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## Volume 18 (Part 4)

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

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Loshing - cross

Q Now then, Mr. Bingham does identify the alternative he refers to as the "preferred answer making 33 KV supply available at the ends of the MELP system."

For purposes of these questions, would you be willing to acknowledge that essentially what he's referring to there is the load transfer service?

A Yes.

Q And Mr. Bingham in this memorandum identified a couple of factors that he felt were critical factors from the standpoint of Muny Light, and can you identify what those critical factors were?

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

THE COURT: Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

MR. LANSDALE: The objection is simply that he is asking this witness for what the memo from Mr. Bingham tells us.

It is obvious that the memo -- that it was not a matter discussed at the meeting, and Mr. Bingham is identified as a witness to be called by Mr. Norris, and I object to the use, to using

1 Loshing - cross

2 this excuse here as a vehicle to present  
3 interrogation, to interrogate this witness  
4 concerning Mr. Bingham's views.

5 MR. NORRIS: That is a frivolous  
6 objection, and that is an unprofessional statement.

7 THE COURT: Just a moment.

8 Mr. Norris, kindly stop provoking the  
9 arguments here in characterizing these things.

10 Why don't you just respond to the objection.

11 MR. NORRIS: It makes me angry to  
12 be criticized like that.

13 THE COURT: I don't care. Let's  
14 stop this characterization. Place your objection  
15 on the record and place your response on the  
16 record, and I am not going to have any more of  
17 this constant bickering.

18 Every time we come up here people are  
19 accusing each other of unprofessional conduct.  
20 Let's get down to the basics.

21 MR. NORRIS: The memorandum  
22 reflects a discussion between this witness and  
23 his subordinate, Mr. Bingham, and I am not reading  
24 the memorandum. I am asking him what the factors  
25 were that Mr. Bingham identified, and if the

1 Loshing - cross

2 witness doesn't recall, I will then draw to his  
3 attention the contents of the memorandum.

4 THE COURT: Read the question.

5 {The question was read by the reporter as  
6 follows:

7 "Q And Mr. Bingham in this memorandum  
8 identified a couple of factors that he felt were  
9 critical factors from the standpoing of Muny  
10 Light, and can you identify what those critical  
11 factors were?"

12 THE COURT: The question is  
13 obviously objectionable because, again, you are  
14 probing this gentleman, and the other fellow is --  
15 now listen to the question.

16 MR. NORRIS: I will rephrase the  
17 question.

18 THE COURT: All right.

19 {End of bench conference.}

20 - - - - -

21 BY MR. NORRIS:

22 Q Calling your attention, Mr. Loshing, to this meeting  
23 that you had with Mr. Bingham, what were the factors  
24 they identified in that meeting that you were  
25 critical from the standpoint of Muny Light?

1 Bashing - cross

2 A Those mentioned in his memo to me of December 29th.

3 Q One of the things that he identified to you in that  
4 meeting was that Muny Light needed some solution that  
5 was a speedy installation?

6 A Yes.

7 Q And he also identified another factor that they needed  
8 continuous availability of whatever the solution was;  
9 is that correct?

10 A That was his opinion.

11 Q And he also identified a couple of factors in this  
12 meeting with you that he felt were critical from the  
13 company's standpoint.

14 Do you recall what those were?

15 A As listed in this memo, it is pointed out that the  
16 69 KV tie might not solve Muny's problems, that there  
17 was a problem -- Paragraph 2 -- as he indicated, that  
18 there was a problem of meeting their summer load.  
19 It was a temporary problem, and if they performed as  
20 they did in the past, they may not have their  
21 turbines installed in time to pick up their own  
22 problems.

23 Q Maybe I didn't make the question clear enough.

24 I was asking what did Mr. Bingham identify as  
25 being critical from the company's standpoint? Isn't

## Loshing - cross

one of the things he identified that would be critical from CEI's standpoint was the temporary nature of the intertie; was that one of the factors?

A Yes.

Q And didn't he also identify as critical to the company limiting the capacity of the intertie which would preclude parallel operations?

A Yes.

Q And Mr. Bingham suggested, did he not, an option that would meet all four criteria, the two critical criteria for Muny Light and the two critical criteria for CEI?

A That is what he suggested.

Q He suggested a 69 KV overhead tie between the two plants alongside the Shoreway would be a solution that would satisfy those four critical factors by both parties, did he not?

A That was his observation, yes.

Q And you agreed that the 69 KV overhead tie option would have met all four critical factors for Muny Light and CEI; is that correct?

A It would have been one way to meet all four criteria, yes.

Q And the 69 KV overhead tie alongside the Shoreway

Loshing - cross

could have been put into service relatively fast; is that correct?

A That is Mr. Bingham's knowledge. I am only reading what he reported to me.

Q But you agreed with the thrust of that, did you not?

A Just from general knowledge, that a B3 overhead would be a way quickly to put in the ground --

Q I was asking about a B9.

A I am sorry, a B9 overhead.

Q Do you recall what your conversation was, Mr. Loshing, as to what you meant by "relatively fast"?

MR. LANSDALE: I object if your

Honor please.

THE COURT: Overruled.

A To my knowledge there was no meeting between Mr. Bingham and I. He was talking about a joint meeting, and my only communications was through Mr. Bingham's memo on where he is expressing his opinion of what went on at that meeting, which was the day after Christmas.

Q Mr. Loshing, I will ask you whether you recall being asked this question and giving this answer in the other trial. This is transcript page 1,908, starting at line 6:

Loshing - cross

"Q So that you did agree to that extent. All right. I understand.

"Now, Mr. Bingham continues:

"Specifically the 69 KV tie has the following advantages.

"1. It can be constructed and put into service relatively fast. Its cost would not be prohibitive to MELP; a permanent underground tie {to be avoided like the plague} would probably take more than a year to construct and would be quite costly."

"Do I take it that you agree with the thrust of that paragraph?

"A Other than the specific language."

Do you recall that question and your giving that answer?

A Yes. The testimony is the same now.

Q Thank you.

Now, with respect to the second element of the continuous availability that Muny needed for whatever solution to the emergency could be devised, you did agree, did you not, with Mr. Bingham's statement to you that, "The 69 KV overhead tie along the Shoreway would be a continuously available source of supply



Loshing - cross

for Muny?"

A Yes, whether we wanted to do it or not is another point.

Q And then you also agreed, did you not, that the 69 KV tie had the advantage from CEI's standpoint of having limited capacity, and you agreed with that, did you not?

A I accepted Mr. Bingham's point --

THE COURT: Did you agree or didn't you agree?

A I accepted Mr. Bingham's observation, yes.

Q And you likewise agreed with Mr. Bingham, did you not, that the 69 KV overhead tie along the Shoreway would satisfy the second criteria from CEI's standpoint as being temporary?

A That is correct.

Q Now, the decision that was made that we have agreed we can characterize as the load transfer service did satisfy both of the CEI's critical factors, did it not?

A Yes.

Q But that load transfer service satisfied neither of the critical factors from Muny Light's standpoint; is that not correct?

A Yes.

Q And Mr. Bingham stated to you at that time that the

Loshing - cross

load transfer solution being proposed by CEI could be proven inadequate with relative ease, did he not?

A That is his observation.

Q Did you agree with that?

A No, I did not. In my testimony -- I said the last time -- I said that I believe that the observation was genuinely true, but I did not think it was necessarily the only or best option to pursue.

Q It was generally true?

A Yes.

Q It was your view that in order for Muny Light to be entitled to receive load transfer service, Muny Light should utilize its existing generating capacity to the greatest extent practicable; is that a correct statement? I am talking about your view, and nothing in the memorandum.

A May I have the question?

{Question read by the reporter.}

A Yes.

Q And it was also your view, was it not, Mr. Loshing, that at the same time Muny Light was utilizing its existing generating capacity to the greatest extent practicable, that Muny Light should likewise keep its system in a prudent state of repair?

Loshing - cross

A That is correct.

Q Now, how can both of those things be done simultaneously without a permanent interconnection?

A We picked up load for them, which gave them relief of supplying that capacity, and not being in the engineering area, I would just think from my own experience that that would have permitted them to rehabilitate their system.

Q How many engineering degrees do you have, sir?

A Two.

Q And what kind of engineering specialties are those degrees in?

A Chemical engineering and mechanical engineering.

Q And you started in the Engineering Department in CEI?

A No. I started in the Technical Studies section as a staff operation.

Q Was that your title, a junior engineer?

A Yes, in the Technical Studies.

Q Is it not a fact that if generating equipment is

being utilized to the maximum extent practicable,

that it is difficult to take it down to maintain at

the same time it is being operated?

MR. LANSDALE: Objection, if your

Honor please.

Loshing - cross

THE COURT: Approach the bench.

{The following proceedings were had at the bench:}

MR. LANSDALE: I object on two grounds:

Number one, he is arguing with the witness; and number two, he is asking for an opinion clearly beyond the witness's expertise.

MR. NORRIS: I think there is certainly no intention to argue with the witness. I was trying to inquire how both of these conditions could be satisfied simultaneously; and secondly, I think the gentleman has sufficient experience in engineering and experience in the company to answer the question.

THE COURT: Why don't you ask him the question, "How can these requirements be satisfied," if he knows, and if it is within his knowledge; and if he doesn't, he can say, "I don't know."

MR. NORRIS: I think I did.

THE COURT: Read the question.

{Pending question read.}

Loshing - cross

THE COURT: That is a different question.

If that is within his knowledge, he can answer it, and if it is not, all he has to say is, "I don't know."

He can say that it is not within my knowledge.

I will overrule the objection.

{End of bench conference.}

THE COURT: Overruled. Read the question.

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

"Q Is it not a fact that if generating equipment is being utilized to the maximum extent practicable, that it is difficult to take it down to maintain at the same time it is being operated?"}

THE COURT: You may answer that if you know.

A That is not within my knowledge as Treasurer or experience within the company.

Q It is not within your knowledge at all; is that right?

A No.

Q You mean no, it isn't?

Loshing - cross

A No, it isn't.

Q And, Mr. Loshing, you recommended that Muny Light pay a daily minimum demand charge so as to discourage Muny Light from using the load transfer service on a continuous basis; is that not correct?

A I cannot recall that.

If you can show me a document --

Q Do you recall testifying in the FPC proceedings in February and March of 1972?

A I remember testifying in those proceedings, yes, nine years ago.

Q Do you recall that those proceedings went into April of 1972?

A They were quite lengthy, yes.

MR. NORRIS: Mr. Lansdale, I am at

page 11 of Mr. Loshing's prepared statement, and it appears on page 736 -- no, I think that is 734.

It is page 11 of his prepared statement.

Q Mr. Loshing, I will ask you if this is not part of your prepared testimony that you gave at the FPC hearing:

"We believe it is in the public interest in this particular case to establish an economic incentive that will serve to encourage MELP to

Loshing - cross

utilize their existing capacity to the greatest extent practicable and to keep their system in a prudent state of repair.

"It is with this type of incentive in mind that I recommended a one-cent-per-kilowatt-hour demand charge for the temporary emergency service rate applicable after some reasonable period for starting and synchronizing MELP's generating equipment, which could be as short as three hours, as prescribed by the Commission's order of March 8, 1972.

"Certainly the daily minimum of eight cents per kilowatt of established demand, which I suggested in my earlier testimony with respect to the temporary emergency rate, is designed to discourage MELP from continuing minimal use of the emergency service in order to keep closed the formerly open tie ordered by the Commission."

Was that part of your testimony?

A Yes. That was part of my testimony, yes.

Q Mr. Loshing, did you consider that the 8 cents per kilowatt of established demand would suit the definition of a proper standby charge as you used it in your June memorandum?

A Yes. I must have had a reason for putting it there.

Loshing - cross

Q I am sorry?

A I must have had it justified before the FPC, yes.

Q And was it your expectation when you made that recommendation that 8 cents per kilowatt of established demand would result in increasing Muny Light's deficit?

A No, Sir.

As I pointed out in the testimony, it was to insure they did their self-help, and we were talking about a different interconnection. We were talking about the next phase of it, and in order to make sure that they limited the burden on our rate payers and our company, that they keep -- that there was an incentive to keep their own facilities in operation.

Q I am asking whether or not the results of that 8 cents per kilowatt of established demand would not be that it would increase Muny Light's deficit?

A Not as effective as encouraging them to put their own facilities back into service, which would relieve their financial problems.

MR. LANSDALE:

If your Honor please --

THE COURT:

Read the question and

answer.

{Last question and answer read by the reporter.}



Loshing - cross

THE COURT:

He answered it.

BY MR. NORRIS:

Q When you say "not as effective," I simply want to know whether you know if the results of that recommended demand charge would be to increase the deficit of Muny Light?

A No, sir. As my testimony clearly pointed out, it was a deterrent charge to make sure that they do not continue to malfease their operation and to improve their own operation and stop leaning on us.

Q You thought that without assistance from CEI in their planning, that they would not be capable of making those decisions themselves; is that what I understand?

A That is the concept, yes.

Q And does that mean that you thought the Muny Light people were just totally incompetent to make those kinds of business decisions themselves?

A No.

Q Let me ask you another question, Mr. Loshing:

Is it accurate that an interconnection or intertie which has the effect of shifting generation to the gas turbines or smaller units of Muny Light would have had the effect of increasing Muny Light's financial burden?

Loshing - cross

A Yes.

Q And is it not a fact that the load transfer service, because of the way it operated, did have the tendency to shift generation to Muny's smaller units and the gas turbines?

A Whatever was running.

Q Yes.

Now, the avoidance of -- excuse me.

Would you agree, Mr. Loshing, that a synchronous interconnection between Muny Light and CEI which would permit the loading up of the big units, which interconnection you have told us CEI was trying to avoid, would, in your view, shift -- would require the shifting of generation -- strike that.

If the interconnection between Muny Light and CEI were a synchronous interconnection, and if CEI were trying to avoid such an interconnection and trying to put in the kind of intertie which would require the shifting of generating from the large unit to the smaller unit, would not that anticipated effect be to increase the financial burden on Muny Light's system?

A Not necessarily, because it would have encouraged them to do what they should have done, and get their own

Loshing - cross

units running, which was the cheapest course of action for them.

Q Do you recall your deposition being taken in a related proceeding that we had on June 25, 1975?

A I don't recall the date, but the time frame seems right.

Q Let me ask you if you recall this question being asked and your answer being given -- and it is page 242, starting at line 8:

"Wouldn't then an interconnection which would have the effect of shifting generation from the large unit to the combustion turbines or smaller units have the effect of increasing MELP's financial burden?"

"A Yes, but in respect to not having an interconnection, they would be worse off."

"Q If an FPC-compelled interconnection would be a synchronous interconnection which would permit loading up the big unit and you were trying to avoid that and trying to put in the voltage transfer points which required the shifting of the generators from the large to the little units, would that anticipated effect be to increase the financial burden on MELP's system?"

"A Yes, it would."

Do you recall those questions and answers?"

A Yes.

Loshing - cross

Q Was it your view, Mr. Loshing, that the load transfer rate was as low as or lower than for comparable size customers in your service territory?

A Yes; for comparable service.

Q Were there discussions at the Federal Power Commission about the possibility of the City's accepting the same kind of an arrangement as CEI had with Union Carbide Corporation?

A That was discussed in the pursuit of the case. I don't recall any discussions.

Q And CEI refused that suggestion?

A That is correct.

Q And the reason you gave was that CEI had the ability to instantaneously interrupt the power being supplied to Union Carbide; is that correct?

A That is correct.

Q And the City told you it would be willing to have the same terms and conditions as CEI had with Union Carbide; is that correct?

A That is correct.

Q But you objected to that?

A Yes, I did.

Q And the basis of your objection was that you knew better than the City of Cleveland what terms and

Loshing - cross

conditions the City should accept; is that correct?

A That is right, because of the reaction. It was not a workable solution.

Q And the City told you that it would be willing to accept service over the interconnection on a when, as, and if basis over preference to the load transfer service; is that correct?

A This was a communication of the company. I don't recall them telling me that, but they told the company, yes.

Q I call your attention to the same FPC testimony that you gave, and this was on March 23, 1972, page 493, line 14:

"If Cleveland wished to be treated like Union Carbide, would the company object to that?"

"A. I would like to answer your question directly. I think the answer is yes, because you do not want to be treated that way. And let me explain on that --

"Q Can we determine, can Cleveland determine what it wants or must CEI determine what Cleveland wants?"

"A We have a different category of power altogether here. In Union Carbide that is an

Loshing - cross

interruptible customer. That is a customer which has its own generation, it will stand by for us 25 megawatts at our call, they will dump their own load.

"They will dump their own load and come back to us the 25 megawatts of firm power as emergency.

"Q You have heard the testimony in this case, have you not?

"A Yes.

"Q Have you heard it said that Cleveland would be happy to accept service from CEI on a when, as and if basis?

"A Yes, in conjunction with the 69 KV interconnection.

"Q What does that mean to you, is that interruptible or not?

"A No. It is a different category.

"Q Tell me why not?

"A You make a commitment when, as and if available. There is a slight difference. You do not contract for a term or you say you cannot provide the service.

"Q Have you finished with your answer?

"A Yes.

"Q Supposing Cleveland were willing to accept

Loshing - cross

the same language in its contract with CEI that appears in the Union Carbide contract. Would the company object to that?

"A We couldn't -- yes.

"Q Would you explain why?

"A The conditions are completely different.

"Q How?

"A We have ability to instantaneously interrupt Union Carbide.

"Q Supposing you had that same ability with respect to Cleveland?

"A That is not an interconnection kind of operation.

"Q I am not asking you to define it. I am suggesting that if Cleveland were willing to accept an identical contract to the contract that you have with Union Carbide, what would the company's objection to that be?

"A The conditions are completely different. It is not germane to the situation. Neither party would live with such a contract. It is a different category of power altogether."

MR. LANSDALE:

May I approach the

bench?

1 Loshing - cross

2 THE COURT: Yes.

3 - - - - -

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

6 MR. LANSDALE: Your Honor, I want  
7 the rest of this thing read.

8 THE COURT: Mr. Norris, there is  
9 no inconsistency in the statement that this man  
10 made.

11 If this is an attempt to impeach somebody,  
12 you haven't impeached him by this testimony.

13 MR. NORRIS: The other question  
14 was, "Did they say it to you?", and he said, "No,"  
15 and they did say it to him, because he was on  
16 the witness stand.

17 MR. LANSDALE: It was in the  
18 proceedings.

19 MR. NORRIS: I have no objection  
20 to the other part of the document being read.

21 THE COURT: All right.

22 MR. LANSDALE: We have the  
23 presiding examiner in that.

24 THE COURT: Where is the rest of  
25 it?



Loshing - cross

MR. LANSDALE: The next two questions.

THE COURT: Where did you start and end?

MR. NORRIS: I left out here.

THE COURT: Let's go back.

{End of bench conference.}

THE COURT: Ladies and gentlemen of the jury, the balance of that reads as follows:

"The conditions are completely different. It is not germane to this situation. Neither party could live with such a contract. It is a different category of power altogether.

"Presiding Examiner: When you say that the conditions are entirely different, are you referring to the City's status as a municipality?

"The Witness: Yes.

"The Examiner: What do you mean?

"The Witness: It wouldn't be genuinely interruptible.

"It would not be -- we would be in the newspapers every time we did it. We have interrupted them a dozen times in the last year.

1 Loshing - cross

2 And that would be 25 newspaper stories. We have  
3 a public responsibility. We are saying that it  
4 is not in the best interests of Cleveland to  
5 have this, and we don't want to engage in such  
6 an operation.

7 "You are, I think, in the wrong ball park.

8 We are not even in this category. We would think  
9 it would not behoove us to even offer you that,  
10 because you are talking about now price and  
11 conditions that you cannot sustain. It would  
12 be much like the service you are providing to  
13 our customers. You are interrupting them all  
14 the time.

15 "I want you to go slow enough for the  
16 reporter."

17 Is that the end?

18 MR. LANSDALE: Yes.

19 BY MR. NORRIS:

20 Q Mr. Loshing, you knew that Muny Light's reliability  
21 would have been improved if instead of a load  
22 transfer service, it could have had the same deal  
23 that you had with Union Carbide?

24 A No, I do not.

25 Q Is it true that CEI purchases firm power when it has

Loshing - cross

conditions of insufficient capacity?

A Yes.

Q And is it true that CEI purchases firm power when the economics are that a block purchase is cheaper than producing?

A Yes.

Q Is it also true that subsequent to July, 1971, that the City requested firm power from CEI on a schedule other than an emergency rate schedule?

A Subsequent -- that means after 1971?

Q Yes.

A Yes.

Q And those requests made by Muny Light were made to Lee Howley, weren't they?

A That is where they should have been, yes.

Q And those requests were denied, were they not?

A Subsequent -- what time frame, sir?

Q In the 1972 period.

A Yes.

Q Thank you.

Mr. Loshing, CEI brought a lawsuit against Muny Light in or about February of 1971, for the load transfer service billing; is that correct?

A That is correct.

Loshing - cross

Q Now, did CEI make any attempt to collect that billing through negotiations before filing the suit?

A Yes.

Q What were those attempts to collect through negotiation before filing suit?

A I would have to ask Mr. Howley or the legal people.

Q Then what are you referring to, Mr. Loshing, when you say, "Yes, there were those attempts made"?

A I knew the company was negotiating with the legal people, were negotiating with the City of Cleveland to pay their bills as billed.

Q But did you know that they were negotiating specifically on this point prior to the filing of the lawsuit?

A Yes.

Q All right.

Now, strike that.

Who in CEI was doing that negotiating that you are aware of?

A Mr. Lee Howley.

Q And anybody else?

A Perhaps Don Hauser.

Q From what period of months prior to February of 1971 were those attempts being made?

MR. LANSDALE:

Objection.

Loshing - cross

THE COURT:

Sustained.

Q Are you aware of any particular date when those negotiations were taking place?

A No, I am not.

Q It is a fact, isn't it, Mr. Loshing, that subsequent to claims having been litigated and judgments entered, that by approximately the end of 1978, Muny Light paid to CEI both the principal and the interest on the billings that were subject to litigation?

A In 1978?

Q Yes.

A Yes, I believe they have been.

MR. NORRIS: Mrs. Richards, would you kindly give Mr. Loshing PTX-2059 and 2516.

{After an interval.}

BY MR. NORRIS:

Q I draw your attention, Mr. Loshing, to your memorandum that we looked at first on Wednesday, PTX-2059, your memorandum to Mr. Miller, February 16, 1971.

Do you have that in front of you?

A Yes, I do.

Q And you calculated the Muny Light quick ratio using the 1969 data as 3.78?

A That is correct.

Loshing - cross

Q And you told me on Wednesday that that was a fairly healthy measure of the liquidity?

A That is right.

Q Would you kindly turn to page 20 of CEI's annual statement for 1970, and that is PTX-2516.

Do you have that?

A Yes.

Q And on page 20 the financial data for both 1969 and 1970 is set forth; is that correct?

A Yes.

Q And on page 20 we see, "Current Assets," and on page 21 we see, "Current Liabilities."

Do you see that?

A Yes.

Q And the way that you obtained the 3.78 quick ratio for Muny Light was that you took the \$3,087,264 and divided that by the current assets of \$11,666,557, and you came out with 3.78?

A That is correct.

Q Addressing your attention to the same data for CEI, I wonder if you would follow me. I see your current assets, using the same year for comparative purposes, for 1969, I see your current assets of 56,063,767; is that right?

Loshing - cross

A Yes.

Q And I see on the next page your current liabilities as 144,943,729; is that accurate, sir?

A Yes.

Q And my division -- and I would ask you whether you would accept that division -- would come to 0.394 quick ratio.

Do you think that looks fairly close?

A Yes.

Q And is it a fact that a 3.78 quick ratio would indicate a greater liquidity than a 0.39?

A It would be one indication.

Q Thank you.

MR. NORRIS: Mrs. Richards, would

you give Mr. Loshing PTX-2882.

[After an interval.]

BY MR. NORRIS:

Q Can you identify PTX-2882?

A Yes. It is a memo from me to Mr. Miller and Mr.

Chopp and Mr. Lester and Mr. Moore, dated July 27, 1971, entitled "Muny Meeting."

Q And the Muny Meeting that you were referring to in this memo was the meeting that took place on July 8, 1971; is that correct?

Loshing - cross

A That is correct.

Q And attached to your memorandum are three pages which are the minutes of the meeting as described by Mr. Hinchee and forwarded to you; is that correct?

A Yes.

Q And for the record, the last three pages of the exhibit are the same as PTX-2860?

THE COURT: What exhibit is that?

MR. NORRIS: The second, third and fourth pages of the exhibit 2882 are Mr. Hinchee's minutes of the July 8th, 1971 meeting, and that is in the record already under another number, PTX-2860.

THE COURT: All right.

BY MR. NORRIS:

Q Now, turn to page 2, which is the first page of Mr. Hinchee's minutes, please, Mr. Loshing, and I see in the upper right-hand corner a date-received stamp, "July 16, 1971, Office of the Treasurer," and is it accurate that you received Mr. Hinchee's minutes on or about that date?

A Yes.

Q Do you recall that this was the second set of minutes of that meeting that you received?



Loshing - cross

A No, I do not recall that.

Q Now, you attended the July 8 meeting?

A Very definitely, yes.

Q Now, I would address your attention to the first page of Mr. Hinchee's minutes, and am I correct that you agree that they accurately reflect what took place at the meeting, and I am referring you now only to the first two paragraphs, and I am including the last paragraph on that page at the moment.

A The first paragraph is correct.

The second paragraph is correct.

The third paragraph is correct, and the fourth paragraph -- does it state what happened?

Q Read the fifth paragraph and tell us if that is correct.

A "It was further stated by Mr. Hauser that he recalled that the Federal Power Commission staff had said that they would permit the disconnection at these two points which are referred to above.

"Both Mr. Hinchee and Mr. Ardery sharply disagreed with Mr. Hauser, denying Mr. Hauser's statement, and advising CEI that the Federal Power Commission did not" -- I am sorry -- "did in fact state as follows."

Q Now, just before you turn the page, would you agree with what you just read as being accurate as the fifth

Loshing - cross

paragraph?

A I was not privy to that Federal Power Commission discussion.

Mr. Hauser was there.

Q I understand, but I am asking you really a different question, whether or not -- you were at the meeting, and I am asking you -- that is the July 8th meeting, and I am asking you whether or not Mr. Hinchee -- the fifth paragraph on the first page of the minutes, whether that accurately reflects what took place during that part of the meeting?

A Yes, both of them disagreed with Mr. Hauser, both Mr. Ardery and Mr. Hinchee.

Q Now, to speed up, would you turn to page 2 and read silently to yourself the first six paragraphs.

[After an interval.]

A Yes.

Q My question is, are the first six paragraphs on page 2 accurate, and your answer is, "Yes"?

A I have no knowledge of the first two paragraphs which are discussions before the FPC between Mr. Hauser and Mr. Ardery and Mr. Hinchee.

Q May I ask, the first paragraph is a quotation, and am I correct that that is what you are referring to that

Loshing - cross

you had no knowledge of?

A The Federal Power Commission, and Mr. Hauser would be the one.

Q Now, how about the second?

A The second is the same thing. Mr. Hinchee is disagreeing with Mr. Hauser as to what happened at the meeting, and I have no knowledge of that.

Q Excuse me. I am confused -- the second paragraph states that Mr. Hinchee, "Further clarified the matter," and then it goes on to state what he did.

I am asking you whether that second paragraph is not accurate with respect to what happened at the July 8 meeting and not what happened at the FPC?

A Yes.

Q All right.

Then, let's go ahead.

The second paragraph you said "Yes" to.

Now, the third, fourth, fifth and sixth paragraphs on that page, are those paragraphs accurate from your recollection?

A It refers back to page 3. I have got to find what that reference is to.

It is Mr. Howley's letter.

The third paragraph is accurate.

Loshing - cross

THE COURT: What page are we on?

MR. NORRIS: The second page, your Honor.

THE COURT: We are on what paragraph? Paragraph 3?

MR. NORRIS: He said three is all right, and he is reading No. 4.

THE WITNESS: I am reading 3 in the context of it referring back to Mr. Howley's letter.

BY MR. NORRIS:

Q Actually that quotation in the fourth paragraph is a quotation from the letter that Mr. Hauser and Mr. Howley brought to the meeting; is that correct?

A All right -- if you could show me that letter, it sounds correct.

Q Could we agree, subject to checking, that there was a reference made back to the letter?

A Yes.

Q Now, go ahead with the fifth paragraph.

A Yes. This states that it was unacceptable to the City of Cleveland.

Q I am not trying to argue if it is your testimony that everything in the fifth paragraph is an accurate

Loshing - cross

statement of what took place during that part of the  
July 8th meeting?

A Yes.

Q Now, move to the next paragraph, starting with the  
last paragraph.

A Are you on the second last or the last?

Q I am on the third, the third from the end. Have you  
already acknowledged that that is correct?

A Yes.

Q I am sorry. I missed that.

Now, go to the next-to-the-last paragraph on  
page 2, and tell me if that is correct?

A Yes.

Q Would you kindly read the last paragraph to yourself,  
and then tell me whether that is an accurate reflection  
of what happened during that part of the July 8th  
meeting?

A Not exactly.

Loshing - cross

Q All right.

This paragraph has one, two, three sentences in it.

Is the first sentence accurate?

A Yes.

May I read it, or --

Q You don't need to.

Is the second sentence accurate?

A Yes.

Q Is the third sentence accurate?

A Half accurate.

Q All right.

Which half is accurate?

A First half.

Q All right.

Read what's accurate.

A "With the clarification by Director James that the City would pay its entire bill at that time".

Q That's accurate?

A "At that time" --

Q That's accurate?

A That's accurate.

{Continuing} -- "Mr. Howley agreed that Director James' letter would be acceptable to CEI as the basis for a working agreement with the City."

Loshing - cross

It was contingent upon the clarification in Mr. James' letter that they would pay on time.

Q And you do recall that at this point in the meeting, the letter that Mr. Hauser and Mr. Howley had brought was set aside because the parties agreed that that could not form the working basis for an agreement between them?

A That is correct.

Q And then Mr. James, in effect, brought out his letter of June 30 and said, "What's the matter with my letter?" or words to that effect, is that right?

A Yes.

Q And then the discussion took place that is referred to in this last sentence, that Mr. Howley wanted a clarification.

And is it not correct, Mr. Loshing, that Mr. James at that point reached agreement with Mr. Howley, and Mr. James wrote along the bottom of his copy of the June 30th letter language that he then read to the entire meeting, and everybody agreed, "Yes, that will do it"?

A That was not my recollection.

MR. NORRIS: Mrs. Richards, would you get PTX-2976?

1 Loshing - cross

2 {After an interval.}

3 MR. NORRIS: Would you hold it up  
4 to make sure I have the right number in my hand?

5 {Mrs. Richards complies.}

6 MR. NORRIS: Yes.

7 {The exhibit was handed to the witness by  
8 Mrs. Richards.}

9 BY MR. NORRIS:

10 Q Mr. Loshing, the Exhibit 297b is a copy, is it not,  
11 of the June 30, 1971 letter from Director James to  
12 Mr. Howley that we have just been mentioning that  
13 Mr. James brought out in the meeting and said, "Well  
14 now, what about my letter, can't we talk about that?"

15 Is that -- have I properly identified that exhibit?

16 A Yes.

17 Q Now, my question to you:

18 Do you notice bold black handwriting along the  
19 bottom margin of that first page of 297b?

20 A Yes, I do.

21 Q Now, do you recall, does that refresh your recollection  
22 that Mr. James wrote that material during the meeting  
23 and then read it to the group, and the group agreed  
24 that, yes, that would be the proper clarification?

25 A I do not recall him reading to the group -- I was



1 Loshing - cross

2 sitting right next to the three parties, and the  
3 agreement was that he would rewrite this letter in  
4 this -- with this context, and once we got that as  
5 official terms, we would then accept it.

6 Q And that was agreed to by both Mr. Howley and Mr.  
7 Hauser and yourself, is that not correct?

8 THE COURT: What was agreed to,  
9 Mr. Norris?

10 MR. NORRIS: What the witness has  
11 just testified about.

12 THE COURT: I don't know what  
13 he's testified to.

14 Read the answer back.

15 BY MR. NORRIS:

16 Q All right. Let me put it this way.

17 You don't remember Mr. James reading that language  
18 out loud in the meeting, but --

19 A He may have, I don't recall that.

20 Q But what is written on the margin of the letter is the  
21 essence of what the agreement was that the June 30  
22 letter was to be rewritten in accordance with that  
23 language, is that a fair statement?

24 A Yes; we helped him draft it because his existing  
25 letter was completely unsatisfactory and, at that

1 Loshing - cross

2 point, there was no point in proceeding with the  
3 meeting until we got another letter.

4 Q Thank you.

5 Now, turn to page 3, if you will, of Mr.  
6 Hinchee's minutes.

7 {The witness complies.}

8 Q And am I correct that you find accurate Paragraphs 1 --  
9 and only address yourselves to these -- Paragraph 1,  
10 Paragraph 3, Paragraph 4, and Paragraph 5, just  
11 1, 3, 4 and 5:

12 Do you acknowledge that what is stated in those  
13 paragraphs is accurate?

14 {The witness reading silently.}

15 A Almost.

16 Let me --

17 Q Well, let's take them one at a time.

18 Which -- 1, is that accurate?

19 A No, because of the very -- and this is a critical  
20 point -- because of the very point I just mentioned,  
21 it says "To accept payment in accordance with Director  
22 James' letter."

23 It was not the extent letter that was presented  
24 there, it was to be the revised one reflecting these  
25 more clarified conditions of payment that were to be

Loshing - cross

what we would accept, and that's a critical point.

Q Mr. Loshing, do you recall testifying in the trial last September?

A Yes.

Q And I want to ask you if you recall these questions and these answers.

MR. NORRIS: I'm reading at transcript 1901, starting at line 15.

Q You testified, according to my notes, that page 3 is entirely incorrect because CEI didn't agree to anything?

A It says, 'Agreed as follows,' so the first statement itself is wrong; so in its totality, that statement is wrong, and within that there are some correct statements.

Q Now, which are the correct statements?

A Okay. We already had gone through number one. I will cut this short.

"Number one is okay. That is a 'Yes.'"

"Number two is absolutely no."

"What about Number 3?"

A "3 is a yes."

Do you recall those questions and those answers?

A Yes. And my testimony then still related to the

Loshing - cross

conditions at the top that said "CEI then agreed as follows:"

Q And you expected to get that letter from Director James?

A That's right; and that was the condition for further action.

Q Now, it is a fact, is it not, that, at that meeting, the CEI engineers agreed to meet with the City engineers during the week of July 12 to begin the engineering study for a permanent power supply interchange point as set forth in Paragraph 3?

A Mr. Davidson agreed -- that was up at the end of the table -- agreed to meet with the City engineers once we had met our requirements for getting our payment.

Q But, Mr. Loshing, you just finished telling me that Paragraph 3 was accurate, "CEI engineers will meet with City engineers during the week of July 12 to begin the engineering study for a permanent power supply interchange point"; that's accurate, isn't it?

A Conditioned upon acceptance of Muny paying the bill on a timely basis for the bill.

Q Now, I thought that you had just told me that that was conditioned upon getting the letter from Director James?

1 Loshing - cross

2 A That would be acceptable to the payment of the bills,  
3 yes.

4 Q As had been agreed to there at the meeting as you have  
5 testified?

6 A Yes; but it was now.

7 Q Would you kindly look then at Paragraph 4 on page 3?

8 A Yes.

9 Q Would you read that to yourself, and is that an accurate  
10 statement?

11 {The witness reading silently.}

12 A Yes.

13 Q Would you read No. 5 and tell me whether that's an  
14 accurate statement?

15 {The witness reading silently.}

16 A Yes; they all were conditioned upon receipt of an  
17 acceptable letter.

18 Q Would you tell me whether No. 6 is accurate?

19 {The witness reading silently.}

20 A That is -- I said "No," last time, "The City will not  
21 agree to disconnect any service points until the City  
22 can carry its own load."

23 That is accurate.

24 Q All right.

25 A But we did not have agreement on the form that the

Loshing - cross

City would disconnect.

Q But, at least, the way it is stated, it is accurate?

A Right.

Q That's all I'm interested in.

What about No. 7, is that an accurate statement?

{The witness reading silently.}

A Again, that is the legal side Mr. Howley and Mr.

Hauser were doing all of the work with.

Q You do not recall whether Paragraph 7 is accurate or not?

A No.

Let me point out one thing at that meeting.

I was there --

Q Excuse me, there's no question in front of you.

THE COURT:

Mr. Norris, --

MR. NORRIS:

May I approach the

bench, your Honor?

THE COURT:

No.

A My purpose in being at that meeting --

MR. NORRIS:

I object, your Honor.

THE COURT:

Overruled.

Go ahead.

A My purpose in being at that meeting was to watch that Mr. Howley did not --

1 Loshing - cross

2 THE COURT: Well, --

3 A -- give away the store.

4 THE COURT: -- that's not

5 responsive.

6 Go ahead.

7 MR. NORRIS: May I approach the

8 bench?

9 THE COURT: Yes.

10 - - - - -

11 {The following proceedings were had at the

12 bench:}

13 MR. NORRIS: I'm going to end my

14 cross, reserving my right to press the Court for

15 the purpose of recalling the witness as we've

16 discussed this morning.

17 THE COURT: All right.

18 {End of bench conference.}

19 - - - - -

20 THE COURT: Ladies and gentlemen

21 of the jury --

22 MR. NORRIS: No further questions.

23 THE COURT: -- Mr. Norris has

24 concluded this examination.

25 "So in light of the approaching noon hour,

1 perhaps this is an opportune time for us to  
2 recess for lunch.

3 Please keep in mind the admonition of the  
4 Court.

5 I am reminded that I'm acting as Paymaster  
6 again this week.

7 Would you kindly deliver the checks to  
8 Mr. Malacky so that he can distribute them?

9 {Law Clerk Schmitz complies.}

10 THE COURT: You are free to go  
11 to lunch.

12 We'll see you at 1:30.

13 {Luncheon recess taken.}

14

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1 FRIDAY, AUGUST 7, 1981; 1:45 O'CLOCK P.M.

2  
3 {After in-camera discussions in chambers  
4 between the Court and attorneys for the  
5 plaintiff, the attorneys for the defendant were  
6 invited into chambers and the following  
7 proceedings ensued:}

8 THE COURT: Now, Mr. Lansdale,  
9 here is the situation.

10 In an effort to eliminate the necessity of  
11 going into these areas that I have discussed  
12 this morning, there are some related exhibits  
13 that were admitted during the last trial that  
14 bear upon this same period that perhaps  
15 establish a continuity in the testimony that  
16 presently exists.

17 Rather than going through the trouble of  
18 putting on witnesses just for the purposes of  
19 identifying these exhibits, because you know  
20 what happens, you put on a witness to identify  
21 an exhibit, and the next thing you know both  
22 sides are off on a tangent; so I have suggested  
23 to Mr. Norris, if this is possible, and maybe  
24 Mr. Murphy and Ms. Coleman, maybe the two of  
25 you ought to get together over the weekend and

1 review those exhibits, and see if you can agree  
2 upon permitting the exhibits to go in without the  
3 necessity of bringing people in to do it.

4 MR. LANSDALE: I feel reasonably  
5 sure that we can do that.

6 MR. MURPHY: We did that the last  
7 time with any number of them.

8 THE COURT: And if you could do  
9 that, we have one area -- well, I am sure I can  
10 speak generally, really, we have one area that  
11 we haven't gone into, and that is the  
12 "pre," and I would permit it in under any  
13 circumstances, and that is the replacement  
14 program, but the others are all foreclosed.

15 MR. LANSDALE: Yes. You didn't  
16 mention that in your list.

17 THE COURT: I am not going to  
18 suggest anything to anybody.

19 MR. LANSDALE: What I am saying,  
20 that was not included in your list of foreclosed  
21 items.

22 THE COURT: I have difficulty  
23 considering one thing at a time, and all I did  
24 was go over the record, and go over my notes to  
25 see what testimony has been in, and where there is

1 this volume of corroborating testimony, and that is  
2 all I was concerned with.

3 And last night one of the last things I said  
4 was that the Court would favorably consider  
5 permitting the testimony as to those areas  
6 pre-damage period where there has been no testimony  
7 developed that reflects upon intent.

8 MR. LANSDALE: That is right. All I  
9 was pointing out was that the Displacement Program  
10 was not one of them.

11 THE COURT: Okay. Let's go.

12 {The Court and respective counsel entered  
13 the courtroom and the following proceedings were  
14 had out of the hearing and presence of the jury.}

15 THE COURT: Please be seated.

16 MR. NORRIS: Your Honor, we have  
17 agreed that I should be permitted to make a  
18 correction on the testimony that both Mr.  
19 Loshing and I were incorrect on.

20 The "3087" should have been the denominator  
21 instead of the numerator, and in order to --

22 THE COURT: I think we ought to  
23 do that, because I am sure the jury --

24 MR. NORRIS: Well, apparently some  
25 of the jurors were looking at that, and if that's

1 all right with the Court, I would like to do that  
2 as soon as they come in.

3 THE COURT: All right.

4 - - - - -

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

8 THE COURT: Please be seated,  
9 ladies and gentlemen.

10 We have resolved some legal problems, and we  
11 are ready to go through the afternoon.

12 Mr. Norris?

13 MR. NORRIS: By agreement, I'm  
14 authorized to state for Mr. Loshing and for me  
15 that we both made a mistake this morning.

16 The numerator should have been the  
17 denominator, so it should be like that {Mr. Norris  
18 writing on the pad on the easel}.

19 11 million 666 on top, and the 3 million 087  
20 on the bottom, and then that comes out to be the  
21 right division to 3.78.

22 Thank you.

23 THE COURT: Very good.

24 Now, I believe -- where is Mr. Loshing?

25 MR. LANSDALE: I have no questions.

1 THE COURT:

Oh, no questions.

2 You are free to proceed, Mr. Hjelmfelt.

3 MR. HJELMFELT:

Call Mr. Salko.

4 - - - - -

5  
6  
7 J E R O M E S A L K O,

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

11  
12 DIRECT EXAMINATION OF JEROME SALKO

13  
14 BY MR. HJELMFELT:

15 Q Please state your name and address.

16 A Jerome Salko, 1625 Tollis Parkway in Broadview Heights.

17 Q Where are you employed?

18 A City of Cleveland, Division of Light and Power.

19 Q And that is the same as Muny Light?

20 A Yes, it is.

21 Q And what is your education?

22 A I attended Ohio University for two and a half years,  
23 and in 1968 I went to work for the City and continued  
24 my education at Cleveland State and Cuyahoga Community  
25 College.

1 Salko - direct

2 Q And in what capacity are you employed?

3 A Presently I am the Manager of Production Power  
4 Generation, from February, 1978 to January 1st of '81.

5 Q And what were your other positions with Muny Light?

6 A From 1972 till 1978, I was a Senior Assistant  
7 Electrical Engineer in the Transmission and  
8 Distribution Section.

9 Q And what were your responsibilities as a Senior  
10 Electrical Engineer?

11 A As a Senior Assistant Electrical Engineer, I studied  
12 under Sesler Titus and Phil Matthews during 1972  
13 learning the operation of the Transmission and  
14 Distribution System as far as locating trouble,  
15 doing load forecasting, restoration of service to  
16 customers, and at the end of 1982 I took charge of  
17 the Transmission and Distribution Section.

18 Q What sorts of responsibilities did you have when you  
19 took charge of Transmission and Distribution?

20 A I continued doing load forecasting, restoration of  
21 service, locating trouble on the system cables, doing  
22 load transfers with CEI.

23 Q What was the load forecasting that you did?

24 A I would prepare a daily forecast as to what our system  
25 power requirements were, and determine from that

1 Salko - direct

2 whethen we had enough generation available or whether  
3 gas turbines had to be run, or whether we would have  
4 to make load transfers with CEI.

5 Q How did you go about making this load forecasting?

6 A Basically by past history as to what our previous  
7 system loads were, what the loads were from the  
8 previous day, what the different weather conditions  
9 were, have a general feeling of what the load would  
10 be that day and that night.

11 Q How did you determine what generating resources were  
12 available?

13 A By talking with our control room operators.

14 Q What did you do if there was not sufficient generating  
15 capacity available to meet your forecast requirements?

16 A When I determined how much additional capacity would  
17 be needed, I would request to make load transfers  
18 from CEI.

19 Q Would you refer to that exhibit that's up there,  
20 Exhibit 2078, and identify that, please?

21 A This is a model of a load transfer and also a  
22 synchronous interconnection between Muny Light and  
23 CEI.

24 Q How was that prepared?

25 A It was under my direction.

Salko - direct

Q And would you please explain the markings on that exhibit?

A The circles are used to represent the CEI generation and Muny generation.

The squares, rectangles represent substations of CEI and Muny Light.

The switches with the letter designations are switches on the CEI system, and they represent circuit breakers.

The number designated switches are circuit breakers on the Muny Light system.

Q And referring to that exhibit, would you please demonstrate the operation of load transfer?

{The witness steps to the easel.}

A The --

THE REPORTER: Could you speak louder, please?

MR. NORRIS: Pull the mike up a little bit, slide it up.

{The witness complies.}

A The yellow wiring represents an 11,000-volt line.

The white represents the 138 for the interconnection.

The Double M symbols are for transformers that



1 Salko - direct

2 step down the voltage.

3 The diagram is set up right now where Muny  
4 generation at the Muny substation, a circuit  
5 breaker into it, supplying power to Muny's customers.

6 In order to make a load transfer to CEI, we first  
7 have to make our contact with CEI's load dispatcher  
8 and notify them that we're ready to make a transfer.

9 We would then drop a load of our customers by  
10 opening the circuit breaker in the substation and  
11 have a man at the location open the circuit breaker  
12 to shut off the power to the customers.

13 Then we would back-feed to CEI substation,  
14 where they would get an indication that the line is  
15 energized to them and that the line is working, at  
16 the time we drop the main feed coming into the  
17 station which would remove this back-feed.

18 They would then close up their circuit breaker  
19 at their station energizing the load back to us; and  
20 once we would get the okay from them, we would then  
21 restore the service to our customers.

22 Q Okay.

23 Would you turn off the light there?

24 {The witness complies.}

25 "MR. HJELMFELT: I would ask that

Salko - direct

the witness be given Exhibits 2551 and 2552,  
please.

{Exhibits handed to the witness by Mrs.  
Richards.}

BY MR. HJELMFELT:

Q Please identify Exhibit 2551.

A 2551 is a pole located outside of Muny Light's East  
53rd Street substation.

Q What equipment is on that pole?

A It is a CEI 11 KV 11,000-volt circuit with load  
break disconnects on it.

Q And what does PTX-2552 -- what is that?

A It is a close-up of the disconnects on the same pole.

Q Now, how would those disconnects be operated?

A These particular ones, a man would either have to climb  
the pole and open and close them, or use some type of  
lift truck to get up to them.

Q Do the disconnects shown show up on the exhibit?

A Switch D was used to represent disconnects out on the  
pole.

Q How long did the outage caused by the load-transfer  
process last?

A It varied anywhere from less than a minute to  
15-20 minutes, depending on the type of switching.

1 Salko - direct

2 operations.

3 Q And how much power was available to Muny Light over  
4 the load transfers?

5 A Over all five transfer points, a total of 18 to 23  
6 megawatts.

7 Q And how much power was had at that individual load  
8 transfer point?

9 A Each station was bout 4, maybe 5 megawatts.

10 Q How many customers would be affected by the outage on  
11 the load transfer?

12 A Probably, depending on which station, maybe 500 or 800  
13 customers.

14 Q How much power was available over the 69 KV tie?

15 A Available -- it was rated for 40 megawatts.

16 Q And how much power was Muny Light able to take over it?

17 A 16 to 20, a little more than 20.

18 Q And why was Muny Light only able to take 16 to 20?

19 A Due to the switching limitations, the way the tie was  
20 set up, and the way it came into our system.

21 We had to split up our 69,000-volt system in order  
22 to put load onto the tie, since it wasn't operated in a  
23 synchronous mode, and it was used as a dead-load  
24 transfer, so we put a block of our Collinwood load  
25 onto it.

1 Salko - direct

2 Q Does that mean it was operated similarly to these  
3 other load transfer points that you described?

4 A Basically the same way.

5 Q You indicated that there was a variance of how many  
6 megawatts could be taken over it, 16 to 20.

7 Why would that vary?

8 A It varied at the time of day and the time of year.

9 In the summer the load was a lot greater than in  
10 the winter and the fall time.

11 Q How did you determine which load transfer points to  
12 operate?

13 A Depending on what the load forecast said my  
14 requirements were.

15 If I only needed 3 or 4 megawatts, I would pick  
16 one load transfer point, and usually the one that  
17 didn't have the outage the previous day.

18 Q Did the City eventually obtain a synchronous  
19 interconnection?

20 A Yes, it did.

21 Q Referring to Exhibit 2078, could you demonstrate the  
22 effect of a synchronous interconnection on Muny Light's  
23 customers if Muny lost generation?

24 A I will set the display up to show the two systems  
25 running synchronized together, and tied in on the 138

1 Salko - direct

2 KV.

3 Well, as Muny --

4 MR. LANSDALE: I'm sorry. I can't  
5 hear the witness.

6 THE COURT: Yes. Please speak up.  
7 Keep your voice up so that everyone can hear you.

8 A The board is set up with Muny Light's generation  
9 feeding Muny customers, and the two systems tied  
10 together at the 138 KV level.

11 If Muny would lose its generation and this  
12 circuit breaker opened, cutting off Muny's generation,  
13 the customers would never see it -- maybe just a  
14 flicker -- but the power would then flow over to the  
15 138, over the 138 interconnection, and keep the lights  
16 on for the customers.

17 Q How would that differ from the situation if there were  
18 no synchronous interconnection?

19 A Well, as soon as -- we would lose generation totally,  
20 and if you lose total generation, you have a system  
21 shutdown, and the customers would be off, and you  
22 would probably drag all your generators to a halt.

23 Q What effect did the load transfer outages have on  
24 Muny Light's customers?

25 A They were unhappy about it. Most of the customers

1 Salko - direct

2 wanted to know the reasons of what caused the outages  
3 and how long they would be out; and because of the  
4 frequency of the outages at certain substations, a lot  
5 of the customers switched to CEI.

6 Q Getting back to your responsibility for making the daily  
7 load forecast, what time of the day would you make the  
8 load forecast?

9 A The first thing in the morning. I started at 8:00  
10 o'clock, and usually by 9:00 o'clock, I would have all  
11 of the information together.

12 Q And on those days that you determined that the  
13 generation available wasn't sufficient to match the  
14 load, what did you do?

15 A I would determine how much additional load I would  
16 need and what transfer points, and then I would call  
17 CEI.

18 I usually talked to Mike Titas, who was their  
19 Supervisor of Systems Operations and Tests.

20 Q Now, earlier you mentioned that you worked for a Mr.  
21 Titus at the City. Are these two different people?

22 A Correct; there is no relationship.

23 Q What time of day would you contact Mike Titas at CEI?

24 A As soon as I knew the load requirements, usually at  
25 9:00 o'clock.

1 Salko - direct

2 Q What information would you give him?

3 A He would request to know what our load requirements  
4 are or what type of generation we had available, and  
5 if we had generation down, why it was down, and the  
6 expected availability time of the generation, and  
7 how much load I needed, and what stations I wanted  
8 to transfer.

9 Q And what response would you get?

10 A Normally he would take the information and say that he  
11 would get back to me.

12 Q And do you know why he would have to get back to you?

13 MR. LANSDALE: I object.

14 THE COURT: Approach the bench.

15  
16 {The following proceedings were had at the  
17 bench:}

18 MR. LANSDALE: He is asking for  
19 something that is not from Mike Titas. And if  
20 it is important, if it is important what Mike  
21 Titas says, then obviously that is permissible,  
22 but to ask what was affecting Mike Titas is  
23 objectionable.

24 MR. HJELMFELT: I can go through the  
25 steps of what did he tell you and why did he call

Salko - direct

back.

THE COURT:

All right.

{End of bench conference.}

BY MR. HJELMFELT:

Q Did Mike Titas tell you he would have to call you back?

A Yes.

Q What did he tell you?

A He stated he had to get authority from somebody higher in the organization.

Q And how long would it be before Mike Titas called you back?

A It varied. Sometimes he would call me back in an hour and let me know whether we would have the transfer points, and other times I could wait all day until 5:00 o'clock or 7:00 o'clock at night.

Please keep your voice up a bit.

Now, on the occasions when he didn't call back until 7:00 o'clock at night, how did that affect your operations at Muny Light?

Well, I didn't know if he was going to be able to make the load transfers or not, and depending on what type of situation that we were in -- usually we



1 Salko - direct

2 had some type of emergency, and we could be losing  
3 generation, and maybe we had a bad fan on a boiler,  
4 or something like that, and I couldn't plan taking  
5 the equipment off for maintenance and make the load  
6 transfer, and I had to keep crews on standby in order  
7 to go out in the field and do the actual switching  
8 procedure.

9 Q Did the delay in getting a response have any effect  
10 on your relations with your customers?

11 A If I knew when I was going to make the load  
12 transfer, I would try to notify our commercial  
13 customers like plating companies, where an outage  
14 there would affect them. They might have something  
15 in the process of being plated, and if you stop it,  
16 then they would lose that material; so we had a list  
17 of customers that we would notify at a certain time  
18 that a particular station would be down for a period  
19 of time, and then they could schedule their shifts  
20 or schedule their operations.

21 Q Were there occasions on which the load transfer was  
22 approved but there was a delay in making the actual  
23 transfer?

24 A Yes.

25 Q Could you describe such a situation?

1 Salko - direct

2 A It occurred a few times. I think it occurred in 1973  
3 with our, I believe it was the Clinton, Western  
4 and Denison substation, where there was about a 27-minute  
5 delay before our customers were put back on, and again  
6 in July of that year, there was about a two-hour delay  
7 before we could make the transfers of East 53rd and  
8 East 79th Street and Windsor substation.

9 Q Were there any problems with the load transfers aside  
10 from the delays?

11 A There were operating problems with them as far as when  
12 one station was on C&I. I couldn't use that station  
13 as a standby or tie to other feeders or other customers  
14 because we couldn't tie the two cables together out in  
15 the field, and therefore I lost the standby for those  
16 stations, and also the operating flexibility.

17 Q Did the operation of the load transfer have any effect  
18 on your ability to maintain the generating units?

19 A If we knew exactly when we were going to get the load  
20 transfer, then I could schedule as to when to take it  
21 down.

22 If we had minor maintenance, and it would take  
23 only a couple hours work, and then I would keep a crew  
24 on standby to take down the unit and do the maintenance  
25 work on it.

1 Salko - direct

2 Otherwise, if I didn't know I was going to get the  
3 transfer, I would have to keep the unit running, because  
4 there was no power from anywhere else.

5 Q Were there any occasions in which CEI denied requests  
6 for load transfer?

7 A Yes.

8 Q Can you give me an example of such an occasion?

9 A During June of 1973 -- I am not sure of the month --  
10 it was our Arctic substation, and we had an outage in  
11 the preferred cable to the Arctic substation, and CEI  
12 was the standby cable, and they refused to allow us to  
13 use that as a load transfer to restore service, and  
14 therefore we had to make 14 field ties in order to put  
15 those people back on and restore service to our  
16 customers.

17 Q And utilizing the 11 KV transfer points and the 69 KV  
18 transfer points, were you able to limit the amount  
19 of power that you were purchasing from CEI?

20 A No, not always.

21 Q Why not?

22 A If I needed, say, for example, that I needed 25  
23 megawatts of load, and the 11 KV tie points were  
24 good for 18, then only other tie point that I had was  
25 the 69, which was a block of 20 megawatts, and by

Salko - direct

implementing that, that gave me 38 megawatts, and therefore I was buying 13 more than I actually needed, and there was no way of varying the amount that was taken over the 69.

Q Why didn't you simply purchase the first block over the 69?

A It couldn't be operated that way.

We had to first implement all the 11 KV tie points first.

Q Were there technical reasons for that?

A No.

Q What was the reason?

A I guess it was a political reason. They wouldn't allow it.

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

THE COURT: Yes.

{The following proceedings were had at the bench:}

MR. LANSDALE: The question of operating the CEI KV synchronously was litigated before the Federal Power Commission, and it was decided, and it is contained in an order of the

1 Salko - direct

2 Federal Power Commission, that it was to be  
3 operated non-synchronously for operating reasons,  
4 and we have a stipulation, 268, and I object to  
5 this witness testifying about the ability to  
6 operate a 69 KV, and I request the stipulation be  
7 read.

8 MR. HJELMFELT: I didn't ask anything  
9 about the synchronous interconnection. I asked him  
10 why couldn't it be operated with the 11 KV.

1 MR. LANSDALE: I believe that I  
2 would have to read the stipulation, but it is my  
3 belief that the order dealt with the question of  
4 weakness of our supply for that 69 KV line, and  
5 that the FPC decision recognized the operating  
6 reasons why we could not, why it was wise from  
7 CEI's operating standpoint to not preempt our  
8 customers in order to do the 69 KV in preference  
9 to the 11 KV.

10 I stand by my objection as to the witness  
11 testifying about the political reasons and  
12 other reasons.

13 It is perfectly plain that it was the result  
14 of the litigation, and I think that these were  
15 operating reasons.

1 Salko - direct

2 MR. HJELMFELT: We ought to look at  
3 the stipulation.

4 {After an interval.}

5 THE COURT: Well, I will sustain  
6 the objection to "I guess that it was a political  
7 reason," so that may go out.

8 What is the stipulation?

9 MR. LANSDALE: 268.

10 THE COURT: 268. I don't have  
11 268.

12 MR. LANSDALE: The second sentence is  
13 stricken out.

14 THE COURT: How come I don't have  
15 it?

16 MR. HJELMFELT: I think this was  
17 dealing with whether it should be operated  
18 continuously and synchronously rather than 11 KV  
19 first.

20 MR. LANSDALE: It deals with the  
21 facts that the Commission found that the  
22 interconnection was operated in accordance with  
23 the Commission's orders; and further, if one were  
24 to assume that the Commission did not prescribe a  
25 method of operating synchronously, synchronously

1 Salko - direct

2 operating the interconnection in a prudent manner  
3 to preserve the integrity of the system and  
4 minimize the possibility of service interruption  
5 to a much larger number of customers, including  
6 the residents of Cleveland, and we have got an  
7 express holding that we operated this in a  
8 prudent manner to serve the integrity of our  
9 system.

10 Now, for you to have this guy suggest -- I  
11 don't think it is admissible, and I am sure he  
12 believes it to be that we operated it in some  
13 devious manner, and I am sure he believes it to  
14 be the truth, don't misunderstand me.

15 MR. HJELMFELT: The issue in that  
16 litigation was not whether you operated the  
17 11's first and then the 69 KV's. It was dealing  
18 with whether you should operate the 69's as a  
19 load transfer or synchronously, and which rate  
20 should be billed, and the question I think that  
21 the City was raising was that since it was  
22 operated as a load transfer, we should only be  
23 paying the load transfer rate, and we lost that.

24 MR. LANSDALE: I was not a participant  
25 in the hearing.

1 Salko - direct

2 MR. HJELMFELT: I wasn't, either.

3 MR. LANSDALE: I read the opinion.

4 All I can do is read this thing, and it says  
5 that we operate in a prudent manner to preserve  
6 the integrity of our system.

7 THE COURT: What are we going to  
8 do, fellows?

9 MR. LANSDALE: I object to  
10 interrogating this witness.

11 THE COURT: Can we read the  
12 stipulation?

13 MR. HJELMFELT: I don't think it goes  
14 to this question.

15 THE COURT: What is before me,  
16 gentlemen?

17 MR. LANSDALE: It is an objection to  
18 the question and the answer that came out that it  
19 was operating in the manner it was for some  
20 reason other than the operating reasons, and he  
21 said, "Political reasons."

22 THE COURT: Well, the answer  
23 should be stricken.

24 MR. LANSDALE: That is all that is  
25 before you.



1 Salko - direct

2 THE COURT: I ruled on that  
3 five minutes ago.

4 MR. LANSDALE: I will make a timely  
5 objection.

6  
7  
8 THE COURT: Now, read the record  
9 where I have indicated.

10 {The record was read by the reporter.}

11 THE COURT: The question and answer  
12 should go out.

13 If you want to rephrase your question, you  
14 are free to do so.

15 MR. HJELMFELT: Well, I can ask for  
16 technical reasons.

17 THE COURT: All right, and he is  
18 going to answer the same thing.

19 MR. HJELMFELT: But we could cut that  
20 part of the answer, just strike the last part of  
21 the answer where he says, "I guess it is political."

22 {End of bench conference.}

23  
24 THE COURT: Now, read the record  
25 where I have indicated.

1 Salko - direct

2 {The record was read by the reporter as  
3 follows:

4 "Q Why didn't you simply purchase the  
5 first block over the 69?

6 "A It couldn't be operated that way.

7 "We had to first implement all the 11 KV  
8 tie points first.

9 "Q Were there technical reasons for  
10 that?

11 "A No.

12 "Q What was the reason?

13 "A I guess it was a political reason.  
14 They wouldn't allow it."}

15 THE COURT: Now, the last question  
16 and answer, what were the reasons for it, and it  
17 was a political reason, is not material, and that  
18 may go out.

19 Please don't guess. Only testify to your  
20 personal knowledge.

21 You may proceed.

22 BY MR. HJELMFELT:

23 Q Would it have made any difference to the City's  
24 operation if it had had a synchronous interconnection  
25 instead of the load transfer after January 1st, 1973?

1                               Salko - direct

2       A     Yes, it would.

3       Q     What difference would it have made?

4       A     Well, we wouldn't have the outages associated with the  
5     load transfer.

6       Q     Would it have made any other differences?

7       A     We would be able to do, to schedule maintenance and  
8     take the units off when necessary.

9                       MR. LANSDALE:                       I couldn't hear that.

10                      THE COURT:                       Please keep your voice  
11     up. Perhaps if you would lower that microphone  
12     and hold it in your hand and then talk into it --  
13     now try it again.

14                      MR. HJELMFELT:                      May we approach the  
15     bench?

16                      THE COURT:                       Certainly.

17                               - - - - -  
18                      {The following proceedings were had at the  
19     bench:}

20                      MR. HJELMFELT:                      Your Honor, the  
21     next thing I would be asking is, could the 69 KV  
22     have been operated synchronously, and that is what  
23     Mr. Lansdale objected to the other time, was that  
24     line of questioning.

25                      THE COURT:                       "Could the 69 KV

1 Salko - direct

2 interconnection be operated synchronously," and he  
3 answered that before he said no that it could be  
4 operated that way.

5 MR. HJELMFELT: I was going to ask  
6 him from a technical standpoint and technical  
7 reasons, is there a technical reason why it  
8 couldn't be operated, and that brings us back to  
9 Mr. Lansdale's objection.

10 THE COURT: Then we are  
11 confronted -- I mean, obviously, from the way he  
12 started to answer, and I don't know -- he didn't  
13 really know. Is this what the ruling is?

14 MR. LANSDALE: Yes. The Federal  
15 Power Commission ordered that it be operated in a  
16 non-synchronous manner, and I don't know why he  
17 feels that the City doesn't have to pay any  
18 attention to them.

19 THE COURT: Let's just read the  
20 stipulation.

21 MR. HJELMFELT: Well then, I ought to  
22 be allowed to put in the evidence.

23 THE COURT: What specifically are  
24 you going to ask?

25 MR. HJELMFELT: I would ask him,

1 Salko - direct

2 does he know whether the 69 KV interconnection  
3 could have been operated synchronously after  
4 July of 1974, and his testimony would be that it  
5 could, and the reason that he knows that is that  
6 he attended a meeting with CEI people, at which  
7 Jim Guy was head of operations and told him that  
8 there were no technical reasons why it couldn't  
9 be operated synchronously.

10 THE COURT: Well --

11 MR. HJELMFELT: Which the commission  
12 ruled that it was operated in a prudent manner.

13 MR. LANSDALE: The Commission did  
14 more than that. There was a specific order that  
15 it shall be operated non-synchronously.

16 THE COURT: And obviously that is  
17 something that he overheard during the course of  
18 a conversation of which ultimately ended up as  
19 not a fact.

20 MR. HJELMFELT: It is not how it was  
21 operated. I think that is an admission by Jim  
22 Guy.

23 THE COURT: I am going to sustain  
24 the objection. If you want me to read the  
25 stipulation which appears to cover it, I will do

1 Salko - direct

2 that, and you can probably edit it to take out  
3 those portions that deal with the proper billing  
4 for the 69 KV.

5 The administrative law judge found that  
6 "The 69 KV interconnection was operated in  
7 accordance with the Commission's orders, and  
8 that CEI therefore properly billed the City at  
9 the 69 KV rate prescribed in FPX Order 644.

10 "Further, if you were to assume arguendo  
11 that the Commission did not prescribe the method  
12 of operation for the 69 KV interconnection when  
13 the switch was closed, CEI nevertheless operated  
14 the interconnection in a prudent manner to  
15 preserve the integrity of its system and to  
16 minimize the possibility of service interruption  
17 to a much larger number of customers, including  
18 the residents of the City of Cleveland."

19 So that is the fact.

20 You can handle it one of two ways. I suppose  
21 technically speaking, and engineeringwise, this  
22 could have been operated in a manner in which  
23 this gentleman will testify that it could have  
24 been operated, synchronously, but the fact of the  
25 matter is that even though it could have been,

1 Salko - direct

2 the Commission ordered that it not be, and you  
3 can bring that out in cross-examination.

4 MR. LANSDALE: Moreover, it is a  
5 question of prudence. I do intend to bring it out.

6 THE COURT: You can have him  
7 answer the question, and then on cross-examination  
8 you can ask him to read the stipulation, and I  
9 will read it.

10 MR. LANSDALE: It seems to me it is  
11 objectionable for this witness to question about  
12 conditions on the CEI's system.

13 THE COURT: Well, if he knows.  
14 Overruled. I will overrule it at this time.  
15 You may ask the question.

16 MR. LANSDALE: Can we agree that the  
17 second sentence of that stipulation about appeal  
18 to the Commission is erroneous and shouldn't be  
19 in there?

20 THE COURT: Yes. That is the  
21 one that we struck out before. There is no appeal  
22 pending.

23 {End of bench conference.}

24  
25 THE COURT: You may ask the..

1 Salko - direct

2 question within those parameters.

3 BY MR. HJELMFELT:

4 Q Do you know whether the 69 KV intertie could have been  
5 operated synchronously after July of 1974?

6 A Yes, it could have.

7 Q And how do you know that?

8 A I witnessed a test of it being operated synchronously,  
9 and also a meeting I attended, Jim Guy of CEI stated  
10 that there is no technical reason that it could not  
11 be operated synchronously.

12 Q And what was Jim Guy's position with CEI?

13 A "Manager of System Operation and Testing."

14 MR. HJELMFELT: I have no further  
15 questions.

16 - - - - -  
17  
18 CROSS-EXAMINATION OF JEROME SALKO

19  
20 BY MR. LANSDALE:

21 Q MR. LANSDALE: I ask that your  
22 Honor read Stipulation 268.

23 THE COURT: Stipulation 268,  
24 ladies and gentlemen of the jury, reads as  
25 follows:



1 Salko - cross

2 "On September 16, 1980, an Administrative  
3 Law Judge of the Federal Energy Regulatory  
4 Commission issued his initial decision concerning  
5 the proper billing for 69 KV service after an  
6 evidentiary hearing had been held before him at  
7 which employees of both the City and CEI testified.  
8 The Administrative Law Judge found that the 69 KV  
9 interconnection was operated in accordance with  
10 Commission orders and that CEI, therefore,  
11 properly billed the City the 69 KV rate  
12 prescribed in FPC Opinion No. 644. Further, if  
13 one were to assume, arguendo, that the Commission  
14 did not prescribe the method of operation for the  
15 69 KV interconnection when the switch was closed,  
16 CEI nonetheless operated this interconnection in a  
17 prudent manner to preserve the integrity of its  
18 system and to minimize the possibility of service  
19 interruptions to a much larger number of customers  
20 including residents of Cleveland. It is further  
21 found that CEI billed the City for such service  
22 at rates which are just and reasonable."

23 BY MR. LANSDALE:

24 Q Were you acquainted with the orders of the Federal  
25 Power Commission which governed the relationship

1 Salko - cross

2 between the City of Cleveland and the CEI with reference  
3 to the operation of the load transfer points including  
4 the 69 KV one in 1973?

5 A With some of them, yes.

6 Q You are aware, are you not, that the order was to --  
7 for CEI to supply energy to Muny Light on a when, as  
8 and if available basis, do you not?

9 A Correct.

10 Q Do you agree that so far as CEI is concerned, it's  
11 first obligation was to its own customers rather than  
12 to Muny Light?

13 A Yes.

14 Q And you -- do you have any feeling that CEI should not  
15 respond to Muny Light's needs with that exactly in  
16 mind?

17 A We were about the same as an interruptible customer of  
18 CEI.

19 Q Well, my question is, do you disagree with the fact --  
20 with the idea that the operators of the CEI system  
21 should have their own customers and their own service,  
22 give that first priority over Muny Light, you don't  
23 have any doubt about that, do you?

24 A Yes, I do.

25 Q You do have a doubt as to whether or not they should do

Salko - cross

that?

A Sure.

Their customers, they have customers like Republic Steel which are interruptibles. I don't think the City of Cleveland residents should be classified as an interruptible customer.

Q And it is your view that CEI should interrupt some of its own customers in preference to -- in order to supply Muny Light's needs?

A Their interruptible customers.

Q All right. If they are interruptible; if they are interruptible.

Now, Mr. Salko, I want to ask you another question.

Is it your view that CEI had this obligation to provide the service at Muny's demand irrespective of whether they would pay for it or not?

A Irrespective of whether they would pay for it or not?

Q Yes, right.

A No; they should pay for it.

Q They should pay for it?

A Yes.

Q And is it -- is it your view that -- withdraw that.

I gather that you were from time to time  
indignant at what you regarded as the slowness with

Salko - cross

which CEI responded to your requests for energy, am I correct in that impression?

A Yes.

Q It's your view that CEI -- I want to ask you this question then, in view of that, as to whether you feel that they should have been more alert and more rapid in responding to your demands whether or not they were paid?

A That had nothing to do with the operation of the load transfers whether they were paid or not.

MR. LANSDALE: I'm sorry. May I have that answer read, your Honor?

THE COURT: Yes.

Read the answer back.

{The last answer was read by the reporter.}

BY MR. LANSDALE:

Q And were you aware of the fact that during the entire year of 1953 Munny Light made only two payments on its bill for energy?

{After an interval.}

Q Are you aware of that?

A No, I'm not.

Q Would that fact affect your view of the intransigence that you view of CEI responding to your request for

1 Salko - cross

2 service?

3 A No.

4 Q Would not.

5 Mr. Salko, if I understood your testimony  
6 correctly, you were in this position involving --  
7 either in charge of it or assisting in it -- in 1972,  
8 '73 and '74, is that correct?

9 A Correct.

10 Q Now, have I -- are all of the -- are all or most of  
11 the episodes that you related to us of difficulty in  
12 securing service from CEI in the year 1973?

13 A Some in '73, some in '74, as I recall.

14 Q You had no problems in '72?

15 A The only thing I recall in '72 was late '71-early '72,  
16 the use of the 69 KV tie.

17 Q In 1972 --

18 MR. LANSDALE: I wonder if, Jim --  
19 do you think you could put '72 up on that easel?

20 THE COURT: Are we through with  
21 that, Mr. Weiner (referring to the exhibit on the  
22 easel)?

23 MR. WEINER: Yes.

24 THE WITNESS: You better unplug it.

25 MR. WEINER: That's a good idea;

Salko - cross

you know me.

{Laughter.}

THE COURT:

Bring it over here.

Mr. Weiner, bring it out of the way.

MR. LANSDALE:

I'm going to want

'73 also.

THE COURT:

What numbers are

those, 3031 and --

MR. LANSDALE:

'72 is 2823; '73

is 2824, and '74 is 2825.

{Plaintiff's Exhibit 2823 was placed on the easel by Mr. Murphy.}

BY MR. LANSDALE:

Q Mr. Salko, you have seen these exhibits before.

I'm directing your attention to -- quickly to 2823, which is the one on the top.

Do you see that?

A Yes.

Q Are you familiar with these? Have you seen them before?

A Yes, I have.

Q And looking at the brown line at the bottom, which we have been advised represents the operation of the load transfer points, I see that the Clinton transfer point appears to have been on during the entire year 1972

Salko - cross

without interruption; is that -- am I reading it correctly?

A It appears that way.

Q So there would be no interruption arising out of that one, would there?

A I started doing the load transfers in December of this year.

Q I beg your pardon?

A In December of '72 is when I took over the Transmission and Distribution Section.

Q Well, Mr. Salko, didn't you testify that you assisted Sesler Titus prior to then in 1972 in learning this?

A I was in training for that, right.

Q And part of this training consisted in assisting Mr. Titus in handling the very things that you became in charge of in late '72, didn't you?

A Right.

I did a lot of the switching, but I didn't keep all the records during that time.

Q Well, I won't -- I won't press you about the details of this; but looking at that exhibit, Mr. Salko, won't you agree that all of the load transfer points were in use for almost all the year?

I notice that one of them -- that is the second

Salko - cross

one -- was out in the middle of March to towards the end of September; the one on the bottom was out for -- from the first of January to the second week in February; and there were several days when one of them -- one of the other ones was out in September.

But other than that, doesn't the exhibit show that they were on almost continuously for the year 1972?

A Pretty much so.

Q Pretty much so?

A Uh-huh.

Q And in 19 -- you don't have 1974 on it, do you?

MR. LANSDALE: Stick '74 on there.

{Mr. Murphy places the 1974 exhibit on the easel.}

BY MR. LANSDALE:

Q In 1974, which is Exhibit 2825, it didn't look quite as continuous as 1972, but this is the year you were responsible for these items, is it not?

A Correct.

Q And do we not find there that all of the load transfer points were on almost the entire year, except the second one down from the top -- which I can't read on the picture I have -- which was out for nearly three



1 Salko - cross

2 months. Other than that, except a brief period, the  
3 rest of them were on the entire year, weren't they?

4 A Right.

5 So were the gas turbines, too.

6 Q I beg your pardon?

7 A I said, so were the gas turbines.

8 Q What's that got to do with it?

9 A Well, if we didn't need the transfer points, we might  
10 have them on on the gas turbines.

11 Q Weren't they on most of the year?

12 A The load transfer points?

13 Q The load transfer points.

14 A Yes, they were.

15 Q And come back again with the gas turbines.

16 Tell me what that has to do with the fact that  
17 they were on -- that the load transfer points were  
18 on most of the year.

19 You lost me.

20 A Well, we had Boiler No. 6 and 11 down for most of the  
21 year, --

22 Q Yes, you sure did.

23 A -- and, therefore, we had to run the gas turbine units  
24 most of the time prior to getting the load transfer  
25 points at CEI's request.

Salko - cross

Q Mr. Salko, I'm trying to suggest to you that whatever the reasons the load transfer points were on is where you needed them most of the year, CEI supplied them to you almost continuously, did they not, and that appears in 1974?

A Yes.

Q Thank you.

A They were on in 1974.

Q Thank you.

In 1973, one of the reasons why the load transfer points were off for a fair amount of time was that your generation had substantially improved and you were able to and were attempting to carry your own load as much as possible, isn't that so?

A Yes.

And you also had a strike in that year.

Q I'll get to that in a minute.

A Okay.

Q But you were attempting -- your own generation had substantially improved, had it not, in 1973?

A Yes, it had.

Q And for that reason, you were attempting to carry as much of your own load as you could?

A That was one of the reasons.

1 Salko - cross

2 Q And that was one of the reasons.

3 Similarly, Muny Light -- CEI had a 120-day strike  
4 in 1973, didn't it?

5 A Yes, they did.

6 Q And at least they believed that they were having  
7 problems of their own which interfered with their  
8 ability to serve your load transfer points?

9 A I guess they believed so.

10 I don't know what they believed; I know what their  
11 requests of me were.

12 Q That's right.

13 And they requested that you request as little  
14 service as you could because of their strike problem  
15 basically, did they not?

16 A They asked that I run gas turbines as much as I could.

17 Q Right.

18 Now, Mr. Salko, you have, in one of these exhibits  
19 in this case, what you refer to at Muny Light as  
20 outage reports; do you recall those?

21 A Yes.

22 Q And if my records are correct, they're PTX-195b.

23 We may have to get them out in a minute, but you  
24 testified on direct, if I understood you correctly,  
25 that you had one two-hour outage in July of 1973 in

1 Salko - cross

2 connection with attempting a load transfer point  
3 either connection or disconnection, I didn't hear you  
4 correctly.

5 A Two-hour delay in making the load transfer.

6 Q Two-hour delay?

7 A Delay.

8 Q Oh. You weren't attempting to suggest it was a  
9 two-hour outage?

10 A No, it was not a two-hour outage.

11 Q All right.

12 Now, you testified a number of times, it seemed  
13 to me, to some extended outages in connection with  
14 the operation of the load transfer points, did you  
15 not?

16 A I recall two of them, I believe.

17 Q Two of them?

18 A Yes.

19 Q In point of fact, most of them, if not all the rest of  
20 them, the outages were generally one minute or less,  
21 were they not?

22 A Depending on which station it was and the method of  
23 switching.

24 Q Well, when I went through the outages, I found two or  
25 three of them that were as long as three minutes but,

1 Salko - cross

2 basically, most of them were one minute or less,  
3 weren't they?

4 A Again, like East 79th Street, we had to go through  
5 the procedure of back-feeding, showing that we had  
6 back-feed on the cable; then I'd have two outages to  
7 the customers during that.

8 - If it was Clinton-Denison and Western, where I  
9 had control of -- when I put the customers back on,  
10 then it was a matter of seconds.

11 [After an interval.]

12 BY MR. LANSDALE:

13 Q I see a load transfer on the 26th of January, a  
14 transfer to MELP -- to you from CEI, that is  
15 disconnecting it, is that what that would mean, if it  
16 was transferred to MELP, the direction of the load  
17 transfer?

18 A It was on CEI and it's going back to us.

19 Q Going back to you.

20 That is Feeder 512-A2.

21 I notice that the duration of the outage is seconds.

22 THE COURT:

What year is this,

23 '72?

24 MR. LANSDALE:

January the 26th,

25 1973.

Salko - cross

If you want your exhibit in front of you,  
it's PTX-1956.

Will you please give it to him?

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

{After an interval.}

BY MR. LANSDALE:

Q Have I got the wrong page? Did I give you the wrong  
page for the year 1973?

A What date is the one in question?

Q I was starting in January, 1973.

A This starts in February, 1973, February 20th.

Q Well, maybe February 20th.

{After an interval.}

BY MR. LANSDALE:

Q I find a load transfer on March the 3rd, transfer from  
you to Clinton, Denison and Western, the outage was,  
in each case, two minutes.

{After an interval.}

A The first transfer I show is Tuesday, March 6th.

Q That's right.

Two minutes?

A Clinton, Denison, Western?

Q That's right; two-minute outage, right?

A Yes.

Salko - cross

Q Then we have one on March the 14th -- you have three on that day, in which you are transferring to CEI, the first one, Arctic, is a second, right?

A That is --

Q The second one is a minute, which is East 79th Ansel Reserve?

A Arctic Station we didn't go through CEI to transfer.

Q I beg your pardon?

A At Arctic Station, we did all the transfers ourselves; there was no CEI people involved.

Q Whoever did it, you only had either seconds or one minute, right?

A Three-way oil switch.

Q It's easy to do, is that what you're saying?

A Yeah.

In other words, one man opens, one closes the other.

Q All right.

Now, on the same -- right about the same time -- just to get these in proportion -- I notice on March the 17th you had a 91-minute outage or 100 customers because of a blown pilot.

And on the same day, a 30-minute outage for 100 customers for a feeder tripped off; am I correct about

Saiko - cross

that?

A Which date are you on?

THE COURT:

March 17.

A 508-A1.

Q 508-A1, right.

A That was during high winds, they fell.

Q And on March the 18th, you had a flame out from your gas turbine, and you had an outage of 12 minutes to 1,500 customers, right?

A That customer number is probably wrong.

Q Isn't that what you have in your report?

A Yes; but it says "Collinwood North," so I know that is more than 1,500 customers..

Q More than 1,500?

**A Yes.**

Q And on the 20th, you had some more load transfers where you're taking the load back.

And you had two outages at different points of one minute, and one of two minutes, right?

A Right.

Q: On the 20th?

A Correct.

Q. However, on the 24th, you had a problem with a faulty cable, and you had 149 customers out for one hour and



Salko - cross

31 minutes?

{After an interval.}

Q More than two hours.

And look, for example, at April 9th, 1973.

It looks to me like you had a big problem that day at a substation with 9,000 customers affected, and outages from 18 minutes to an hour, for two hours, an hour, 58 minutes?

A April 9th?

Q April 9th.

A We lost No. 6 boiler and No. 11 generator.

Q Now, Mr. Salko, I could go through these reports -- and the jury will be glad to hear that I do not intend to do so -- and you had in each month of the year, you had a number of outages from various causes, almost all of which were for longer periods of time and their total affected more customers than the outages in 1973 from load transfer points, didn't it?

A I can't state that exactly as to whether it affected more customers or not.

I know we had a lot of boiler outages and feeder outages, which is normal.

Q Well, the 9,000 customers I suggested to you was a boiler outage, but most of the outages were due to

Salko - cross

faults on the feeders, some accidents happening of some kind, or some piece of machinery or cable or equipment failing in some fashion?

A There are a lot of outages on that.

Q Sir?

A There are normally a lot of outages due to cable failures.

Q All right.

Mr. Salko, you testified as to what you could have done so far as maintenance is concerned.

Did you have any responsibilities for maintenance?

A Maintenance as far as the electric system, except for the generating plant, I did maintenance on the gas turbines.

Q You did maintenance on the gas turbines?

A Yes, some of them.

Q And the gas turbines is the thing that you were referring to when you mentioned the fact that if you had a synchronous interconnection, you could have done maintenance?

A No, not the gas turbines.

I was referring to the boilers at the time.

Q You were referring to the boilers; and that was under someone else's responsibility?

1 Salko - cross

2 A Yes; I didn't do any maintenance on them.

3 Q Now, Mr. Titus, when you were referring to your  
4 ability to do maintenance --

5 THE COURT: This is Mr. Salko.

6 THE WITNESS: I'm Salko.

7 MR. LANSDALE: I apologize.

8 THE WITNESS: That's all right.

9 Q Mr. Salko, you were indicating that you could do  
10 maintenance if you had a synchronous interconnection  
11 but could not do it if you had a load transfer point,  
12 is that what you were intending to convey to us?

13 A No.

14 What I was intending to convey is that if I  
15 didn't know when I was getting the load transfer  
16 points and for how long CEI would allow me to use  
17 them, then I couldn't schedule maintenance.

18 Q I see. But it was only during the year 1973 that you  
19 had this real problem of being unable to schedule the  
20 load transfer points for extended periods of time?

21 A '73 was a bad year.

22 Q '73 was the year.

23 MR. LANSDALE: I have no further  
24 questions.

25 THE COURT: Redirect.

## REDIRECT EXAMINATION OF JEROME SALKO

BY MR. HJELMFELT:

Q One of the outages you were asked about that affected 9,000 customers was the result of a boiler outage.

Would those customers have been affected if there had been a synchronous interconnection?

A No.

Q Are distribution outages from cable failures something that any utility experiences?

A Yes.

Q Are load transfer outages something that any utility experiences?

A Not that I know of.

Q Were you ever advised by the CEI dispatchers that they were delaying in responding to your requests because the City wasn't current on its bills?

A We never talked money when we talked to a load dispatcher.

MR. LANSDALE:

I'm sorry, I didn't

hear you.

THE WITNESS:

We never talked

money when we talked to a load dispatcher at

CEI.

Salko - redirect

Q What did you understand CEI's position to be with respect to the use of the load transfers during the strike?

A During -- it was July of '73, their requirements were that we make the transfer early in the evening, and that we had to transfer back to them at 1:00 o'clock in the morning, somewhere around that time.

We went back and forth like that for about a week because they said they didn't have operating people to send out to make the transfers, that they were using supervisory personnel.

Q If there had been a synchronous interconnection, would the strike have had any impact?

A Not as far as the load transfers; we wouldn't have had to make the load transfers.

MR. HJELMFELT: I have no further questions.

THE COURT: Recross.

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1 RE-CROSS-EXAMINATION OF JEROME SALKO  
2

3 BY MR. LANSDALE:

4 Q Mr. Salko, will you look at your Exhibit 1956, the  
5 outage report for April 9th, 1973 -- covering the  
6 event on April 9, 1973, the report being dated  
7 April 10th?

8 {The witness complies.}

9 Q It says that at 3:13 P.M. 11 KV cable on the  
0 overhead line from the No. 1 gas turbine to the  
1 West 41st Street substation 11 KB buss failed  
2 causing an outage to the west side area.

3 So far, that's not a boiler failure, is it?

4 A No, it's not.

5 MR. LANSDALE:

Thank you.

6 MR. HJELMFELT:

I have no further

7 questions.

8 THE COURT:

Thank you. You may

9 step down.

10 Call your next witness.

11  
12 MR. HJELMFELT:William Masters.  
13  
14  
15

WILLIAM MASTERS,

of lawful age, called by the plaintiff as  
if on cross-examination, being first duly  
sworn, was examined and testified as follows:

CROSS-EXAMINATION OF WILLIAM MASTERS

BY MR. HJELMFELT:

Q Please state your name and address.

A My name is William Masters.

My home address is 3263 Stockholm Road, Shaker Heights.

Q And what is your present occupation?

A I'm employed by the Cleveland Electric Illuminating Company, and my position is Manager of the System Planning Engineering Department.

Q How long have you been employed by CEI?

A Since 1952.

Q Could you briefly describe your -- the history of your employment with The Illuminating Company?

A I joined The Illuminating Company in 1952 when I graduated from college as an engineer and have served in various engineering positions in the company, mostly in the System Planning Department, until I was made Manager of that department.

Masters - cross

Q Now, are you familiar with load transfer service that was provided to the City by CEI in some respects?

A Yes.

Q And do you recall the period in which that load transfer service was in operation?

A Not being precise about the end dates, but during the '72, '73, and '74 period.

Q Load transfer service was provided on an as, if and when available service, is that correct?

A Yes.

Q And would you please describe what is meant by when, as and if available?

A Well, as I understood it, when we were requested to make a load supply load transfer service, we would do it when it was requested, and under the conditions or as it was available and if it was available from our system.

Q And under those terms, CEI was at liberty to take the load transfer point back to its own service at any time, isn't that correct?

A That was my understanding, yes.

Q And under those circumstances, the City could not rely upon the continuation of that service for the purpose of taking generating units down for



Masters - cross

maintenance, isn't that correct?

A It was subject to the provision that if it were available, we would -- and requested, we would supply it; if it were not available, we would not supply it.

Q And the continuity of that service was not assured, was it?

A That's right, subject to the same availability.

Q And so that at any time CEI could call the City and say, "Give back the load transfer"?

A I believe that's right.

Q And sometimes, CEI would call them and say, "Give it back right now"; is that correct?

A I think there were cases of that type, yes.

Q And knowing that those load transfer points might be taken back immediately, the City would have no assurance that they would have power available to do repairs that took more than a short period of time, isn't that correct?

A {Inaudible.}

THE COURT: Read that back, I can't hear what you're saying.

{The last question was read by the reporter.}

THE REPORTER: I didn't catch the whole answer.

1 Masters - cross

2 THE WITNESS: Would you like me to  
3 answer the question again?

4 THE COURT: Please..

5 Would you read the question again.

6 MR. HJELMFELT: I will put the question  
7 to you.

8 BY MR. HJELMFELT:

9 Q Under the circumstances, when the City knew that CEI  
10 could call up at any time and say, "Transfer -- give  
11 the load transfers back, the City would have no  
12 assurance that it would have load transfer power  
13 available to it during the time that it wanted to  
14 take a unit down for an extended maintenance period,  
15 is that correct?

16 A That's right.

17 If they were planning to take a unit off a line  
18 in order to maintain it and it depends upon that  
19 power, its availability was subject to its availability  
20 on our system.

21 If the capacity was already idle because it had  
22 been damaged, there was no reason why it couldn't  
23 be repaired.

24 Q Do you recall if the availability of your service over  
25 the 69 KV was the same as it was with the 11 KV load

Masters - cross

transfer?

A By "availability," I'm not sure what you mean by "availability" in this case.

Q Did the system have enough available --

A Oh, yes; I think those were the same circumstances.

Q Now, do you recall when CEI first began to do engineering for the 138 KV interconnection?

A The earliest that I can recall is that in 1972, the Department System Planning, the Engineering Department that I'm involved with, issued a document which described the general arrangements of that 138 KV interconnection.

THE COURT: What year was that?

THE WITNESS: 1952.

Q And it's true, isn't it, that CEI didn't complete the engineering until October of 1974?

A I don't know if it was complete at that point, but I recall when it went into service in 19 -- early 1975.

Q Are you saying that maybe there was engineering continuing after October of '74?

A I don't really know when it --

Q Would the fall of '74 sound correct to you?

A It would have to be substantially completed by that time, that's right.

1 Masters - cross

2 Q And it could have been -- the engineering could have  
3 been completed sooner, could it not?

4 A I expect so.

5 THE COURT: I don't understand  
6 the question.

7 MR. HJELMFELT: The engineering on  
8 the -- for the 138 KV, from CEI's standpoint,  
9 should have been completed -- would have been  
10 completed sooner than the fall of 1974.

11 THE COURT: Oh.

12 I don't know, Mr. Hjelmfelt, is the question  
13 in context with the previous question?

14 Is the question that CEI could have  
15 physically completed it, the engineering, sometime  
16 before October of 1974, or are you saying it is  
17 his understanding that CEI completed it sometime  
18 prior to 1974, that's where I am having difficulty.

19 MR. HJELMFELT: Thank you, your Honor.

20 I will try to clarify it.

21 BY MR. HJELMFELT:

22 Q My question went to -- I think -- did we agree that it  
23 was completed in the fall of '74?

24 A Substantially, yes.

25 Q And then the question was:

Masters - cross

Could it have been completed -- as a physical engineering matter, not as a question of whether your recollection of fall is wrong -- but could the engineering have been done prior to that, sooner than that?

A If the question is, could we have done it quicker?

THE COURT: Right.

THE WITNESS: Yes, we could have.

MR. HJELMFELT: Thank you. Your question is better than mine.

{Laughter.}

THE COURT: Better than mine.

{Laughter.}

BY MR. HJELMFELT:

Q Would you agree that reductions in required installed generating capacity can be effected through coordinating operations?

A I'm sorry, I didn't hear the whole question.

Q Would you agree that reductions in required installed generating capacity can be effected through coordinating operations between utilities?

A Yes.

Q And would those coordinated transactions or coordinated operations include emergency backup support?

1 Masters - cross

2 A Yes.

3 Q And that would reduce the required installed  
4 generating capacity?

5 A It could.

6 Q And would the purchase of firm power be such a  
7 transaction?

8 A No; it would be an alternate to installing generating  
9 capacity.

10 Q And how about diversity interchange?

11 A That could have an effect, yes, on the premise.

12 MR. HJELMFELT: Thank you, Mr.

13 Masters.

14 I have no further questions.

15 THE COURT: Do you have any  
16 questions at this time?

17 MR. LANSDALE: Yes.

18 - - - - -

19

20 REDIRECT EXAMINATION OF WILLIAM MASTERS

21

22 BY MR. LANSDALE:

23 Q When you say that the backup for emergency service  
24 should reduce installed -- could reduce installed  
25 capacity whereas, on the other hand, the firm power

1 Masters - redirect

2 arrangement is an alternative to it, will you explain  
3 that further, if you will, Mr. Masters?

4 Why, in the one case, is it -- why is firm power  
5 purchased and alternate to the reduction in the  
6 installed capacity you're referring to?

7 A Well, what I'm speaking of are systems that are  
8 independently managed in the plant; and one of the  
9 considerations that a system like that would consider  
10 is its requirements for generating capacity --  
11 reserve generating capacity, and the ability to rely  
12 on other systems during periods of emergency would  
13 be taken into account in determining how much  
14 reserve capacity one company should have.

15 But it's also possible that planning generating  
16 capacity to consider in addition to putting in  
17 generating units or instead of to make commitments  
18 for firm power as an alternative to installing  
19 generating capacity.

20 And it's possible --

21 Q I'm sorry --

22 THE COURT:

Go ahead.

23 A It's possible that the amount of firm power or the  
24 amount of generating capacity that an electric system  
25 would be considered to require would be affected by

Masters - redirect

whether or not it had emergency -- availability to emergency power from other systems..

Q Let me try to get something that satisfies my more simple approach to it.

When you have a mutual arrangement which results in a reduction in the installed capacity for the parties to the arrangement, does there have to be some mutuality about it? Do you have to have any kind of a quality in the capacity supplied by the two parties?

A Oh, in general, that's the way it's worked in the electric utility business, because the general principle has been one of mutuality of interconnection between essentially or reasonably equal systems.

Q So that if CEI had such an arrangement with another utility whereby it supplies emergency backup to the other utility, what is the fact as to whether in such a mutual arrangement it's expected that the other utility will similarly provide such service to CEI?

A That's customary -- a customary provision, yes.

Q And is the -- is your statement that firm power may be an alternative to this a statement that one of the systems could, instead of installing its own generation,



Masters - redirect

buy firm power from someone else in lieu of installing its own generation?

A That's what I meant by "alternative."

Q And if, stated another way, either by mutual trade-off or purchase of firm power, each of the parties has to purchase the capacity to serve its own load, is that a fair statement?

A Yes.

MR. LANSDALE: Thank you.

I have no further questions.

{Mr. Hjelmfelt and Ms. Coleman conferred off the record.}

THE COURT: Recross.

RECROSS-EXAMINATION OF WILLIAM MASTERS

BY MR. HJELMFELT:

Q Do you recall how many interconnections CEI has?

A I beg your pardon?

Q Do you recall how many interconnections CEI has?

A Interconnections?

Q Yes.

A We're interconnected with several other utilities.

1 Masters - recross

2 We're connected with the Ohio Edison Company;  
3 we're connected with the Ohio Power Company, and we're  
4 connected with the Pennsylvania Electric Company.

5 Q The use of an interconnection can -- that could be  
6 used to firm existing generating capacity, would that  
7 be correct?

8 MR. LANSDALE: Object, if your  
9 Honor please.

10 THE COURT: Approach the bench.

11 {The following proceedings were had at the  
12 bench:}

13 MR. LANSDALE: I suggest this is not  
14 redirect -- I mean, recross.

15 THE COURT: Well, I don't know  
16 where he's going.

17 MR. HJELMFELT: I will withdraw the  
18 question.

19 THE COURT: It could be material,  
20 I don't know.

21 MR. HJELMFELT: That's fine; I will  
22 withdraw the question.

23 THE COURT: Do you wish to proceed  
24 to another area?

1 Masters - recross

2 MR. HJELMFELT: No.

3 {End of bench conference.}

4 - - - - -

5 MR. HJELMFELT: I have no further  
6 questions.

7 THE COURT: I see the jurors are  
8 looking at their watches.

9 {Laughter.}

10 THE COURT: It is close to the  
11 adjournment, hour, ladies and gentlemen, and so  
12 that you may return to your homes and prepare for  
13 the weekend and all of these sport events that are  
14 available for you, perhaps we will permit you to  
15 retire early to the jury room to view the  
16 exhibits of the day, after which you are free to  
17 go home.

18 And, needless to say, during the course of  
19 the adjournment, especially on weekends, you are  
20 not to discuss the case either among yourselves,  
21 with members of your family, or with anyone else;  
22 you are to read no accounts of the case in  
23 newspapers, or listen to any radiobroadcasts or  
24 view any videobroadcasts of the case.

25 "And, as I pointed out to you so many times,

1 Masters - recross

2 you, ladies and gentlemen, are the triers of the  
3 facts; you are the ones that listen to the  
4 witnesses and examine the exhibits firsthand;  
5 you, better than anyone else, know what the  
6 witnesses have testified to, and know what those  
7 exhibits say, and I'm sure that you don't need  
8 any interpretation of what you hear, read, or see.

9 You are to keep an open mind until such  
10 time as you have heard all of the evidence in this  
11 case, and until such time as I have had an  
12 opportunity of instructing you on the law as  
13 that law will apply to the facts as you find them  
14 to be at the conclusion of your deliberation; and  
15 you are to keep an open mind until such time as  
16 the matter is ultimately submitted to you for your  
17 final decision and your judgment.

18 With that, have a nice weekend, and see you  
19 bright and early on Monday morning at 8:30.

20 You are free to go.

21 {The jury left the courtroom and the  
22 following proceedings were had out of their  
23 hearing and presence.}

24 - - - - -

25 {The Court and Law Clerk Schmitz conferred off

Masters - recross

the record.}

THE COURT: Gentlemen, Plaintiff's Exhibit 538 is already in evidence and the jury has seen it, but it may go to the jury.

Plaintiff's Exhibit 54, any objection?

MR. MURPHY: No, your Honor.

THE COURT: 2059?

MR. MURPHY: We have that admitted already, your Honor.

THE COURT: Fine. 2516?

MR. MURPHY: No objection.

THE COURT: 2582?

MR. MURPHY: No objection.

THE COURT: 2976?

MR. MURPHY: I think that has been admitted also, your Honor.

THE COURT: And Exhibit 2078 is a demonstrative exhibit; that's not going to go to the jury.

2551 is the photo of a pole.

MR. MURPHY: No objection.

THE COURT: 2552 is a photo that no one has really testified to.

MR. MURPHY: No --

1 MR. WEINER: He did; he said it was  
2 a --

3 MR. NORRIS: He said it's another  
4 shot of the same --

5 MR. MURPHY: We have no objection.

6 THE COURT: It may go in.

7 1956, which is the outage report for 1973,  
8 it may go to the jury.

9 Thank you, gentlemen. I'll see you Monday  
10 morning at 8:30.

11 MR. NORRIS: We will try to take  
12 your advice over the weekend.

13 THE COURT: Yes, I suggest that  
14 the lawyers have a relaxing weekend and come back  
15 here in a relaxed posture.

16 Good night.

17 {Court adjourned for the day.}

18 - - - - -  
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