maintenance on that particular automatic switch, as I understand it; is that correct?

A That is correct.

Q Now, with respect to the November situation -- Kathy, can we put that up on the easel?

Mr. Meehan, I discovered among the papers here something called PTX-3058, and see if you can't set that up on the easel, and that is a representation of a turbo generator, and the problem at the -- withdraw that question.

As I understand it, Mr. Meehan, the turbine itself and the turbine blades, and the wheels that support the blades, are attached to a long shaft, some 30 or 40 feet long; is that correct?

Meehan - cross

A The length is wrong.

Q How long is it?

A It is about 10 feet.

Q 10 feet.

A It is in two sections.

Q In any event, it is a long, comparatively speaking -- it is a long shaft?

A That is correct.

Q And attached to the shaft are the wheels with turbine blades on it at various angles?

A Yes.

Q And there is a housing around this through which the steam is admitted to drive the turbine?

A That is correct.

Q And one of the problems in starting up a turbine from a cold start is to avoid a problem created by a differential expansion of the housing as distinguished from the turbine shaft itself; is that correct?

A That is correct.

Q And the turbine shaft is anchored at one end so that as it heats up, it gets longer when it is hot than when it is cold?

A That is correct.

Q And that is -- withdraw that.

Meehan - cross

And this is rather close, rather close tolerances there, and if the housing doesn't lengthen approximately co-equal with the lengthening of the shaft itself, then you are in trouble?

A Correct.

Q And when you said that the turbines started to go "long" on your direct examination, you were referring to the fact that you are indicating, or the dials -- I guess it is a paper drum or something -- was showing at that time that the turbine shaft was getting longer than the turbine housing?

A That is correct.

Q And when this happened, the General Electric man present urged you to shut the turbine down immediately, did he not?

A Yes.

Q And you, however, were concerned about your failure to be able to start the combustion turbine to pick up the load that would be dropped thereby, and you kept running it for a few moments following the indication of the shaft going long?

A That is correct.

Q And the consequence of that was to damage the turbine itself by reason of the differential expansion of the

Meehan - cross

shaft as distinguished from the housing?

A That is what happened, yes, sir.

Q Yes. Thank you.

As I understand -- if I understand it correctly, Mr. Meehan, it sounded to me as if you had trouble with this boiler almost from the time that it went into service in 1967; is that a fair inference?

A I would say yes.

Q And you had, in connection with trying to find out what was wrong with it, you had, from time to time, you had various consultants in to examine it and study it, did you not?

A That is correct.

Q And I believe that the boiler and turbine had been installed under the direction or supervision of Burns & Roe, an engineering consulting firm, is that correct?

A That is correct.

Q And Burns & Roe are one of the people that came in to try to determine what was wrong with the boiler; right?

A Correct.

Q I am looking for my notes.--

MR. LANSDALE: Would you please
furnish the witness CEI Exhibit 430, Kathy?

Meehan - cross

{After an interval.}

A I have it.

Q Do you have it?

A Yes, sir.

Q And this is a letter from Burns & Roe, dated December 19, 1969, to Mayor Stokes, to which they attach an analysis of some kind, an analysis of this Boiler No. 6, dated December 5, 1969, and that is correct, is it not?

A That is correct.

Q And on page 3 I invite your attention to the fact that in their discussion of the problems of combustion control, Burns & Roe believe, "that the basic difficulty lies with the plant personnel who have not familiarized themselves with the equipment enough to troubleshoot or maintain the various items of control hardware."

Is this an opinion with which you agree or disagree?

A I don't agree with the opinion.

Q You don't agree with the opinion.

You feel that the personnel had sufficient training and skill to deal with this relatively sophisticated unit?

1 Meehan - cross

2 A If I remember properly, at the time this letter came
3 out, we hired service engineers from Beckman, who
4 I believe took over from Riley to come in and
5 supervise the equipment and controls and teach our
6 men how to operate the controls.

7 Q You mean after you got this report?

8 A We had done it both ways, and I remember definitely
9 of hiring them in here to do it.

0 Q All right.

Now, Mr. Meehan, you told us about a meeting at
CEI in May of 1969 which was attended by you and Mr.
Fakult, I believe, the Commissioner?

A Commissioner Fakult and Mr. Erickson and Phil
Matthews.

Q And you met with CEI people, and I will ask you if it
is not the fact that the City of Cleveland had asked
CEI -- had told CEI that they wished to take
certain boilers, I believe it was Boiler No. 2 and 3,
out of service for the purpose of installing
precipitators?

A That is correct.

Q And you were there to seek the assistance of CEI and
provide a power to Muny Light for the purpose of
enabling you to take these boilers out of service

Meehan - cross

while the precipitators were installed?

A That is correct.

Q And you had planned to do the work of installing the precipitators in, I believe, January or February of 1970?

A We had to postpone it, due to the trouble that we were having with the equipment.

Q I understand that. That came a little bit later on, but at the time of this meeting, the purpose of the meeting was to discuss the request earlier made for an interconnection -- withdraw the term "interconnection" -- but for some kind of supply of emergency power to enable you to put the precipitators on the boilers?

A At that time we were looking for an interconnection that would take care of that problem, and also the problems when we lost No. 6 boiler and No. 11 turbine.

Q I heard what you said, and my question to you is, insofar as the request of CEI was concerned, the sole request was to assist, was for assistance in taking Boiler No. 2 and 3 off the line?

A Our request was that we wanted an interconnection, and they offered a transfer of power.

Q Who made that request?

Meehan - cross

A Commissioner Fakult.

Q And this was made orally at the meeting?

A Yes; and your people kept notes on it.

Q Yes, I know we kept notes, and we have a full memorandum of that meeting, Mr. Meehan.

Did anybody from Muny Light make any memorandum of what occurred at that meeting?

A I have not found them, but I found your memorandum in the files at Muny Light.

Q I see; and you know from that memorandum that our people stated that the Muny people present believed that the request to buy power in order to put in the precipitators was simply a political venutre and not really what Muny Light needed.

That is what the memo said that was made at the time?

A The memo may have said that, but that is not true. We were not political employees.

Q I asked if that is not what the memo stated that you received from the Muny Light files?

A I would have to go back and look at it.

Q And when did that memorandum come into your possession, Mr. Meehan?

A I would say five or six months ago, going through some

1 Meehan - cross

2 of the records that I had produced.

3 Q Five or six months ago was the first time that you saw
4 it?

5 You did not see it contemporaneously?

6 A I had picked it up before that. It was in my records.

7 Q I am trying to find out when it came into your records.
8 This was before your retirement?

9 A It has been there a long time.

0 Q Was this before your retirement that it came into your
1 records, before your retirement?

2 A It must have been, because I got it out at the plant
3 itself.

4 Q Now, if I understand, you retired in -- what year?

5 A April 1st, 1973.

6 Q 1973, and at that time, at the time that you were
7 having this meeting, you were the Superintendent?

8 A I was.

9 Q -- of the plant?

0 A I was.

1 Q And would it have come into your files at or about that
2 time?

3 A It would have come into my files at that time.

4 Q And you would have seen it then at that time?

5 A That is right.

Meehan - cross

Q All right.

And did you suppose, Mr. Meehan, that it was feasible to provide a synchronous interconnection at this time that you made this request, that you made this request that you speak of, for the purpose of putting precipitators in, in January or February?

A If it was possible.

Q Beg pardon?

A If it was possible.

I am not an electrical engineer, so I couldn't determine for you at this time how long it would take to put in any connection.

Q I see. All right.

Now, Mr. Meehan, you had been at Muny Light a long time.

You remember, do you not, various reports of consultants and recommendations of commissioners and Directors of utility with respect to the installation of generators and boilers and the like at Muny Light, dating from back in 1953 and '54, when you became a Supervisor of Electric Generation?

MR. WEINER: Your Honor, may we approach the bench?

THE COURT: Yes.

Meehan - cross

Ladies and gentlemen of the jury, it now being 4:05, and in order for you to review the daily exhibits, we will excuse you at this time.

Please, during the recess, remember the admonitions. You are not to discuss the case with anyone, not even among yourselves, and please keep an open mind until you have heard all of the evidence and the Court's instruction as to the law and its application to the facts.

You are now free to go. Good night.

{The jury was excused.}

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THE COURT: The following exhibits may be submitted to the jury, since all of them had been admitted prior to today.

Well, I will just read them off:

Plaintiff's Exhibit 2938, 2860, 1530, 2162, 2163, 2164, 3239, 3238, 1516, 2653, 2905, 2906, and 3050.

And the following exhibits also previously admitted may be taken to the jury:

CEI Exhibit 284, 1164, 1163, 1267, 434, and 430.

There has been no objection at this juncture

1 to CEI-1046 and 1268. 1046 has not been identified,
2 and 1268 has not been utilized.

3 I don't know what exhibits those are.

4 MR. NORRIS: 1046, your Honor,

5 Mr. Lansdale used in cross-examination, and it
6 has not been identified.

7 MR. LANSDALE: I used -- did I use
8 1046? -- yes.

9 MR. NORRIS: We are objecting to
10 it because it hasn't been testified to, and the
11 same thing on 1268.

12 THE COURT: Well, it was testified
13 to. We utilized it today.

14 MR. NORRIS: It should be
15 identified. It should be identified with Mr.
16 Hinchee, and he didn't identify what it was.

17 THE COURT: All right. I will
18 sustain the objection until such time as it is
19 identified.

20 MR. NORRIS: And 1268 was not
21 utilized in the cross-examination.

22 THE COURT: Yes. I don't think
23 it was. The only reference you made was to
24 1267.

25 MR. LANSDALE: I offer it in any

event, because it comes from the same Form No. 1 that Mr. Hinchee testified about, and it speaks for itself.

MR. MURPHY: It comes from the

1970 FPC Form No. 1.

THE COURT: It is four pages that came before the FPC. What you claim for it, I don't know. What is it being admitted for?

MR. LANSDALE: Because the witness was extremely reluctant to say that they were buying power from us for resale.

THE COURT: Well, he conceded to that.

MR. MURPHY: It is also to show the price, your Honor, at which the power was being sold in 1970.

THE COURT: Well, at this juncture I will sustain the objection. All you have to do is identify it. It is a technical objection.

Anything further? If not, good night. See you in the morning.

{Court was adjourned.}

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