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## Volume19 (Part 4)

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

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1 use to which this could be put.

2 THE COURT: Well, I don't know --  
3 You tell me what other issue is there?

4 MR. NORRIS: Well, I would like  
5 an opportunity to see the document to determine  
6 how to make use of any questioning of Mr. Hauser,  
7 and I think I have the right to see the document,  
8 so I don't have to respond to questions in a  
9 vacuum without having had a chance to review the  
10 documentation.

11 There are two things called for in the  
12 subpoena, and I respectfully request that Mr.  
13 Lansdale comply with the subpoena.

14 MR. LANSDALE: We would submit it  
15 to his Honor.

16 THE COURT: I will take it under  
17 advisement. I have a luncheon engagement.

18 {Luncheon recess had.}

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1 WEDNESDAY, AUGUST 12, 1981; 1:45 O'CLOCK P.M.

2  
3 THE COURT: Gentlemen, I am  
4 informed that Juror No. 6 is not feeling well.  
5 Apparently it was something she had at lunch that  
6 disagreed with her system. She has indicated  
7 that she is willing to stay, however, she  
8 doesn't know if she can survive the afternoon.

9 My suggestion is that we adjourn for the day,  
10 and then permit her to regain her physical  
11 well-being, and we will reconvene in the  
12 morning rather than attempt to have her stay on  
13 this afternoon.

14 I don't know what your positions are.

15 MR. NORRIS: We have no objections.

16 MR. LANSDALE: We have no objections.

17 THE COURT: All right. Why don't  
18 we do that.

19 Bring in the jury.

20 - - - - -

21 {The jury was reseated in the jury box and  
22 the following proceedings ensued:}

23 THE COURT: Ladies and gentlemen,  
24 I understand that one of your number is not  
25 feeling too well?

1 JUROR NO. 6: Yes, sir.

2 THE COURT: Do you feel that you  
3 would like to stay on and try to continue this  
4 afternoon, or would you think it is more  
5 advisable that you left, in which case we would  
6 adjourn court until tomorrow morning. It is up  
7 to you, whatever you think you can do.

8 JUROR NO. 6: I would like to try  
9 to stay on.

0 THE COURT: All right. We will  
1 proceed, and if you don't feel well, just  
2 indicate, and we will adjourn.

3 JUROR NO. 6: Yes, sir.

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

6 THE COURT: Yes.

7 - - - - -

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

10 MR. NORRIS: Because of scheduling  
11 problems, I discussed with Mr. Lansdale earlier if  
12 we don't get through with Mr. Hauser, I would like  
13 to interrupt his testimony tomorrow morning and  
14 put on the witnesses that are important to the  
15 Muny Displacement evidence, because we have at

least two witnesses that are not going to be able to be with us past tomorrow, and I mentioned this to Mr. Lansdale.

MR. LANSDALE: I have no objection.

THE COURT: It is all right with me. You better figure out how many witnesses you are going to have on that Displacement Program, because we are not going to get into this duplicative evidence.

MR. NORRIS: We are going to be able to satisfy your Honor's concerns about that.

THE COURT: I have no problem with the other aspect.

MR. NORRIS: Could I also ask the Court whether -- I would just like to review again what we are talking about, what we were talking about before lunch, and request the enforcement of the subpoena.

THE COURT: I am just about to look into it now.

Where is Mr. Hjelmfelt?

MR. NORRIS: He is right here.

MR. HJELMFELT: Yes, sir.

THE COURT: What are you going to do with Rubin? What is your position again on it.

1 This is testimony -- this is post-damage  
2 testimony that you are desirous of having him  
3 testify to; namely --

4 MR. HJELMFELT: This is with respect  
5 to the effort to get the wheeling schedule after  
6 they were ordered by the Nuclear Regulatory  
7 Commission, and the fact they had asked for the  
8 wheeling schedule shortly after the order, and we  
9 didn't get one, and we ended up filing a letter  
0 to the Commission asking them for enforcement of  
1 their original order.

2 The testimony I believe was invited by the  
3 cross-examination of John Engle, in which Mr.  
4 Engle was asked questions going to why didn't  
5 AMP-Ohio pursue the PASNY power immediately  
6 after the order of the NRC.

7 MR. LANSDALE: There is a stipulation  
8 on this subject. I don't have it with me. It is  
9 No. 126.

10 {End of bench conference.}

11 - - - - -

12 THE COURT: Ladies and gentlemen  
13 of the jury, if you would like, you may go back  
14 to the jury room and relax while we are finalizing  
15 these things. It will be more comfortable for you.

1 {The jury retired to the jury room.}

2 - - - - -

3 {The bench conference continued as follows:}

4 MR. MURPHY: It is 126.

5 MR. LANSDALE: I have no personal  
6 involvement in this wheeling stuff, and I don't  
7 want you to get the idea I am saying how it is.  
8 I want to tell you my understanding. My  
9 understanding is that the City made no demands  
10 immediately consequent upon this, and that  
11 very much later on, towards the end of that year,  
12 the end of 1977, the City started raising --  
13 withdraw that -- started complaining about a  
14 schedule not having been filed, and in due course  
15 it was filed, and you had a lot of rinky-dink  
16 about it.

17 But my inquiry went to the AMP-Ohio taking  
18 some initiative, and it seems to me that the  
19 stipulation covers the situation indicating that  
20 the time has come for AMP-Ohio to take some  
21 initiative on this.

22 This is the same kind of thing that we met  
23 with throughout that CEI is supposed to do all  
24 kinds of stuff, but the City doesn't have to  
25 take an initiative about anything, and for -- it

1 doesn't mean to me, in view of the stipulation,  
2 that testimony that later in the year the City  
3 complained about us not having filed a schedule  
4 a year later, it doesn't seem to me that has  
5 anything to do with the case.

6 MR. HJELMFELT: Well, Mr. Rubin's  
7 testimony was, I believe it was in May, that we  
8 first asked and we got one back in June, that  
9 just didn't go along with what the order was,  
10 that during the rest of that year the City was  
11 basically in a sale mode, and we asked again  
12 in November and again in December, and we said,  
13 "We are going to file the one we told you we  
14 were going to file back in May," and we went to  
15 the NRC.

16 THE COURT: What was the purpose  
17 of introducing his testimony?

18 MR. HJELMFELT: To rebut the  
19 inference that Mr. Lansdale was creating that  
20 after the NRC decision, the City was sleeping on  
21 its rights, and I presume if we didn't get PASNY  
22 in 1980, it was our own fault.

23 THE COURT: Number one, it doesn't  
24 go to damage, but I think it is admissible for  
25 rebuttal purposes, and that is what the record



1 reflects.

2 Under the circumstances I will permit him  
3 to testify to that, so now you can tell him to  
4 hurry back to Cleveland.

5 MR. HJELMFELT: Thank you, your Honor.

6 THE COURT: Now, frankly, between  
7 us boys, since Ms. Coleman is not here, I don't  
8 see what all the fuss is about, but obviously the  
9 document is one that goes to the issue that has  
10 been ruled out of the case at the last trial.

11 It is directed to the \$9 million bond issue.

12 And at this juncture I am remiss to see where  
13 it is relevant to this case; however, I am not  
14 trying the City's case, and the City may see  
15 something that goes beyond the \$9.8 million  
16 issue that I do not see.

17 I think it would be prejudicial error for me  
18 to foreclose the City from examining this document.

19 I will, if it gives you peace of mind, Mr.  
20 Lansdale, I will place the document under  
21 protective order, and I will not permit any copies  
22 of it to be made, although between us, I don't  
23 see anything in the document that would warrant  
24 that, but if it makes you feel better, I will do  
25 it.

1                   MR. LANSDALE:                   What I want, your  
2 Honor, is protection, again, which was expressed  
3 many times in this case, that the contents of the  
4 document and the thrust of the document is  
5 disclosed to the jury in the process of trying to  
6 get it in, and then it is ruled out.

7                   THE COURT:                   We are not going to  
8 permit that, and if need be, we will have an  
9 in camera voir dire.

10                  MR. LANSDALE:                  All right.

11                  THE COURT:                  And certainly, as I  
12 indicated to you gentlemen before, I don't  
13 ordinarily read the newspapers as it relates to  
14 this trial, because all it does is aggravate me,  
15 because I wonder if what is being reported is  
16 actually happening in this courtroom, but I have  
17 noticed that there are certain things that are  
18 coming out in print that certainly are not coming  
19 out during the course of this trial, at least  
20 in yesterday's article, and I just bring that to  
21 your attention, gentlemen.

22                  Use it for whatever it is worth.

23                  I will put it under a protective order, and  
24 I will permit Mr. Norris to see the document, and  
25 you are free to examine it at this juncture, and

1 it shouldn't take you more than a couple of  
2 minutes to examine it, and it is under a  
3 protective order, and no copies shall be made,  
4 and it shall be introduced into the record, if  
5 that is the situation, and you can tell me what  
6 you intend to do with it.

7 MR. NORRIS: May I have a copy?

8 THE COURT: No.

9 MR. NORRIS: For my purpose --

10 THE COURT: No. There will be  
11 no copies. You are free to look at it. You may  
12 take as much time as you are desirous of having  
13 to examine it.

14 There will be no copies either in part or  
15 otherwise, and if at any time you are desirous  
16 of seeing it, I will be more than happy to direct  
17 Roy to permit you to examine it.

18 All right. I will retire until you call me,  
19 gentlemen.

20 {Recess taken.}

21 {The following proceedings ensued in the  
22 Court's chambers, all counsel for both parties  
23 being present:}

24 MR. NORRIS: Your Honor, I have  
25 now examined the documents that were produced in

1 response to the subpoena of Mr. Hauser, and this  
2 relates to a subject different from the one that  
3 I had anticipated, and different from the one  
4 that Mr. Hauser testified to on deposition.

5 This particular set of papers refers to the  
6 deletion of language at the bottom of page 1598  
7 of the City record, going to whether or not the  
8 City had a right or would be permitted to use any  
9 of the City's general resources to pay for the  
10 costs of the proposed bonds.

11 And that is all very interesting, but I had  
12 understood from reading Mr. Hauser's deposition  
13 that Mr. Hjelmfelt conducted on July 12 of 1975,  
14 starting at page 111, and let me read these  
15 questions that I would bring directly to the  
16 Court's attention:

17 "Q Did CEI ever draft proposed  
18 amendments to the bond ordinances of the City of  
19 Cleveland pertaining to the City Light system?

20 "A Yes.

21 "Q Who drafted those amendments?

22 "A As I recall, I did.

23 "Q Was any use ever made of those  
24 drafted amendments?

25 "A Yes.

"Q What use?

"A They were given to one or more members of the Utilities Commission, and those members were asked to consider those amendments in connection with the legislation.

"Q What legislation was that?

"A Legislation pertaining to the financing of the Municipal Light Plant.

"Q Was that for the purpose of the sale of the \$7.8 million in bonds" --

And then colloquy followed, and then beginning on page 113 he asked if those amendments pertained to the \$7.8 million bond issue, and the answer was:

"A There was at least one amendment that did pertain to the \$7.8 million bond issue.

"Q What was the nature of the amendment?

"A The nature of the amendment was to amend the ordinance as originally drafted which provided for the sale of the bonds to the Sinking Fund of the City of Cleveland to provide that they would be sold to other than the Sinking Fund."

And then there were further questions and answers, with respect to these amendments, and

1           that subject matter that Mr. Hauser identified on  
2           page 113, lines 15 to 19, providing for the sale  
3           of bonds to "other than the Sinking Fund," and I  
4           would inquire whether there is in existence a  
5           copy of that amendment that I understood from  
6           reading the deposition that Mr. Hauser had  
7           prepared and had given to the members of the  
8           Utilities Commission.

9           MR. LANSDALE:           Well, I have listened  
10          to this, and I didn't have this in mind -- but it  
11          has been several years since I read that, and I  
12          listened to that, and it says "CEI" and not Mr.  
13          Hauser himself.

14          But I suggest, Jim, you go out and ask Don.  
15          How does the subpoena read? This is all Don  
16          gave me.

17          MR. NORRIS:           The original or the  
18          copy of the "Amendment to Bond Ordinance 2404-72,  
19          which you prepared and distributed to various  
20          Cleveland City Council members on or about July,  
21          '73, and, Jim, I would offer the transcript.

22          MR. MURPHY:           Were there other  
23          amendments?

24          MR. LANSDALE:           Yes, I would inquire,  
25          were there any other amendments? -- but I think the

1 reason the various things that the subpoena  
2 directs Don to bring in, the documents that he  
3 drafted, and he gave to the Councilmen -- now, if  
4 he has a document that somebody else gave to the  
5 Council, he is not going to bring them in under  
6 that subpoena, and that is the reason we get into  
7 this fuss, because you use the subpoena with this  
8 and other things, and I said that you must live  
9 within the bonds of the subpoena.

10 Now, if there is anything else --

11 THE COURT: Go ahead.

12 MR. LANSDALE: Yes; go out and talk  
13 to Don. Loan him the deposition, will you?

14 THE COURT: I take it then that  
15 if he can have this document back --

16 MR. LANSDALE: I think this has the  
17 effect that you are talking about, and I read it,  
18 and I thought it was rather interesting. I didn't  
19 realize he was doing it this way.

20 THE COURT: My recollection is  
21 that we went into that area at a bench conference  
22 or something during the last trial, either in  
23 voir dire or otherwise, because I do recollect  
24 some mention of the amendment to the proposed  
25 ordinance.

1 MR. NORRIS: Well, the deposition  
2 makes it clear that there was more than one, and  
3 I think the deposition also makes it clear that  
4 Mr. Hauser drafted them.

5 THE COURT: I would disagree with  
6 you. It says "the" document that you circulated,  
7 the amendment, and that indicates to me that there  
8 was one, but that is academic. Let's not get into  
9 academics at this point.

10 MR. NORRIS: Well, if there is more  
11 than one, I think the language of the subpoena  
12 would be broad enough to put him on notice to  
13 produce all of them.

14 MR. MURPHY: Mr. Hauser tells me  
15 that the amendment that he gave us as part of the  
16 subpoena was the one to which he was referring  
17 when he responded to that deposition.

18 He also told me that he gave no Councilmen  
19 any other amendment in connection with this piece  
20 of legislation, and I finally told him that to my  
21 knowledge nobody else from CEI did.

22 MR. NORRIS: Well, could we voir  
23 dire Mr. Hauser right now?

24 THE COURT: Sure, bring in Mr.  
25 Hauser.



1           {Mr. Donald H. Hauser was summoned into the  
2           Court's chambers and duly sworn, and the following  
3           voir dire examination ensued:}

4  
5           VOIR DIRE EXAMINATION OF DONALD H. HAUSER

6  
7           BY MR. NORRIS:

8           Q     Mr. Hauser, I am looking at the transcript of the  
9           deposition which Mr. Hjelmfelt took of you on July 12  
10          of 1975, in the NRC proceeding, and the transcript on  
11          pages 111 and 112, and I will just read a couple of  
12          questions so you can have the context of Mr.  
13          Hjelmfelt's discussion with you was about the 2104-72  
14          piece of legislation and amendments that were prepared  
15          to that legislation, and he asked you the following:

16                "Q     Did CEI ever draft proposed amendments to  
17          bond ordinance of the City of Cleveland pertaining to  
18          the City Light System?

19                "A     Yes.

20                "Q     Who drafted those amendments?

21                "A     As I recall, I did.

22                "Q     Was any use ever made of those drafted  
23          amendments?

24                "A     Yes.

25                "Q     What use?

Hauser - voir dire

"A They were given to two or more members of the Utility Commission, and those members were asked to consider those amendments in connection with the legislation."

Now, is the document that you have produced in response to the subpoena one of the amendments that you made with reference to what you have drafted?

A Yes, and it is the amendment that I recall that I gave to Mr. Gaul.

Q On page 113, Mr. Hjelmfelt asked you the nature of the amendments, and you responded at lines 15 to 19 as follows:

"A The nature of the amendment was to amend the ordinance in the originally drafted form which provided for the sale of the bonds to the Sinking Fund of the City of Cleveland to provide that they would be sold to other than the Sinking Fund."

And I would ask you whether you ever prepared an amendment to 2404-72 that was of the type that you described in your deposition and the language I just read?

A I did prepare an amendment to that effect, and this is the amendment.

Q And that amendment that you hold in your hand, that

Hauser - voir dire

you brought in in response to the subpoena duces tecum, states in your opinion -- states that these bonds must be sold to other than the Sinking Fund; is that right?

A Yes.

Q And what is there about that amendment that would require that result?

A Well, it deleted, as it says, the second paragraph in Section 7:

"Provided, however, if otherwise lawful, nothing herein shall be deemed to prohibit this city from using of its own volition any of its general resources for the fulfillment of any of the terms and conditions of the mortgage, this ordinance, or the bonds."

Q Then in what respect would that require that the bonds would be sold to other than the Sinking Fund?

A By eliminating the provision in the ordinance authorizing the sale to the Sinking Fund, and there had been prior history and other bond ordinances that I was relying on when I drafted that that did not contain this provision, and at least up until the period of time it was revenues of the Municipal Light Plant that were used, at least to satisfy some

1 Hauser - voir dire

2 of the outstanding indebtedness of the City, or I  
3 should say, the Municipal Light Plant.

4 Q Mr. Hauser, the section of the ordinance that the  
5 amendment that you have brought here today -- that is  
6 Section 7, and Section 7, as originally introduced,  
7 dealt with the method of paying back the bonds and  
8 the debt service thereon rather than the actual  
9 placement and/or sale of those bonds.

10 Now, Section 3 is entitled, "Sale of the  
11 Improvement Bonds," and perhaps you recall this better  
12 than I, but the ordinance as originally produced in  
13 Section 3, it stated that, "The improvement bonds  
14 shall first be offered for sale to the Sinking Fund  
15 and then shall be offered to the Treasury Investment  
16 Account, and if not taken by such commission, shall  
17 be sold at private sale."

18 The order as passed in July of 1973, in Section 3  
19 states, "The improvement bonds shall be sold on the  
20 open market by the Director of Finance following the  
21 solicitation of the proposals," and so forth.

22 Now, my specific question is:

23 How could the amendment to Section 7 accomplish  
24 the result that was described by you in your deposition  
25 in 1975 when Section 3 remains unchanged?

Hauser - voir dire

A Well, Mr. Norris, I have had a little experience in drafting legislation and amendments to legislation.

The amendment that I have brought with me was my conclusion as the best possible way of getting an amendment directed towards the ends that I sought to accomplish.

Legislation is not a precise art, and one of the reasons that I remember this as being the amendment is because I thought it was artful draftsmanship.

Q The deposition that I read to you a moment ago spoke in terms of amendments in the plural. And that is on page 112, and the question was:

"Q And who drafted those amendments?"

"A I did.

"Q Was any use ever made?"

"A Yes.

"Q What use?"

"A They were given to one or more members of the Utilities Commission."

My question to you, sir, is, did you prepare an amendment to Section 3 of the ordinance?

A I don't believe I did.

Q Well, what could you have had reference to when you were speaking in 1975 of amendments in the plural?

Hauser - voir dire

MR. MURPHY: Excuse me, your Honor.

THE COURT: What is it?

MR. MURPHY: Your Honor, I would object to the question, because my recollection -- and I glanced at the deposition -- and the source of the questions from which Mr. Norris is now reading is the generic name of what Mr. Hauser at various times proposed as amendments.

I don't think the question right now is addressed specifically to the 9.8 million bond issue.

THE COURT: We can pick it up and go back to the deposition.

MR. NORRIS: Well, whether his statement is correct or not, I would say -- I would ask the same of the witness.

I would like to know whether there was more than one amendment, and I would like to know whether there were amendments.

THE COURT: All right. I will permit you to ask the question, but for the purposes of expediting this case, I would suggest that you fix a time frame.

Hauser - voir dire

Now, if you want to ask him were there more than one amendments submitted in conjunction with this particular ordinance, that is one thing.

MR. NORRIS: That is what I am asking. That is what I thought was the understanding of my question, but that is my question, and I am talking about this particular ordinance, and my question, I thought, carried with it a July, 1973 time frame.

THE COURT: All right.

A Mr. Norris, I did draft a number of possible amendments to Ordinance 2404-72, but the only one that left my office is the one that I brought with me.

Q What communications are you aware of that occurred with respect to the other amendments that you drafted to 2104-72?

A I believe that the one that I brought with me was the only one that was communicated, either internally or externally.

Q Who else in the company had knowledge of the amendments that you drafted to 2104-72?

A I can't recall whether they even had copies of them.

We might have discussed a number of approaches to Ordinance 2104-72, but as I say, this was the amendment.

Hauser - voir dire

Q Well, who were the other people?

A That would be Lee Howley and Harry Fitzgerald.

Q Did they have copies of the other amendments that you drafted?

A I don't remember giving them to them.

Q That is not my question.

Do you know whether they, in 1973, whether you gave them to them, or in any other way, shape or form became in possession of these other amendments that you drafted?

A Not to my knowledge.

Q Was an amendment to Section 3 of the ordinance one of the amendments that you drafted?

A I don't recall that there was one specifically to Section 3.

Q Well, what were you then thinking of when you testified as you did on page 113, lines 15 to 19?

A The amendment that I brought with me today.

Q Even though that amendment makes no reference to the Sinking Fund?

A That is correct.

Q And even though you testified using the language "Sinking Fund"?

A That is right.



Hauser - voir dire

Q Do you have any knowledge where the amendment originated to Section 3 of the ordinance?

MR. LANSDALE: Is this relevant,

is this a relevant question, your Honor?

A I don't know specifically, no. It undoubtedly was with one or more counsel.

It didn't originate with me.

THE COURT: Did somebody testify that there was an amendment to Section 3?

MR. NORRIS: There is an amendment to Section 3, your Honor.

THE COURT: All right.

MR. NORRIS: The amendment that was made to Section 3 tracks exactly what Mr. Hauser testified to in 1975, and that is what gave rise to the question.

THE WITNESS: I believe in that deposition some place I said that my amendment was not passed, but another one that accomplished the same purpose was.

Q Now, Mr. Hauser, did you have a conversation with Frank Gaul with respect to the substance of the amendment that was ultimately made to the Section 3 of the ordinance?

Hauser - voir dire

A I believe I did, yes.

Q And did those conversations take place at the committee meeting that took place the same date as the passage of the ordinance?

A I doubt if it was the same day, but it would be over on the second floor of City Hall in and around the Committee rooms.

Q And during those conversations did you bring to his attention the substance of the testimony that you gave on page 113, line 15 to line 19 that the amendment to Section 3 was to provide that the sale would be to other than the Sinking Fund, and that would be another way of accomplishing your objective? Did you impart that information one way or the other to Mr. Gaul?

A No, not that I recall.

Q Was that subject discussed between you and Mr. Gaul?

A It could very well have been.

Q What was the nature of that discussion?

MR. LANSDALE: I object to this.

If anything, it is protected, and it is also irrelevant. I object to this witness's interrogation about it.

THE COURT:

Well, he answered the

Hauser - voir dire

question. I don't know how far you are going to go.

Obviously with each question you are going more and more into the Noerr-Pennington exception area, and assuming they did so, he is permitted to do that.

MR. NORRIS: Well, if we are on voir dire, I thought it would be appropriate to find out the extent of the activity, and then we would address to you such legal arguments, such arguments as we think would be appropriate.

MR. LANSDALE: I object. This is just discovery.

THE COURT: We are not going to get into that. We are here for a specific reason.

We are here as to whether or not he responded to a subpoena, and we are not going to get into the areas of Noerr-Pennington and the legislative activity that transpired as a result of it.

That is not material here, and, as I say, you are perfectly free to pursue any questions concerning whether or not the document that has

1 Hauser - voir dire

2 been permitted here in camera and the protected  
3 order is the document that was subpoenaed.

4 MR. NORRIS: May I have an answer  
5 to the last question?

6 THE COURT: No. It is not  
7 material. I will sustain the objection.

8 MR. NORRIS: I have no further  
9 questions.

10 THE COURT: All right. Anything  
11 further that is outstanding that I have to rule  
12 upon?

13 MR. NORRIS: Well, your Honor, --

14 THE COURT: Now, let's go and see  
15 how our sick lady is doing.

16 MR. NORRIS: The City would like  
17 to note for the record that even though the voir  
18 dire on the document produced in response to the  
19 subpoena is at an end, that the City believes  
20 that the conduct of Mr. Hauser, that he has already  
21 testified to, and having conversations with Mr.  
22 Gaul about the way in which the same objective  
23 could be accomplished in other respects, goes  
24 far beyond the lobbying activity that is protected  
25 by Noerr-Pennington.

1 Hauser - voir dire

2 We would submit to your Honor that it has  
3 nothing -- it is nothing but a baldfaced attempt  
4 to interfere with the business relationship of  
5 Muny Light, and it serves no legitimate purpose  
6 beyond that, and that we would seek to convince  
7 your Honor that this does fall within the sham  
8 exception, and that we should be permitted to  
9 interrogate the witness in front of the jury on  
10 that subject.

11 THE COURT: Overruled.

12 From what he testified today, it doesn't even  
13 approach what happened in the California Motor  
14 Freight versus whoever it is. Let's go.

15 {End of chambers conference.}

16 - - - - -

17 {The following proceedings ensued in open  
18 court:}

19 {The jury was reseated in the jury box, and  
20 the following proceedings ensued:}

21 THE COURT: I hope you are  
22 feeling better.

23 Call Mr. Hauser.

24 - - - - -  
25

1           D O N A L D   H.   H A U S E R,  
2       of lawful age, called by the plaintiff as if  
3       on cross-examination, being first duly sworn,  
4       was examined and testified as follows:

5  
6       CROSS-EXAMINATION OF DONALD H. HAUSER

7  
8       BY MR. NORRIS:

9       Q     Would you please state your name?

10      A     Donald H. Hauser, H-a-u-s-e-r.

11      Q     What is your address, please, Mr. Hauser?

12      A     My home address is 8300 Glen Oak Drive, Broadview  
13       Heights, Ohio.

14      Q     What is your occupation?

15      A     I'm an attorney.

16      Q     And you work for CEI?

17      A     That is correct.

18      Q     What is your present position at CEI?

19      A     I'm General Attorney at CEI.

20      Q     Give us just a brief review, if you would, of your  
educational background?

21      A     I did my undergraduate work at Ohio State University,  
and then I also received my law degree from Ohio  
State University Law School.

22      Q     When was that?

Hauser - cross

A In 1951.

Q And did you go to work for CEI right out of law school?

A Not right out of law school but several months later.

Q Would you give us a brief history, if you will, of your employment at CEI?

A I started with CEI as Associate Counsel towards the end of May of 1951.

I then went -- was promoted to several positions within the General Legal Staff, Counsel, Senior Counsel.

In 1957 I was promoted to General Attorney of the Claims Section when Ralph Hoken, who had previously headed that section, retired. That was still a part of the Legal Department.

I continued in that position until 1964, when I was promoted, with the retirement of Randall Luke, to Managing Attorney of the Legal Department, which included the Claims Section, the Real Property Section, and the General Legal Staff.

I remained in that position until 1972, when I was appointed Corporate Solicitor.

I remained in that position until 1975, when I was made the General Attorney of the company upon the retirement of Lee Howley, and I have remained in that

Hauser - dross

position ever since.

Q How many attorneys are there in total in the CEI Legal Department?

A There are a total of approximately 13 legal attorneys, six of whom work in my office.

Q Mr. Hauser, when did you first become familiar with the relationships between CEI and Muny Light?

A Probably from the beginning of my employment as a part of the General Legal Staff in 1951.

Then my activity decreased with regard to the relationship between Muny Light and CEI while I was General Attorney of the Claims Section.

Then in 1964, and I would say that probably began my heaviest involvement in Muny Light, although that, of course, was just one of the legal matters involving The Illuminating Company.

Q Would it be fair to say that since 1964 you have had a fairly continuous relationship with matters between CEI and Muny Light?

A That's a fair statement, yes.

Q And would that also -- would that include familiarity, Mr. Hauser, of the dealings between the two systems with respect to interconnection?

A That is correct, yes.



Hauser - cross

Q And I take it that you were also familiar with the matter of the load transfer service offered and supplied by CEI to Muny Light?

A Yes.

Q In May of 1971, Mr. Hauser, CEI notified the City and the Federal Power Commission that CEI was terminating and canceling load transfer service effective June 20th, 1971, is that correct?

A That is correct.

MR. NORRIS: Mrs. Richards, would you please give Mr. Hauser PTX-1968?

{After an interval.}

THE COURT: What's the number of that exhibit, Mr. Norris?

MR. NORRIS: It's 1968, your Honor.

THE COURT: Thank you.

MR. NORRIS: Mrs. Richards is going to bring it right up.

{Exhibit handed to the witness and to the Court by Mrs. Richards.}

{The witness reading silently.}

THE WITNESS: Yes, this is the notice of termination and cancellation that was filed with the Federal Power Commission dated

Hauser - cross

May 20, 1971 because the City had failed to pay for the load transfer service that had been provided since February of 1970.

BY MR. NORRIS:

Q As a matter of fact, three months prior to this CEI had instituted a lawsuit to recover those amounts of money in the Common Pleas Court in this county, is that right?

A That is correct.

Q And just prior to the filing by CEI of PTX-1968, the City had filed in the FPC a request for an order compelling an interconnection, is that correct?

A That is correct, I think they crossed in the mails.

Q Well, however that might be, would you accept the fact that the City filing was on May 11, and the CEI filing was on May 20?

A That is correct, yes.

Q And at the time you filed the notice of termination of the load transfer service, Mr. Hauser, it is correct, isn't it, that CEI indicated that it would still be willing to provide Muny Light with emergency or breakdown service?

{The witness examining the exhibit.}

A We would be willing to continue the load transfer service

Hauser - cross

if Muny would pay its bills on a timely basis.

Q Calling your attention, please, to Paragraph 7 of page 3 of the letter of transmittal, isn't it a fact that the first sentence of Paragraph 7 refers to -- well, let me ask you the following questions:

Is it not a fact that this sentence states the company wishes to emphasize that it is willing to maintain the existing interconnection by the facilities in place and to provide emergency or breakdown service for a limited period upon payment of, just compensation, but that it cannot continue to transfer loads from the City system at five different locations to its own system without substantial addition to its facilities?

A That is correct.

Q Subsequent to the filing on May 20 of this notice of termination of the load transfer service, CEI voluntarily extended the date for that termination, is that correct?

A That is correct.

Q And these voluntary extensions by CEI were in different periods of time, a couple of weeks, or three weeks or something of that -- a reasonably short length, is that a fair statement?

1 Hauser - cross

2 A That is correct.

3 We were hoping to work out an arrangement for  
4 paying the past-due indebtedness which, if it had  
5 been worked out where payments had actually been  
6 made, of course, the load transfer service would  
7 have continued --

8 Q And these --

9 A -- without cancellation.

10 Q I'm sorry.

11 A -- without cancellation.

12 Q And the CEI voluntary extensions continued for most  
13 of the calendar year 1971?

14 A That is correct.

15 Q But then, as of the middle of 19 -- I'm sorry -- as of  
16 the middle of December, 1971, CEI refused to grant  
17 any further voluntary extensions of that termination  
18 date, is that correct?

19 A That is correct; because we had not been able to work  
20 out a suitable arrangement for either time payments of  
21 the past-due indebtedness, and the City continued to  
22 be delinquent through 1971 in the payment for the  
23 services rendered.

24 Q Mr. Hauser, you attended that meeting on July 8, 1971  
25 where representatives of CEI and Muny Light discussed

Hauser - cross

these matters, were you not?

A Yes, I was.

Q Now, coming back to mid-December, 1971, after CEI refused to grant any further voluntary extensions of the termination, then the FPC ordered that the termination of the load transfer service would be extended for a period of five months, is that correct?

A That is correct.

Q Which meant that that voluntary load transfer service, as you had been supplying it to Muny Light since February of 1970, terminated in mid-May, 1972, is that correct?

A That is correct.

Q Then from that point forward, Mr. Hauser, you supplied emergency service to Muny Light over the load transfer points in accordance with the requirements specified by the FPC, is that correct?

A We provided service over the load transfer points in accordance with the Federal Power Commission order during 1972, 1973, 1974.

Q The specific kind of service that CEI was supplying from May, 1972 forward was the emergency or breakdown service, was it not?

A I would disagree with that statement, because in those

1 Hauser - cross

2 orders of the Federal Power Commission, while they  
3 ordered CEI to continue to provide load transfer  
4 service, they ordered the City to do several things:

5 1. To pay their bills; and

6 Secondly, to maintain and repair their equipment  
7 so that it would again be operable.

8 Q Well, Mr. Hauser, as an attorney who has had 30 years  
9 of experience in the CEI Legal Department, may I ask  
10 you this question:

11 Is it not a fact that the only kind of order that  
12 the FPC could put on your company with respect to  
13 providing service to Muny Light was emergency  
14 service, is that not correct?

15 A That is correct.

16 But as long as Muny Light didn't repair and  
17 maintain their equipment as ordered, there was an  
18 emergency.

19 Q Well, at least we can agree on both propositions.

20 Now, coming to what actually occurred, Mr. Hauser:

21 Am I not correct that from May of '72 forward  
22 until sometime in 1975, CEI did not sell power to  
23 Muny Light unless Muny Light had all of its  
24 available generating equipment on line, is that correct?

25 A That is correct.

1 Hauser - cross

2 Although during that period they didn't have all of  
3 their equipment on the line because it was  
4 unavailable.

5 Q Well, at least you attempted, did you not, to satisfy  
6 yourself that before CEI did sell power of any  
7 description to Muny Light during the 1972 to 1975  
8 period, that Muny Light did have all of its available  
9 generating equipment in operation?

10 A That is correct.

11 Q How did you go about trying to determine whether Muny  
12 Light actually was keeping all of its available  
13 equipment on line?

14 A I would rely on the information that our operating  
15 personnel received from the operating personnel of  
16 the Municipal Light System primarily.

17 There were reports given by the City to the  
18 Federal Power Commission in that period as to the  
19 condition of their facilities.

20 In addition, of course, you could -- observations  
21 could be made of the Muny Light Plant as to whether  
22 or not one or more units were operating by observing  
23 their stacks.

24 Q Well now, when you say "observing their stacks," isn't  
25 it a fact that you did, on more than one occasion,

Hauser - cross

receive information as to which Muny Light Plant's stacks there was smoke coming out of?

A Yes.

Q And this was on a fairly regular basis, wasn't it?

A No, I wouldn't say it was on a regular basis.

Q It was -- it happened more than once?

A It happened more than once.

Q And would these have been CEI employees that you asked to tell you whether smoke was coming out of the stacks at Muny Light's plant?

A Either I would ask them -- and I think this was true during the strike in 1973 -- other times, CEI employees would volunteer the information.

Q And if you didn't see smoking coming out of a particular stack, you would then assume that there was equipment that Muny Light should be putting on the line before you gave load transfer service, is that right?

A No. You could also say that there was equipment not on line that they should be repairing and maintaining.

Q When did you first commence this procedure of checking on what generating equipment Muny Light had in operation before you would supply the load transfer



Hauser - cross

service?

A It really began right prior to the strike of CEI union employees that commenced in May -- the end of May of 1973 and continued for 122 days into September.

Q That's the strike?

A That's the strike. And that is when a specific procedure was set up to coordinate activities involving Muny Light.

However, before and after the strike, as I mentioned before, the City, as required by either the staff or an administrative law judge or the Commission itself, would require the City to report on the status of their generating equipment.

I can recall a number of instances in which the Federal Power Commission sent an engineer on their staff out to interview and inspect the Municipal facilities as well as to interview and investigate with regard to CEI's activities.

Q Well, Mr. Hauser, my question was much more limited than that.

I asked you whether you commenced checking on the Commission of Muny Light's equipment before you would supply load transfer service, and can you recall

Hauser - cross

when you commenced making that kind of a check?

A As I thought I said, it really started right prior to the strike but, certainly, because of the continued and growing delinquency in the payment of their bills, we tried to ascertain the condition -- their condition even before that date and, certainly, with the orders of the Federal Power Commission in 1972 which directed them to repair and rehabilitate their equipment, we were definitely interested and would try to ascertain what information we could with regard to the condition of their facilities.

Q As a matter of fact, you were doing that back in 1971 also, weren't you?

A Yes; yes.

Q And you were doing that both before the December refusal -- December of '71 refusal by CEI to continue any further voluntary extensions of the termination and after that date?

A Well, in that term of reference, I suppose we started certainly early in '71, about the time that we filed the lawsuit to collect a million three or four hundred thousand that was delinquent at that time.

Q So you were actually doing this a substantial period before your strike in 1973?

Hauser - cross

A Yes; but not a -- as a matter of procedure --

Q Now, --

A -- or regular procedure.

Q -- Mr. Hauser, after May of 1972, if the Municipal Light Plant wanted to take a unit down, say, for a week for repair, and if it was projecting maybe the first of next month we'll take a unit out for a week to repair and rehabilitate it, was Muny Light able to come to CEI and make an arrangement to purchase maintenance power for that kind of a situation where they could plan ahead and say, "In the first of the month we'll take a unit out for a week's time"?

A Well, they didn't tell us too much about what they were planning to do. But, certainly, we provided power for periods of weeks, months, in which they could have taken a unit down or -- and repaired and maintained it -- or repaired and maintained a unit that was already down.

Q But in the illustration that I put in my question, Mr. Hauser, that would be a purchase of power for something other than emergency or breakdown, wouldn't it?

A Certainly the original concept of the load transfer service was to enable the Municipal System to take

1 Hauser - cross

2 down some of their older units and install  
3 precipitators, and there was no reason after May of  
4 1972 that if Muny so desired, they couldn't have done  
5 that type of work utilizing the load transfer.

6 Q Maybe I'm not asking the question clearly, but I don't  
7 believe that I have had an answer from you, sir.

8 On the illustration that I posed to you of  
9 Muny Light wanting to plan ahead to take a unit out  
10 of service for maintenance purposes, and they said  
11 to CEI, "On the first of the month we'd like to have  
12 so much power to permit us to maintain a unit",  
13 CEI had no obligation to provide power under those  
14 circumstances, is this not correct?

15 MR. LANSDALE: I object, if your

16 Honor please.

17 THE COURT: Approach the bench.

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

21 MR. LANSDALE: There is no evidence  
22 in this case that in the dates suggested which,  
23 as I recall, was up until 1972, that there was any  
24 record of Muny asking for that other than for the  
25 precipitators to which this witness already

Hauser - cross

testified.

Secondly, the letter contract of January 20, 1970 contains provision in it for maintenance, and counsel knows it, and I object to suggesting to this witness a contrary fact.

MR. NORRIS: Well, there is evidence, if the Court please, that there were requests for power --

MR. LANSDALE: That there were what?

MR. NORRIS: That there were requests for power -- and this is after May, 1972, Jack, I don't know whether you understood my time frame.

THE COURT: I don't think that's your question.

Read the question back.

Your question says: Did they have any obligation to.

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

"Q Maybe I'm not asking the question clearly, but I don't believe that I have had an answer from you, sir.

1 Hauser - cross

2 "On the illustration that I posed to you of  
3 Muny Light wanting to plan ahead to take a unit  
4 out of service for maintenance purposes, and  
5 they said to CEI, 'On the first of the month we'd  
6 like to have so much power to permit us to maintain  
7 a unit', CEI had no obligation to provide power  
8 under those circumstances, is this not correct?"

9 THE COURT: That question is  
10 different from your previous question.

11 MR. LANSDALE: It's undated, but I  
12 understood you were talking about the period up  
13 to May, 1972.

14 The question is undated.

15 Secondly, if it is in the period prior to  
16 the issuance of the Federal Power Commission's  
17 order directing the interconnection and replacing  
18 FPC No. 7, then it is clear that there was a  
19 contractual arrangement with respect to maintenance,  
20 and I object to this witness being suggested otherwise.

21 THE COURT: Well, certainly the  
22 question -- the inferences and innuendos in the  
23 last question, namely, that he did not answer the  
24 previous question are not well taken, and I will  
25 sustain it as to form, certainly not as to

1 Hauser - cross

2 substance.

3 You are free to pursue the subject matter.

4 {End of bench conference.}

5 - - - - -

6 THE COURT:

The objection is

7 sustained as to the form of the question not as

8 to the substance of the question, and you may

9 pursue this line of inquiry.

10 BY MR. NORRIS:

11 Q In this industry, Mr. Hauser, am I not correct that  
12 you define maintenance power as power that a system  
13 will purchase on a planned or scheduled basis so that  
14 planned maintenance can be carried out on a system?

15 A That would be one definition.

16 Q Is that a definition that you are willing to accept  
17 for the purposes of this trial?

18 A No.

19 Q What would be your definition of maintenance power?

20 A Again, as I testified before, the Federal Power  
21 Commission on a number of occasions ordered CEI to  
22 continue to provide load transfer service to the  
23 City.

24 In the same order, they ordered the City to  
25 repair and rehabilitate and maintain their equipment.

1 Hauser - cross

2 And, at least as to several of those orders,  
3 specifically in January of 1973 and April of 1974,  
4 both CEI and the City agreed to those orders.

5 So you have both the Federal Power Commission  
6 requiring the service to be provided while Muny  
7 repairs and rehabilitates its equipment; you also  
8 have both parties agreeing to those orders.

9 So there was no reason why Muny couldn't  
10 repair and rehabilitate its equipment; and I submit  
11 that I felt that CEI was obligated to continue to  
12 provide load transfer service while they were doing  
13 the repairs and rehabilitation.

14 MR. NORRIS: May I have the  
15 question read, your Honor?

16 THE COURT: Read the question  
17 back.

18 What's your definition of maintenance power?  
19 {The last question was read by the reporter  
20 as follows:

21 "Q What would be your definition of  
22 maintenance power?"}

23 A You gave one that I agreed was acceptable in the  
24 industry.

25 I would say, also, that the power that was



Hauser - cross

provided pursuant to the order of the Federal Power Commission was also -- and agreed to by the parties -- was also maintenance power, if you will.

Q Mr. Hauser, is it a fact that a generator that might need maintenance of a certain character could nevertheless be operated and produce energy?

A I believe that's so.

Q And is it not also a fact that in order to satisfy the condition that before Muny Light could get service over the load transfer service, it had to have all of its available generating equipment on the line, is it not a fact that a small piece of maintenance or a medium size of maintenance on that generator could not be carried out if the unit had to be on line to produce electricity?

A I don't know.

Q You would agree that all generating equipment needs routine maintenance?

A Yes.

Q You also agree that for this kind of routine maintenance that you have agreed that my definition was appropriate of maintenance power, would you agree that for that kind of maintenance power Muny Light had to look to some place other than the load transfer

Hauser - cross

service that CEI was providing?

A No.

Q Mr. Hauser, would you think that maintenance power is the same thing as power to be provided for emergency or breakdown service, or are those different things?

A They could be different.

Q Who was it in your organization that would generally receive requests from Muny Light for the load transfer service?

A Our operating personnel.

Q And when Muny Light made a request for load transfer service to your operating personnel, that -- those operating personnel would check with you whether or not CEI should approve or disapprove Muny Light's request, is that correct?

A Beginning in 1973, that is correct.

Q And not before?

A They might have -- they might have called me before, but there was no established procedure to contact me before May of '73.

Q Well, whether there was an established procedure or not, is it not a fact that the operating personnel did contact you prior to 1973 on these kinds of

Hauser - cross

questions?

A On occasion, yes.

Q Yes.

And is it not a fact that this occurred as early as the year 1971 on occasion?

A Even earlier.

Q Even earlier.

Now then, what information would you expect -- strike that.

When you say "operating personnel," would these be the load dispatchers that you're talking about?

A Yes.

Q And Mr. Mike Titas is one in particular?

A Yes.

Q All right.

Now, what information would you expect your load dispatcher to supply to you before you could make a decision as to whether or not to approve or disapprove the load transfer request?

A Basically the status of the Municipal System and the then present status of CEI's system.

Q And also whether or not all of Muny's equipment was operating?

A That could be included, yes.

Hauser - cross

Q And when you were informed what these conditions were, whether or not Muny equipment was operating, and what the conditions were on your system, am I correct that you would then make your decision as to whether to grant or not grant this request for service based upon whether you thought it would impose an unreasonable risk on the reliability of CEI's service to its customers?

A I would also consult with engineering people within the company; but if the system reliability of CEI, certainly, and service to its own retail customers would be adversely affected, this would be a very determinative factor in appraising the situation as to whether the company could provide service or not.

Q You're not an engineer, are you?

A No, I'm not.

Q And you have never worked in either the engineering or the operating elements of CEI?

A No, I have not.

Q And whether or not any particular request for load transfer service at any particular time would impose an unreasonable risk to the reliability of CEI's service to its customers, that's really an engineering or an operating question, isn't it?

1 Hauser - cross

2 A I would agree with that.

3 Q Pardon me?

4 A I would agree with that.

5 Q And for you to answer this service reliability  
6 question, you would have to rely on what somebody  
7 else told you about the service reliability, would  
8 you not?

9 A That is correct. Both the operating and engineering  
10 personnel of CEI.

11 Q Did the operating and engineering personnel consult  
12 with you before CEI power was dispatched to Union  
13 Carbide Corporation?

14 A No.

15 Q Did the operating and engineering personnel consult  
16 with you before CEI power was delivered to either  
17 Ohio Edison or Ohio Power or Penelec or over the  
18 interconnection that CEI had with these neighboring  
19 electric power companies?

20 MR. LANSDALE: I object.

21 THE COURT: Approach the bench.

22 - - - - -

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

25 MR. LANSDALE: I submit that this

1 Hauser - cross

2 is an irrelevancy.

3 This is merely argument. Supposing they  
4 didn't consult him about 100 other things either?

5 MR. NORRIS: It goes to intent,  
6 your Honor, because he is making his decision  
7 based upon elements of service reliability that  
8 he didn't know anything about.

9 It permits an inference, namely, that there  
10 was something else operating here, namely, an  
11 attempt by the Legal Department to disadvantage  
12 Mun Light, and it wasn't truly simply a matter  
13 of service reliability, and that is an inference  
14 that, I think, can be drawn from these facts.

15 MR. LANSDALE: Not until it can  
16 be shown that the circumstances respecting the  
17 relationship is the same with these other  
18 companies, that they weren't paying their bills  
19 and they were under specific orders of the  
20 Federal Power Commission --

21 THE COURT: You have to lay a  
22 foundation for your question.

23 I mean, the question, in its present form,  
24 it's highly improper.

25 Sustain the objection.

1 Hauser - cross

2 {End of bench conference.}

3 - - - - -

4 THE COURT:

Sustain the objection.

5 If you lay a foundation for showing the  
6 circumstances that existed, you may proceed if  
7 you can do that.

8 BY MR. NORRIS:

9 Q How long would it take you, Mr. Hauser, to decide  
10 whether or not Muny Light was going to receive load  
11 transfer service?

12 A It could be a matter of a few minutes if all of the  
13 information was available. Sometimes it would take  
14 longer because all of the information was not available.

15 As I say, on occasion, I would have to confer  
16 with engineering personnel in addition to operating  
17 but, overall, the time wasn't too long --

18 Q In --

19 A -- in most cases.

20 Q In most cases not over a half a hour?

21 A That would be a fair statement.

22 Q But, on occasion, as much as two hours?

23 A Maybe.

24 Q And there was at least one occasion when it was six  
25 hours, right?

Hauser - cross

A That was not load transfer service.

Q Well, let's talk about that.

In late 1972 and early 1973 after the 69 KV temporary tie was built alongside the Shoreway, CEI would provide service to Muny Light over that 69 KV temporary tie, but only if all of Muny Light's five load transfer points were receiving service and, also, if all of Muny Light's available generating equipment was on line, is that a correct statement?

A No.

First of all, the temporary 69 KV tie or interconnection was not completed until the summer of 1974.

The line that was to be utilized for the 69 KV interconnection or tie had been completed, and in December of 1972 and early in '73, on two occasions the City did request that we provide service over the 69 KV line, if I could use that term to distinguish it between a tie or an interconnection -- and we did provide service on those two occasions.

In December of 1972 there was some six hours that expired between the time that the request was made and the time that CEI agreed to provide service over the 69 KV line.



1 Hauser - cross

2 Q But you did require that the five load transfer  
3 points would be in service before service would be  
4 supplied over the 69 KV line, is that correct?

5 A That's absolutely true, again, primarily because of  
6 the reliability to the CEI system; that was 69 KV line  
7 and later the interconnection utilized one of five  
8 cables supplying the Lake Shore load area, in other  
9 words, it took that out of service to CEI customers  
10 and devoted it to Muny and its customers for that  
11 period of time, so that reliability in that case was  
12 a very real concern.

13 Q Am I correct that Mr. Karl Rudolph had to approve the  
14 load transfer transactions between CEI and Muny Light  
15 over the 69 KV line?

16 A He had to approve the transactions over the 69 KV line,  
17 I'm not sure that that was a load transfer service or  
18 not.

19 Q Whatever it was, he had to approve whether it was  
20 operated like a load transfer service, wasn't it?

21 A I believe that's correct.

22 Q Like a sixth load transfer point?

23 A I believe that's correct.

24 Q And service was first supplied over this 69 KV line in  
25 December, '72, correct?

Hauser - cross

A That is correct.

MR. NORRIS: Mrs. Richards, would  
you hand Mr. Hauser PTX-1433?

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

BY MR. NORRIS:

Q Can you identify PTX-1433?

A Yes, I can.

Q What is it, please?

A It is a summary of monthly reports made to the Federal  
Power Commission pursuant to orders of that Commission.

These reports were made by me; the summary was  
prepared by myself and my secretary from those reports.

Q What kind of information did these reports contain?

A They would provide the information that's shown on  
the exhibit concerning the service provided, when it  
was energized, when it was disconnected, some of the  
circumstances pertaining to the various occasions.

The report also contained the summary of the  
monthly billings to the Municipal System and, in  
fact, had attached to them copies of the monthly  
billings.

Q And these summaries also included information as to  
whether CEI had approved or disapproved their request

Hauser - cross

for service?

A That is correct.

Q And what time period does 1433 cover, Mr. Hauser?

A It covers really July 17th of 1972, but the detail starts with December of 1972.

Q Now, in December of 1972, CEI was providing an additional 8 to 18 megawatts over the 69 KV line to Muny Light, is that correct?

A That is correct.

Q And it is also a fact, is it not, that at that time, all five load transfer points were in operation?

A Yes.

Q And it is also a fact that on or about December 16th, 1972, Muny Light was faced with another emergency and Muny Light asked for service over the 69 KV line?

A December 16, 1972.

Q And you provided the service?

A Yes.

Q And it was Mr. Rudolph, the President, that made the decision as to whether or not CEI would provide Muny Light the service at that time?

A That is correct.

Q Over the 69 KV line?

A That is correct.

Hauser - cross

Q And even though Mr. Rudolph was making the decision, you were involved in that decision-making process, correct?

A Yes, I was.

Q How long a delay took place at this time, Mr. Hauser, between the time Muny Light's request for service and the time of the actual commencement of that service?

THE COURT: This is when,

December 16 --

MR. NORRIS: December 16, 1972.

A Six or seven, eight hours is a fair --

Q And one of the reasons it took that long for Muny Light's request to be acted upon was that you made a recommendation that CEI should not provide the service at the time it was requested; is that right?

A That is correct.

Q And am I correct that your recommendation against providing service was based upon what you referred to as "Legal Reasons"?

A That is correct.

Q And at that time, Mr. Hauser, is it not a fact that CEI was seeking to have a contract approved in City Council that would permit CEI to raise the rates it was charging to the City for street light service?

Hauser - cross

A That is right.

Q And that particular contract, you were aware, needed the approval of Mr. Kudukis, the Director of Public Utilities?

A Yes, I was aware of that.

Q And you knew that Muny Light was in an emergency situation when they made this request?

A That's what they told us.

Q And CEI used this situation, did it not, to pressure the City to approve a new CEI contract for street lights that had nothing at all to do with the providing of service over the 69 KV line?

A That certainly is true to a large extent, although with regard to the street lights, we were concerned about paying for past and future service just as we were with regard to the load transfer service.

Q And during this six- to eight-hour delay, CEI told the City that Muny Light would not receive this emergency service over the 69 KV line until the City took steps to approve and execute this new contract that CEI was trying to get approved, is that a fair statement?

A Not exactly.

The City was to commit itself to take the necessary

1 Hauser - cross

2 steps to put into effect a -- the street light contract  
3 as proposed.

4 It actually wasn't executed until about a year  
5 later, in November of 1973.

6 Q You recall testifying in this trial last September?

7 A Yes.

8 MR. NORRIS: Mr. Lansdale, I  
9 address your attention to transcript 2605, lines  
10 6 to 12.

11 {After an interval.}

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

14 THE COURT: Yes.

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

18 MR. NORRIS: Your Honor, I'm  
19 trying to follow the ruling that you made about --

20 THE COURT: I understand.

21 MR. NORRIS: -- impeaching  
22 testimony.

23 MR. LANSDALE: I appreciate it, and  
24 I submit that the testimony is not at all  
25 impeachable.

1 Hauser - cross

2 {Mr. Lansdale hands his copy of the  
3 transcript to the Court, and the Court reads  
4 silently.}

5 THE COURT: Here's where we start, --

6 MR. NORRIS: Line 6, your Honor.

7 THE COURT: It's not line 6, it  
8 goes back to 2604 and the apparent question that  
9 is the point of departure is:

10 "Q And CEI used this situation, did it  
11 not, to pressure the City to approve a contract  
12 for City lights, that had nothing to do at all  
13 with the load transfer service; is that a fair  
14 statement?

15 "A That is a fair statement."

16 That's a consistent answer.

17 MR. NORRIS: That's correct, it is.

18 THE COURT: "Q And it is a fact,  
19 is it not, Mr. Hauser, that CEI told the City that  
20 Muny Light would not receive the emergency service  
21 it had requested over the 69 KV line until the  
22 City took steps to approve and execute the new  
23 street lighting contract between CEI and the City,  
24 is that correct?

25 "A That is correct."

1 Hauser - cross

2 MR. NORRIS: And that is the  
3 question, your Honor, that was answered in a much  
4 different way and it called for the impeaching  
5 testimony.

6 THE COURT: Read the answer back.

7 {The answer was read by the reporter as  
8 follows:

9 "A Not exactly.

10 "The City was to commit itself to take the  
11 necessary steps to put into effect a -- the  
12 street light contract as proposed.

13 "It actually wasn't executed until about a  
14 year later, in November of 1973."

15 MR. LANSDALE: You just got  
16 additional information. The thing is perfectly  
17 consistent.

18 {The Court reading silently.}

19 THE COURT: The answer is not  
20 completely responsive to the question and it's not  
21 inconsistent with his previous testimony, but I'll  
22 direct him to answer the question, and it's not an  
23 impeachment question.

24 MR. NORRIS: Your Honor, if I may  
25 be heard on this?



Hauser - cross

THE COURT: First of all, let me say one thing:

We are having difficulty here.

The test of credibility is not whether or not a witness answers the question in the exact manner that he answered it previously. The test is whether the substantive answer departs from the previous answer.

And you, Mr. Norris, are -- you are saying that unless he answers the same question that you read before in the exact same manner that he answered it before, his credibility is in issue.

MR. NORRIS: Your Honor, I think that in this particular instance that we're talking about, to answer the question in three words, "That is correct" on one occasion; and then on this occasion, your Honor, to say, "Not exactly," and give me a speech that goes beyond the question --

THE COURT: No, it isn't.

MR. NORRIS: -- is a credibility issue that the jury should have an opportunity to reflect upon.

1 Hauser - cross

2 THE COURT: Mr. Norris, you have  
3 to understand, this is a retrial. Both sides have  
4 seen the other side's hand, and both sides, I  
5 assume, are attempting to correct any errors in the  
6 answers, and to elaborate on the answers that they  
7 made previously.

8 So unless there is an inconsistency in the  
9 answer, I am not going to permit that type of  
10 impeachment.

11 I will tell him to answer the question directly.  
12 Let's proceed; I have ruled.

13 MR. NORRIS: One other question,  
14 your Honor: In telling him, you will have the  
15 question read back, is that correct?

16 THE COURT: Yes.

17 {End of bench conference.}

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Hauser - cross

THE COURT: Read the question

back, and then read the answer back. Read the question and the answer.

{The last question and answer were read by the reporter as follows:

"Q And during the six- to eight-hour delay, CEI told the City that Muny Light would not serve this emergency service over the 69 KV line until the City took steps to approve and execute this new contract that CEI was trying to get approved; is that a fair statement?

"A Not exactly. The City can't say to commit itself to take the necessary steps to put into effect the street lighting contract as proposed.

"It actually wasn't executed until about a year later, in November of 1973."

THE COURT: Now, again read the question.

{Question read.}

THE COURT: You may answer that.

A The City was to make a commitment that steps would be taken to approve and execute the contract.

Neither CEI nor the City expected them to be able

1 Hauser - cross

2 to accomplish that on December 16.

3 THE COURT: Read the question  
4 again.

5 {Question reread.}

6 THE COURT: You can answer that  
7 question.

8 A No. If it is intended to imply that the City had to  
9 do everything to implement the equipment that we were  
10 seeking before the service was provided -- in fact, we  
11 did provide the service.

12 Q Mr. Hauser, I asked you whether or not --

13 THE COURT: Read the transcript  
14 of the testimony over to him.

15 Q Isn't it a fact that you were asked this question and  
16 gave this answer:

17 "Q And it is a fact, is it not, Mr. Hauser,  
18 that CEI told the City that Muny Light would not  
19 refuse the emergency service that it had requested  
20 over the 69 KV line until the City took steps to  
21 approve and execute the new street lighting  
22 contract between CEI and the City; is that correct?

23 "A That is correct."

24 Do you recall that question and answer?

25 A Yes.

1 Hauser - cross

2 Q Is it a fair statement, Mr. Hauser, that Mr.  
3 Kudukis resisted CEI's demands in this regard?

4 A Yes.

5 Q And there were a number of discussions with Mr.  
6 Kudukis during that six- to eight-hour period of  
7 delay?

8 A That is correct.

9 Q And finally, Mr. Kudukis gave in and agreed to  
10 withdraw his opposition to CEI's rate increase for  
11 the street light service; is that correct?

12 A Yes.

13 Q And you recommended to Mr. Rudolph that he permit  
14 the emergency service to flow to the Muny Light over  
15 the 69 KV line; is that correct?

16 A No.

17 Q Mr. Rudolph did make that decision, did he not?

18 A Yes.

19 Q And did you still recommend against it?

20 A Yes.

21 Q But power did then flow on December 16, 1972, across  
22 the 69 KV line after the six- to eight-hour delay?

23 A That is correct.

24 Q Now, was this particular decision process based in  
25 any way upon the reliability of service to CEI

Hauser - cross

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customers?

A In part.

Q Is that in minor part?

A Well, one of the five cables -- I wouldn't say it was minor.

Q Thank you.

A -- but it was determined that during the period of time that one of those five cables could be utilized to provide service without affecting reliability on the CEI system.

Q You did not mention anything to Mr. Kudukis about the five cables?

A I didn't talk to Mr. Kudukis on that day.

Q Then what do the five cables have to do with the demands CEI was making at that time?

A The providing of the service would utilize one of the 69 KV cables, and it was and did enter into the discussions during that day as to whether or not service would be provided.

I would agree with you that that one cable had nothing to do with the discussions involving the street lighting contracts.

Q Isn't it a fact that Mr. Kudukis then subsequently followed through on the commitment he had made and

Hauser - cross

withdrew his opposition to the CEI contract that was pending in City Council for an increase in the rate that CEI charged the City for street lights?

A Yes.

Later in 1973, and as I said before, it was executed in November of 1973.

Q But Mr. Kudukis did not go back on his commitment?

A No, he did not.

Q Addressing your attention to your summary, PTX-1433, and please turn to page 3.

Muny Light asked for, "Load transfer service on May 25 and May 29," and in both cases the load transfer service was denied; is that correct?

THE COURT: What year?

MR. NORRIS: In 1973. That is

the only year mentioned on page 3.

A That is correct, because of the company's situation.

Q You were on strike; right?

A At 12:01 A.M. on March 24 the Utility Workers Union of America, Local 270, went on strike, and that was approximately over half of CEI employees at the time.

And during the strike period, 2,000 rather than 4,700 employees had to maintain service.

Q If a permanent interconnection had been in place between

Hauser - cross

CEI and Muny Light on May 25, 1973, and May 29, 1973, the CEI strike would have nothing to do with whether Muny Light got that service; isn't that a fact?

A No.

Q What would a strike have to do with the instantaneous flow of power across the synchronous interconnection, assuming that the CEI system was operating at all?

A You again would have 2,000 employees doing the work of 4,700.

You had shipments of coal and other supplies to the power plants interfered with, while we were purchasing all of the power from outside sources that we could.

The operation of the system was very difficult using supervisors that are not used to doing manual labor, and taking coal out of coal piles rather than dumping railroad cars, and it is a very difficult job to keep the system operating, so that a severe strain was put on the employees and the system of the company during that period, so it could very easily be that the strike would affect the ability to provide power to Muny, even with a permanent parallel 38 KV interconnection.

Q Do you have any knowledge of whether any company with



Hauser - cross

which CEI was interconnected ever went on strike?

A Yes.

Q And did the instantaneous flow back and forth across that interconnection stop because the other company went on strike?

A In those situations, just as I said, we were buying power from whoever we could during that period. I imagine the company on strike with which we were interconnected was taking everything that we could provide them, so there would be a flow of power from us to the striking company.

Q You have been in the courtroom for much of the testimony in this trial; is that correct?

A That is correct.

Q And have you heard engineering witnesses testify that once a synchronous interconnection is established between the power companies, that the loads are instantaneous back and forth across that interconnection?

A Yes; I heard that.

Q And I appreciate the fact that when supervisors have to operate a company because the rank and file are on strike, that there are burdens, but that wouldn't interrupt the service across the synchronous

Hauser - cross

interconnection?

A It probably could.

Q Looking at page 3, the past paragraph; isn't it a fact that on July 2, 1973, Muny Light requested additional load transfer service for its noon peak, and also 12 megawatts for its evening peak; is that accurate?

A That is correct.

Q And CEI's response was that it would not pick up the noon peak, but that it may be able to do wa little with respect to the 12-megawatt evening peak?

A And it later shows that the additional load transfers were completed between 5:00 and 6:00 P.M.

Q And over the next several days service was both on and off?

A That is correct. We provided when we could, and when we couldn't, we couldn't.

Q Turn to the next page.

On page 4, is it accurate that Muny Light made another request for load transfer service on July 11, 1973?

A That is correct.

On July 12 they made another request, and we provided service, and again that was on and off.

Hauser - cross

Q My question is, first, with respect to July 11:

Now, is it a fact that the City advised that it had not received service that it had requested on July 11?

A That is correct. We provided it on July 12.

Q And then you provided it on July 12, and again on July 14 Muny Light made another request for load transfer service which was denied; is that right?

THE COURT: What date?

MR. NORRIS: July 14, 1973.

A That is correct, and they didn't request service until July 20th.

Q And then address yourself to the large middle paragraph on page 4, the morning of July 20, 1973, the City had a cable failure at the Artic Substation and requested load transfer service to replace that cable capacity; is that correct?

THE COURT: What date?

MR. NORRIS: July 20, 1973.

A Yes; and in addition to the strike, this exhibit shows that the company as well as the entire State of Ohio was under an air pollution alert which added a very real complicating factor to providing electric energy to our own customers.

1 Hauser - cross

2 Q Hurrying along because of the hour, would you turn to  
3 page 6.

4 Is it true that in November of 1973, Muny Light  
5 again asked for service over the 69 KV line, but it  
6 was denied?

7 THE COURT: What was the date?

8 MR. NORRIS: November 28, 1973.

9 A That is correct.

10 Q And as a matter of fact there were two requests, were  
11 there not? There was one made at 5:00 P.M., November  
12 28, 1973, and another request made the following  
13 morning on November 29, 1973, and both of those  
14 requests were denied; is that correct?

15 A That is correct.

16 As I recall, there was either a railroad strike or  
17 a coal strike during that period of time.

18 Q Of course your own strike was over with by that time?

19 A That is correct.

20 Either the railroad or the United Mine Workers  
21 were on strike, as I recall.

22 Q On each of these occasions where a request for service  
23 was denied, isn't it a fact, Mr. Hauser, that had a  
24 permanent interconnection been in place between the  
25 two systems on the occasion of each of those requests,

Hauser - cross

Muny Light's emergency needs would have been automatically satisfied?

A As I said before, that interconnection -- the strike during that period would have been a factor in providing service, even over a permanent parallel 138 KV interconnection, and as you pointed out, that from an engineering standpoint, unless steps were taken to curtail the interconnection from an engineering standpoint, as you pointed out, the flow would take place.

MR. NORRIS: I am all through.

May I please approach the bench?

THE COURT: Yes.

- - - - -

{The following proceedings were had at the bench:}

MR. NORRIS: I request the right to read the impeaching testimony.

MR. LANSDALE: Why don't you tell me before I come up here.

MR. NORRIS: It is 2613, and he gave me a clear answer before, and I get a speech this time.

THE COURT: The answer is not

1 Hauser - cross

2 inconsistent. Read the answer back. He said  
3 from an engineering standpoint it would be  
4 possible that there would be no -- read it back.

5 {Record read.}

6 MR. NORRIS: My objection is that  
7 the witness gave an unqualified answer, and now  
8 he is qualifying it.

9 THE COURT: That is not the  
10 purpose of attacking credibility.

11 Again, we are right back where we were.

12 Just because the witness doesn't answer the  
13 question in the same manner, if his answer is  
14 substantive and substantially the same as before,  
15 he is not being inconsistent.

16 He can answer a question five different  
17 ways, and they will all be different, and in each  
18 of them it may not be inconsistent with the answer  
19 that he gave previously, and my credibility is not  
20 impeached because of that.

21 MR. NORRIS: My point, your Honor,  
22 is that --

23 THE COURT: The only point is that  
24 he read his questions and answers from the previous  
25 trial, and he is qualifying his answers, which is

1 Hauser - cross

2 not being inconsistent.

3 MR. NORRIS: Well, it is when he  
4 gives me an unqualified answer one time that goes  
5 beyond the engineering, and he went beyond the  
6 engineering before, and I think the jury should  
7 have an opportunity to know that he is going  
8 unqualified on one occasion and qualified on  
9 another.

10 MR. LANSDALE: May I make another  
11 objection?

12 THE COURT: Are you making an  
13 objection?

14 MR. LANSDALE: No, sir. I want to  
15 make a comment in response to this:

16 There is an additional reason why this is  
17 improper. This witness has not been qualified as  
18 an engineer, and the circumstances -- and we  
19 agreed that in the circumstances is mere  
20 argument, and this witness is not qualified.

21 THE COURT: Mr. Lansdale, I  
22 can't help if it you haven't objected. I was  
23 wondering why you didn't object to the  
24 engineering questions that are beyond this  
25 fellow's expertise, and he testified he is not

1 Hauser - cross

2 an engineer.

3 If you don't make an objection, I can't do  
4 anything about it. The answers are consistent.

5 Let's proceed.

6 MR. NORRIS: I was just -- I just  
7 have another couple questions, your Honor.

8 THE COURT: A couple of questions.  
9 You have assured me of that before, and a couple  
10 of questions sometimes lasts longer than a couple  
11 of questions.

12 MR. NORRIS: Well, this will be  
13 the exception.

14 {End of bench conference.}

15 - - - - -

16 BY MR. NORRIS:

17 Q Mr. Hauser, of course it depends on you whether I have  
18 one more question.

19 A I am cooperative.

20 Q During the period of load transfer service from 1972  
21 to 1974, am I correct that there wasn't anything to  
22 prevent CEI from entering into main power transactions  
23 with Munny Light over and above the load transfer  
24 service if CEI chose to do so; is that a fair statement?

25 A I think you have a wrong date. You said between 1972



1 Hauser - cross

2 and 1974, and I think it probably should be 1972 to  
3 May of 1975.

4 Q All right.

5 Let's accept that, and is that a fair statement  
6 with your amendment?

7 A Yes.

8 MR. NORRIS: Your Honor, I am  
9 through with this line of questions. How many  
10 questions was that.

11 THE COURT: That was one. I will  
12 give you a merit point for that.

13 THE WITNESS: And I cooperated.

14 THE COURT: And I will give you  
15 a merit point, too. He answered the question.

16 Ladies and gentlemen, we will adjourn for  
17 the day, and please keep in mind the Court's  
18 admonition that you are not to discuss this  
19 case, either among yourselves or with anyone else.

20 Keep an open mind until you have heard all  
21 of the evidence and the Court's instructions  
22 on the law and the application of the law as to  
23 the facts as you ultimately find them to be,  
24 and until such time as the matter is submitted to  
25 you for your deliberations and judgment.

1 Ms. Dolyk, I hope you are feeling better.  
2 Thank you for staying. Thank you and good night.

3 You are free to go after you review the  
4 exhibits.

5 You are excused and be sure to be here  
6 early in the morning.

7 {The jury was excused from the courtroom.}

8 - - - - -

9 THE COURT: The following  
10 exhibits are admitted and may go in to the jury.  
11 They are the previously-admitted Defendant's  
12 Exhibits 1286, 1287, 1288 and 1290.

13 And then Plaintiff's Exhibits 3244, 2313,  
14 2312, and Defendant's Exhibit 372.

15 Now, what about, gentlemen, Plaintiff's  
16 Exhibits 3248?

17 MR. MURPHY: No objection.

18 THE COURT: It may be admitted.

19 I think these may already be in evidence.  
20 I think they are.

21 Plaintiff's Exhibit 3178, 1968, and 3178 is  
22 the ordinance No. 1200-71, and 1968 is the  
23 notice of termination issued by CEI as to the  
24 load transfer points sometime in December of  
25 1973.

1 MR. MURPHY: They both have been  
2 admitted.

3 THE COURT: And then 3240, the  
4 overlay to Plaintiff's Exhibit 2064.

5 MR. MURPHY: No objection.

6 THE COURT: And 1433?

7 MR. MURPHY: No objection.

8 THE COURT: FPC summary, and  
9 that may go to the jury.

10 Thank you, ladies and gentlemen.

11 {Court adjourned for the day.}

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