
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

8-26-1981

Volume 23 (Part 2)

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

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Wein - cross

back, please.

It sounds like a statement.

{Question read by reporter.}

THE COURT: Please rephrase the question.

MR. LANSDALE: All right.

BY MR. LANSDALE:

Q Dr. Wein, is your opinion as to the destructive character of confining inducements to the specific area of competition, is that opinion that you have -- does that rest in whole or in part upon any of the legalities that you think are applicable to CEI as a regulated public utility?

{After an interval.}

A Well, it's a very difficult --

I think it rests mostly on the fact that there are two companies.

It rests also on the fact of my belief that one of them has substantial market power, substantial monopoly power.

And it rests on the nature of other acts, given the fact that I believe that one of them has substantial monopoly power.

So that whether it was regulated or not, it seems

Wein - cross

to me that I would view it in the situation given, the economics of this industry, and given the fact of CEI domination as I have explained it with respect to the facilities, with respect to transmission --

THE COURT: Read the question back to me, please.

Listen to the question, Doctor.

THE WITNESS: I am.

THE COURT: Read it back to me, please.

{The question was read by the reporter as follows:

"Q Now, I want to come back to the situation to find out from you how important the existence of regulation is.

"And I still wish to try to explore with you whether your opinion rests in whole or in part upon any of the legalities which you believe attach to the circumstances under which services are offered by an electric utility."

MS. COLEMAN: May we approach the bench, your Honor?

THE COURT: Yes.

Wein - cross

{The following proceedings were had at the bench:}

THE COURT: He just goes on and on and on, just completely disregards the question.

MS. COLEMAN: Your Honor, he is responding to the question --

THE COURT: No, he's not, Ms. Coleman.

MS. COLEMAN: -- in the best way that he can without adverting to the Federal antitrust law issues that we have here, so he's explaining the --

MR. LANSDALE: Without referring to what?

MS. COLEMAN: The antitrust laws. So he's explaining in terms of the market considerations with respect to this.

I think that to press him to either say yes or no on legalities when he's speaking in terms of things which had legal consequences is very difficult given the instructions that are on him to testify here.

MR. LANSDALE: I didn't confine him to just anything about the antitrust laws; I

Wein - cross

said --

MS. COLEMAN: I realize that; you said the "legalities," and I believe --

MR. LANSDALE: I said "regulated public utility."

MS. COLEMAN: I believe that his concern is that the things that he considers have legal consequences, so he doesn't want to say "No."

So he's explaining to you what those things are.

I think it's responsive, and that's the problem with that kind of a question.

MR. LANSDALE: I think it's a very proper question, your Honor.

THE COURT: Well, I'm going to tell you, frankly, Mr. Lansdale, it is not as easy a question to answer as it appears to be on its face.

And we are on this very borderline that you have been objecting to and getting into.

If you want to open the door, be my guest.

MR. LANSDALE: I do not want to open the door, and I do not intend -- I do not

Wein - cross

1
2 intend -- I do not intend to examine this witness
3 at all with respect to price regulation, but I do
4 think that I'm entitled to know whether he's
5 expressing an opinion as an economist or --

6 THE COURT: Why don't you ask --
7 if you would frame the question properly in the
8 first instance -- now, somewhere along the line
9 you departed from it when he started to answer.

10 If you go back -- I don't know if you took
11 it or whether the girl took it down, but the
12 question in its original form was:

13 Do you base your opinion on legalities of
14 the fact that it is a regulated industry or
15 upon economic principles?

16 He never did answer that question, but you
17 never pressed that question.

18 So why don't you go back and --

19 MR. LANSDALE: I'll ask it another
20 way.

21 {End of bench conference.}

22
23 THE COURT: Please rephrase your
24 question.
25

Wein - cross

BY MR. LANSDALE:

Q Let me ask the question a different way, Dr. Wein.

Still referring to your view as to the destructiveness of confining the inducements to the competitive situation, do you base your opinion that these offerings of these inducements to the competitive area alone, is this based upon economic principles or upon in whole or in part the legalities that you think apply to the Cleveland Electric Illuminating Company as an Ohio public utility subject to Ohio regulation?

A No. I think it's based on economics. I am not making any legal judgment.

Q And you would have the same view in any two-industry competitive situation?

A No, I wouldn't have the same view in any two-industry competitive situation.

Q Where there was no regulation?

A Where there was no regulation.

Q And does the fact of regulation provide the distinction between the two?

A Not from my drawing the opinion in this case.

Beg your pardon?

Not from my drawing the opinions which I have in

Wein - cross

1
2 this case.

3 Q Not from your drawing the opinions which you have in
4 this case.

5 Tell me, Dr. Wein, why an inducement to persuade
6 a customer to shift from Muny Light to CEI should
7 necessarily be offered to customers who are already
8 customers of CEI looked at as an economist as a
9 question of destructive or constructive competition?

A One, if you take the view which I hold that CEI has
the market power, dominant market power.

Two, if you take the view that there are
barriers, significantly great barriers to entry into
this market.

Three, if you take the view that I do that there
have been other actions and objectives which support
the hypothesis that the aim and intent was to
eliminate competition.

Given these facts, the Muny Displacement Program
in my view was aimed at the destruction of Muny
Light and not simply of the meeting of competition.

Q Dr. Wein, it is true, is it not, that in a two-industry
business one competitor may not acquire a customer
served by the other competitor without depriving
the other competitor of some revenue; is this not so?

Wein - cross

1
2 A Certainly it is so.

3 Q And it is your statement that it is destructive to
4 attempt to secure as many of those customers as you
5 are able to secure?

6 A If one of the competitors has dominating monopoly
7 power, if it uses this power for elimination and
8 intends to eliminate the competitor, if that is the
9 case, then the nature of the meeting of the
0 competition, when combined with the others, then it
1 would seem to me that that would be destructive.

2 Q Dr. Wein, do you know of any way that anybody can
3 intend to get as much business as possible from a
4 competitor without intending to eliminate pro tanto
5 that competition?

6 A The question as to whether you eliminate competition
7 doesn't depend upon capturing the customer. It
8 depends upon far more than that.

The question here is whether the two customers
have equal access to opportunities to compete.
One may capture one and another may capture another.

Q I see. So it's a fact that if one customer has
less access to resources than the other, then the
competitor who has the most resources, it is
destructive if he attempts to take customers by

Wein - cross

offering inducements only to the competitor; is that your statement?

A No, that isn't my statement exactly.

My statement exactly was that if one of the competitors has dominating market power and the other hasn't, if there are barriers to entry into this industry, if one has more so, if the one with dominating market power controls the access to these resources, then it is destructive.

Q Suppose one of them does not control access to these other resources but is dominating in all other respects. Does that change it any?

A Well, he either has dominating monopoly power or he doesn't. If he has monopoly power, it doesn't change it; if he doesn't have monopoly power, then it doesn't matter.

Q Okay, sir.

Now, Dr. Wein, I will offer you a hypothetical which, if you keep up with what happens in the antitrust world, you may recognize.

Will you assume for me --

THE COURT: Why don't we make these assumptions in the morning?

MR. LANSDALE:

All right, sir.

Wein - cross

1
2 THE COURT: It's 4:00 o'clock,
3 ladies and gentlemen. It's been a long day.
4 We will adjourn for the day and we will have the
5 exhibits of the day presented to you.

6 Please during the adjournment of Court
7 keep in mind that you are not to discuss the case
8 either among yourselves or with anyone else.
9 You are to keep an open mind until such time as
0 you have heard all of the evidence, the Court's
1 instructions on the law and until such time as
2 the matter is submitted to you for your judgment.

3 With that, you are free to retire to the
4 jury room. Mr. Schmitz will bring the exhibits
5 in for you, and after you view them, you are
6 free to go. And we will see you bright and early
7 in the morning. Thank you and good night.

{The jurors left the courtroom.}

{The following proceedings were had in the
absence of the jury.}

THE COURT: The following exhibits
have already been admitted: PTX-628, 2385.
Offered, PTX-2166, may go in. PTX-2162,
Defendant's 284, Defendant's 1002.

Wein - cross

The following Plaintiff's exhibits may be presented to the jury: 180, 181, 290, 354, 380, 517, 530, 578, 685, 749, 1012, 1243, 1537, 1538, 1549, 2124, 2140, 2247, 2375, 2457, 2483, 2662 and 3074.

MS. COLEMAN: Approach the bench, your Honor?

THE COURT: Yes.

{The following proceedings were had at the bench:

MS. COLEMAN: I just wanted to confirm my understanding that, since Mr. Lansdale has the burden of proof on natural monopoly, that we will have an opportunity to put on rebuttal testimony through whatever witnesses are appropriate, and the fact that he brings it up here does not require it to be addressed here.

THE COURT: Oh, absolutely.

MS. COLEMAN: I just wanted to have a clear understanding on that.

MR. LANSDALE: I had no doubt about this.

1 THE COURT: Absolutely. This,
2 theoretically, is directed to meet the doctor's
3 opinions in his direct testimony.

4 MR. LANSDALE: Yes.

5 THE COURT: Albeit the net
6 effect of it is to address the issue more
7 directly of natural monopoly since it is
8 appropriate cross-examination as it relates to
9 the economies of scale and the testimony related
0 thereto.

1 Now, certainly, you do not have to address
2 those issues here. You will be free to go into
3 those on rebuttal.

4 MR. LANSDALE: Yes. I have no
5 question about that.

6 MS. COLEMAN: I just wanted to
confirm that. Thank you.

7 THE COURT: And maybe over the
8 adjournment you can practice on asking one
9 question at a time and Dr. Wein can practice on
0 answering the question directly.

1 Off the record.

2 {Discussion was had off the record.}

3 {End of bench conference.}

4 - - - - -

1 {The foregoing proceedings were had in the
2 absence of the jury.}

3 - - - - -

4 {Court adjourned at 4:10 P.M.}

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1 THURSDAY, AUGUST 27, 1981; 9:25 O'CLOCK A.M.

2
3 LAW CLERK SCHMITZ: City of Cleveland,
4 Plaintiff, versus the Cleveland Electric
5 Illuminating Company, Defendant. This is Civil
6 Action No. C75-560.

7 THE COURT: Bring in the jury.

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

1 THE COURT: Please be seated,
2 ladies and gentlemen.

3 Good morning.

4 - - - - -

5 DR. HAROLD H. WEIN,
6 resumed the stand and testified further as
7 follows:

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

0 CROSS-EXAMINATION OF DR. HAROLD H. WEIN {Resumed}

Wein. - cross

BY MR. LANSDALE:

Q Good morning, Dr. Wein.

A Good morning.

Q Dr. Wein, the Cleveland Electric Illuminating Company, in common with most, if not all, investor-owned electric utilities, keeps its accounts in accordance with a uniform system of accounts prescribed by the Federal Power Commission, does it, not?

A Yes, that's true.

Q And are you familiar with that system of accounts and the methods of accounting necessary to comply with --

A Are you talking about the Public Utilities Commission of Ohio?

A No, sir.

Q I'm talking about the system of accounts prescribed by the Federal Power Commission used, as you have just testified, by The Illuminating Company and most other investor-owned utilities?

A Yes.

Q You are familiar with that system of accounts?

A Yes; generally, yes.

Q You testified as to one of the indicia, as I got it, of the -- what you regarded as the destructive nature

Wein - cross

1
2 A Well, are we talking about the Federal Power
3 Commission accounts or about accounting firms
4 putting in expenses for the Internal Revenue
5 Service?

6 What is it that we are talking about?

7 Q Dr. Wein, just at the opening of this testimony you
8 testified or agreed with my suggestion that the
9 Cleveland Electric Illuminating Company, in common
0 with most if not all investor-owned utilities,
1 utilizes a uniform system of accounts prescribed by
2 the Federal Power Commission.

3 You remember that, don't you?

4 A Yes. They utilize a uniform system of accounts
5 prescribed by the Federal Power Commission when they
6 are submitting that information to a Public
7 Utilities Commission.

8 Q They don't necessarily use a uniform system of
9 accounts for other purposes.

10 A I'm not sure what you are asking.

11 Q Are you suggesting that The Illuminating Company
12 keeps four or five sets of books, Dr. Wein?

13 A I don't know how many sets of books they keep.

14 Q Is it your statement that you do not know the
15 system of accounts used by The Illuminating Company

Wein - cross

1
2 for recording the financial results of its business?

3 A I think that when they record the financial results
4 of their business to the Federal Power Commission,
5 they use the Federal Power Commission's code of
6 accounts; I know that.

7 Q Do you really think that they use a different method
8 of accounts for reporting to its shareholders?

9 A Well --

10 Q Do you really think that, Dr. Wein?

11 A Well, yes. When they report to shareholders in their
12 annual corporate reports, the code of accounts are
13 not listed. It's quite a different statement
14 which is listed.

15 I'm not familiar with any reporting of
16 shareholders of the Federal Power Commission's code
17 of accounts which go to shareholders every year.
18 I've never seen that.

19 Q My question, Dr. Wein, is: Do you really believe
20 that The Illuminating Company uses a different
21 system of accounts to reflect the results of its
22 business when it reports those results to its
23 shareholders than it does when it reports those
24 results to the Federal Power Commission; do you
25 really believe that?

Wein - cross

1
2 A I'm not sure what they do when they report to their
3 shareholders, Mr. Lansdale.

4 MR. LANSDALE: May I have the
5 question read?

6 THE COURT: Read the question
7 please.

8 {Record read by the reporter.}

9 A I have no knowledge of what they report to their
10 shareholders.

Q Is it your statement that you have no belief in that
regard?

A Yes, I have no belief.

Q Fine. Now, Dr. Wein, do you have any belief as to
the accounting system which was being followed when
you referred to the fact at pages 15,148 and 149 of
the record to the fact that the expenses and costs
of the Muny Displacement Program were expensed as
a part of the annual expenses of The Illuminating
Company?

THE WITNESS: Read that question
again, please.

{Record read by the reporter.}

THE WITNESS: I don't understand
the question, your Honor.

Wein - cross

Now, Dr. Wein, you made a reference in one of your answers a moment ago to the fact that these expenses reflected the cost of certain tangible things.

What did you intend to convey by that suggestion?

A Well, I intended to convey that when CEI, for example, spends a quarter of a million dollars for SIFCO, and a great deal of that expenditure comes in long-life pieces of equipment which would ordinarily be put into a plant account -- if you owned it, it would go into a plant account because it is not used up in one year, it's not like coal or paper or labor.

What I intended to suggest is that --

Q Dr. Wein, you must mean something by referring as you have done now four or five times to the fact that a quarter of a million dollars was spent to buy things that are long-lived and contrasting that with The Illuminating Company putting the cost thereof in a one-year account.

Are you attempting to suggest that this was somehow deceptive accounting on the part of The Illuminating Company?

Wein - cross

A Precisely.

Q Precisely?

A Precisely, yes.

Q Now, Dr. Wein, you yourself suggested, did you not, that this property was property that did not belong to The Illuminating Company but they merely paid for it?

A That itself was deceptive.

Q Beg your pardon?

A That itself was deceptive.

Q Well, the jury will decide whether this was deceptive, Mr. Wein.

THE COURT: Please.

Q My question is this: This was not plant or property belonging to The Illuminating Company, was it?

A It was plant or property --

Q May I have the question answered, Doctor?

A Yes, I'm trying to answer the question.

THE COURT: Listen to the question, Doctor.

THE WITNESS: I did listen to the question. May I answer it?

THE COURT: Dr. Wein --

THE WITNESS: Yes?

Wein - cross

BY MR. LANSDALE:

Q If it was not property of The Illuminating Company, it would have been improper for The Illuminating Company to have put it in its capital accounts, would it not?

A If it was not property of The Illuminating Company, it would not have been right to put it in its capital accounts, yes.

Q That is correct.

And Dr. Wein, there are numerous instances provided by the uniform system of accounts for putting in annual expenses things which have a benefit extended far beyond the year in which the expense is recorded; is this not so?

A Well, that's true of everything, yes.

Q Beg pardon?

THE COURT:

Listen to the question.

A The answer is yes.

Q Why don't you say so?

A I did say so.

MS. COLEMAN:

May I approach the

bench, your Honor?

THE COURT:

Approach the bench.

Wein - cross

{The following proceedings were had at the bench:}

THE COURT: Read that question back, and listen to the question.

We are going to have a problem. If he's going to start arguing with me, he's going to have a problem.

{Question read by the reporter.}

THE COURT: Listen to the answer.

{Answer read by the reporter.}

THE COURT: That is not a response.

Let's proceed.

MS. COLEMAN: Your Honor, I object to Mr. Lansdale yelling at the witness.

THE COURT: Well, he's bringing it upon himself. From the very beginning of today's testimony he's off on another of his tangents again.

Let's go. Let's proceed.

{End of bench conference.}

- - - - -

BY MR. LANSDALE:

Wein - cross

Q Dr. Wein, how did Muny Light record on its books its \$600,000 expenditure for the purpose of the Associated Estates customer acquisition?

A The expenditure was \$406,000, if I recall, not \$600,000. But in any case, it was simply an expense.

Q Thank you.

A May I change that?

Q Beg pardon?

A I'm not sure about that.

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

THE COURT: Well, he wants to change his answer.

A I'm not sure about that. I think all items of tangible nature, all equipment --

THE COURT: Dr. Wein, you either know or you don't know.

A Well, I don't know. I think some elements were expensed and others I don't know.

Q You think it was expensed if the property was left to be the property of the Associated Estates?

A I don't know.

Q You don't know?

Wein - cross

A I don't know.

Q But it would be deceptive if this happened, wouldn't it?

A No, I don't think so.

Q You don't think so?

A No.

Q All right. Now, Dr. Wein, similarly, towards the end of your direct testimony you were reflecting upon the destructive character, as you characterized it, of the plans of The Illuminating Company for attempting to entice customers away from Muny Light, and you referred to the fact that revenues of certain of these customers taken together amounted to somewhere around a million dollars and you alluded to the fact that, and you were referring, as appears at 15,169, to the period '71 to '75 and you made the observation that this was a significant amount in a system which has revenues at the time of perhaps \$10 million.

You were not intending to suggest by that that Muny's revenues at this time were as low as \$10 million, were you?

A I have to read the transcript to see that.

Q I will read it to you.

Wein - cross

THE WITNESS: May I have it while
he is reading it?

THE COURT: Dr. Wein, you just
listen to it. Your counsel will follow it to
see that it is accurate.

Please state the page, Mr. Lansdale.
What page are you on?

MR. LANSDALE: 15,169. I'm
beginning at line 18.

BY MR. LANSDALE:

Q "Q That insofar as you can reduce the revenue
from which the cash flow of Muny Light depends,
insofar as you can reduce the revenue of this
company of Muny Light, particularly in the period
after the installation of the big generator and
during the period '71 to '75, you are creating
severe financial problems for them.

"If Muny Light loses a million dollars in
revenue as, for example, the 60 largest
customers, one-tenth of 1 percent of Muny Light's
customers, if you could capture those, Muny Light
has all of its facilities but for which it has
ongoing expenses. But its revenue has been
reduced by a million dollars, and that is a

Wein - cross

significant amount in a system which has revenues at the time of perhaps \$10 million."

My question is: Were you intending to suggest that during this period, Muny's revenues were as little as \$10 million?

A You mean between '71 and '75?

Q Yes.

A Well, I think they increased their revenues as they raised their rates.

THE COURT: Dr. Wein, please listen to the question and respond.

Read the question back.

[Record read by the reporter.]

A Well, I suppose I was. I may have been mistaken in the size.

Q Dr. Wein, it is a fact, is it not, that not since 1966 has Muny Light's revenues been as low as \$10 million?

A Well, if that is --

Q Sir?

A If that's a fact, that's a fact.

Q And that each year since that time it has increased its revenues until by 1975 they were nearly \$20 million a year?

Wein - cross

1
2 A Okay. If that's the fact, that's the fact.

3 Q Well, you have hertofore studied Muny Light's
4 financial condition, haven't you?

5 A I certainly have, but I cannot keep all these numbers
6 in my head.

7 MR. LANSDALE: All right. Mr.

8 Murphy, will you put on the screen CEI Exhibit
9 1177?

10 {The exhibit was put on the screen.}

11 BY MR. LANSDALE:

12 Q I put this Exhibit 1177 which you saw yesterday,
13 Dr. Wein, on the board -- excuse me a minute --
14 to examine further some testimony you gave yesterday
15 in which you were testifying in response to questions
16 by me in which you were elucidating the destructive
17 character, as you viewed it, of meeting competition
18 by a dominant electric utility as you referred to it,
19 CEI, in a two-firm market where there are only two
20 competitors.

21 And you indicated that this was destructive
22 competition in the electric distribution business
23 as I read it, because of the peculiar characteristics
24 of the business in that the customer is attached
25 physically to the supplier and that this makes it

Wein - cross

particularly difficult to get one customer to move to the other, and you said particularly where you have a 10-year contract as part of one shift; do you recall that testimony?

A Well, more or less, yes.

Q Dr. Wein, I have put this on the board because you accept the substantial accuracy of what is delineated there, as I asked you to do, there are in the neighborhood of 115 to 120 thousand customers of one kind or another in the area indicated there, is this not so?

{Pause.}

Q I get that by deriving .42 --

A What -- May I have the question read, please? I have not followed you.

THE COURT: Read the question back, please.

{Question read by the reporter.}

MS. COLEMAN: May we approach the bench, please?

THE COURT: Yes.

{The following proceedings were had at the bench:}

Wein - cross

1
2 MS. COLEMAN: I just wanted to get
3 some clarification.

4 You mean to say "if you accept" rather
5 than "you accept"? He hasn't accepted the
6 accuracy of -- I think your question ought to be
7 "if you accept" or --

8 MR. LANSDALE: If you wish me to
9 do that, I'll be glad to do so.

10 THE COURT: Very well.

11 {End of bench conference.}

12
13 BY MR. LANSDALE:

14 Q Dr. Wein, Ms. Coleman points out that I sound like
15 I suggested that you had accepted the validity of
16 the figures shown on that map.

17 I did not intend to so suggest.

18 A Well, that's what threw me.

19 Q And I ask you to accept the substantial validity of --
20 substantial accuracy of what is delineated on that
21 map and, with that assumption, that the data there
22 reflects that there are in the colored sections on
23 that exhibit in the neighborhood of 115 to 120
24 thousand customers, depending upon precisely how
25 many customers Muny Light had in some particular

Wein - cross

year between '71 and '75.

That's a fair statement, is it not?

A I'll assume that hypothetical, yes.

Go ahead.

Q And is it your suggestion that if Muny Light has reliability and that if Muny Light has lower rates sufficiently lower in accordance with your --

A Survey.

Q -- survey to induce movement that Muny Light would have any extraordinary difficulty in persuading substantial numbers to shift to Muny Light?

A No, I don't think the difficulty would be extraordinary.

Q Thank you.

MR. LANSDALE: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION OF DR. HAROLD H. WEIN

BY MS. COLEMAN:

Q Dr. Wein, I'm going to ask Mrs. Richards to give you CEI Exhibit 1002, which you referred to in your

Wein - redirect

testimony yesterday.

{Exhibit handed to the witness by Mrs.

Richards.}

{After an interval.}

A Yes, I have it.

It's very difficult to read.

Q You have reviewed the typed transcription of that exhibit?

A Yes, I have.

Q And what does that exhibit indicate, if anything, as to whether the customers that were solicited pursuant to that plan were new customers to the area or were existing Muny Light customers?

A They were existing Muny Light customers.

Q What indicates that?

A Well, the heading under 2C in -- "The specific solicitation of MELP customers to follow this matter" and it leads -- gives you a -- "following storms or other major outages affecting MELP's system where buildings are served by both CEI --" I can't read it.

May I have the typed thing?

THE COURT: I can't read it

either.

Do you have a typed copy, Ms. Coleman?

Wein - redirect

MS. COLEMAN: No, I don't.

THE WITNESS: I think I have it,
I'll look for it.

{The witness leafing through the folders
in his briefcase.}

THE COURT: Do you have a copy,
Mr. Lansdale?

MR. LANSDALE: No, sir.

THE WITNESS: I had three of them
yesterday.

{Laughter.}

THE WITNESS: That's where filing
plans go awry.

MR. LANSDALE: I wouldn't object if
counsel would read it to him and ask him --

THE COURT: All right; why don't
you read it.

BY MS. COLEMAN:

Q Dr. Wein, referring you to the policy statement,
very top of CEI Exhibit 1002, which states "It has
been the policy of The Illuminating Company not to
solicit private customers supplied by the Municipal
Electric Light and Power Company, but to maintain
periodic contact with these customers."

Wein -. redirect.

1
2 A Yes, I can see that.

3 Q Referring you further to other references throughout
4 the memorandum to MELP customers, are these the
5 references in this memo which indicated to you that
6 existing customers rather than new customers were the
7 object of the policy statement?

8 A Yes. It's perfectly clear throughout this, and the
9 particular thing where CEI lines have been extended
10 in to form an exclusive MELP territory comes under
11 the heading of Specific Solicitation of MELP
12 Customers, to follow this pattern, and there are
13 a whole bunch of other things.

14 Q Thank you.

15 Dr. Wein, you had reference yesterday to the
16 opinions of some persons that the proposal of an
17 interconnection involving Cleveland, Painesville and
18 Orville was uneconomic or unfeasible.

19 MS. COLEMAN: Mrs. Richards, would
20 you give Dr. Wein, please, Plaintiff's Exhibit
21 693?

22 THE COURT: I'm sorry. What was
23 the exhibit number?

24 MS. COLEMAN: 693, your Honor.

25 Q Is this one of the sources of that opinion that you

Wein - redirect

had reference to?

A Yes, this is one of them.

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

THE COURT: Approach the bench.

{The following proceedings were had at the
bench:}

MR. LANSDALE: This is covered by
stipulation, if your Honor please, and we will
find it in just a moment.

{Pause.}

MS. COLEMAN: Your Honor, the only
question here is is this what he referred to.

THE COURT: Yes. There is
nothing wrong with that question, Mr. Lansdale.

MR. LANSDALE: No, there is nothing
wrong with that, but I object to him explaining
the significance of this. He lectured me at
length yesterday on this, and I object to going
into that again because it has been stipulated.

MS. COLEMAN: I haven't asked him
anything other than is this what he referred to.

MR. LANSDALE: Has he answered that?

Wein - redirect

MS. COLEMAN: I hope so.

THE COURT: Everybody is anticipating everything else, and I am supposed to rule on anticipations. I am not going to rule on anticipations.

MR. LANSDALE: I submit, your Honor, with this witness, some anticipation is necessary.

THE COURT: My observations of the morning are, I think, how many weeks is it now, seven weeks, eight weeks? I think people are getting a little edgy.

Why don't we just relax and go back and --

MR. LANSDALE: Yes. If counsel intends to ask him was this what he was referring to and he says yes, then I withdraw my objection.

But if it goes beyond that --

{End of bench conference.}

BY MS. COLEMAN:

Q Dr. Wein, in related discussion yesterday you were questioned concerning consultant's recommendation on increased generating capacity and interconnection, and

Wein - redirect

1
2 did you refresh your recollection by referring to
3 the consultant's report as you mentioned that you
4 would yesterday?

5 A Yes.

6 MS. COLEMAN: Mrs. Richards, would
7 you give Dr. Wein Plaintiff's Exhibit L&L2,
8 please?

9 {Exhibit placed before the witness.}

0 Q Is that the report you looked at?

1 A Yes. It confirms my recollection.

2 Q What portion are you referring to when you testify
3 it confirms your recollection?

4 A I am referring to the Summary and Page 1 which is
5 talking about interconnection with Painesville and
6 Orville and expansion of the plant with the big
7 unit.

8 Q What was your recollection that was refreshed by
9 this?

0 A Well, my recollection was they said go ahead with
1 the big unit whether you get the interconnection or
2 not. I will read it.

3 "This expansion will pay for itself with or
4 without the interconnection."

5 It's not that they said the interconnection

Wein - redirect

wouldn't be good but they said, "Even if you don't get it, it will pay for itself."

—And then it says: "It is evident that this expansion must proceed as soon as possible.

Interconnection need also be accomplished at the earliest possible date" -- et cetera.

Q Dr. Wein, with reference generally to consultants' reports, can those reports be evaluated without reference to the questions asked to the assumptions they make and to the circumstances which surround their being made and which follow their being made?

A No, they cannot.

Q And can you make an evaluation about whether the recipients of the reports following the report or failure to follow it without looking at the circumstances?

A No. That would be foolish.

Q Dr. Wein, you were questioned today concerning accounting treatment of the Munny Displacement Program. I wanted to ask you, are you familiar with the concept of amortizing expenses?

A Yes.

Q And are you familiar in what situations that might be used?

Wein - redirect

should be amortized rather than treated all in one year?

A Well, most advertising expense that I am aware of, at least as it came into the code of accounts, was expensed in one year, not treated over 25 years, even though its lasting effects might be that long.

Q Dr. Wein, with reference to the Muny Light expenditures connected to the Associated Estates development, the Euclid Beach development, I would like to ask Mrs. Richards to give you Plaintiff's Exhibit 2165, if you would, Mrs. Richards.

{Exhibit placed before the witness.}

Q Would you turn to page 8 of that exhibit, please, Dr. Wein, down about two thirds of the page to the section starting, "The total dollar value of construction work in progress"?

A Yes.

Q Does the information presented there refresh your recollection as to the accounting treatment at Muny Light for installations at the Euclid Beach apartments?

A Yes.

Q And what treatment is indicated in this financial report of Muny Light?

Wein - redirect

1
2 A It's carried as part of the property of the Muny Light
3 system.

4 Q Dr. Wein, is it common or is it rare for one customer
5 to be served by two electric companies?

6 A It's quite uncommon.

7 Q You made an analogy, a comparison a couple of days
8 ago to Swiss cheese when you talked about the market.

9 What are the essential characteristics that you
10 were referring to in terms of how customers are
11 found in a market where there are two or more
12 electric suppliers?

13 A Well, essentially when you have two or more electric
14 suppliers in a city like Cleveland, generally you
15 will find that on some streets, one company may
16 have it, but on some streets they may divide.

17 So that if I were getting down to a very fine
18 scale of a street, there would be a hole in those
19 streets where if I wanted to say what is served
20 by Muny Light and what is served by CEI, one
21 customer would be served by Muny Light, another
22 customer would be served by CEI and so on.

23 Or if I have five streets, there may be no
24 customers served by either one or the other, and
25 simply if I had 15 streets that may be the case.

Wein - redirect

1
2 And so if you take these customers and spread
3 them out over geography, whenever you are going to
4 have two customers, one of them -- with two
5 companies serving them -- one of them will at some
6 piece of geography not have any customers and so
7 there would be a hole, you see.

Now, when you look at the geography and you are
trying to turn to the market, when you have two
systems there are inevitably going to be holes
somewhere; that is to say, one system doesn't have
any and therefore the other one must. And the
variation of that, the size of the holes, where in
the city they occur and so on is inherent in the
nature of a regional market, and so I use the
analogy of Swiss cheese.

I mean, Swiss cheese is not Swiss cheese unless
it has holes. And in a regional geographic market,
where you have two utilities serving, you are bound
to find some holes.

Q Does the existence of these holes necessarily tell
you what the scope of the market is?

A Not in my opinion.

Q Dr. Wein, you referred in your direct testimony and
were questioned on cross about your using Census

Wein - redirect

tracts as a reference tool in looking at where customers were now.

Can you explain why you chose to use Census tracts?

A Well, Census tracts are very standard things. They usually persist for several Censae. The Census is taken every 10 years, and they bring together a great deal of information for which it is valuable to know such as it tells you how many occupied family dwelling units. That's important to know what the potential in terms of residential sales are.

It tells you about where businesses are, it tells you what the income of the people are, it tells you about how large the families are.

In short, the most important source of information in the United States on most things pertaining to economics is the Census, and that's why I use it.

Q Does the tract itself have any particular purpose?

A No. The tract itself, a piece of geography, has no particular significance because it is obvious that there are literally infinite numbers of ways by which you can divide up an area and which has

1 Wein - redirect

2 customers scattered in some way in it is sort of a
3 proposition which politicians know well when they
4 gerrymand the political districts; lots of ways to
5 do it.

6 Q Dr. Wein, what is the significance of the fact, as
7 you testified, that some 75 percent of the occupied
8 family units and some percentage close to that of
9 business units exist in the 139 Census tracts
10 were Munny customers?

11 A The significance is that this is where most of the
12 City of Cleveland in terms of people and business
13 is, and Munny does business there.

14 Q Dr. Wein, Mr. Lansdale asked you various questions
15 concerning aspects of the Munny Displacement Program
16 that you considered in coming to your opinion.

17 Did you consider these things separately or did
18 you consider them together?

19 A Well, I first had to consider them separately and
20 then, of course, I had to consider them together
21 because I'm trying to see a pattern of acts to see
22 whether these are independent acts for which
23 benign reasons will explain them, or whether the
24 pattern is of such nature that the assumptions of
25 benign behavior is possible; and, as a consequence

Wein - redirect

of looking at it that way, I decided that, no, it wasn't.

Q Dr. Wein, Mr. Lansdale asked you some questions about hypothetical systems competing by duplicating facilities.

I would like to ask you whether one could have competition for customers without such duplication -- I'm sorry, let me rephrase my question.

In an industry where there is competition, does one find duplication in lines?

A Yes; yes, all the time.

Q Dr. Wein, Mr. Lansdale asked you questions about historical shifts of Muny Light and CEI customers between Muny and CEI.

Did you consider the question of how long it would take for CEI and Muny to be of equal size in the City of Cleveland if CEI lost, say, 500 customers a year beginning in 1966?

A Yes, I made such a set of calculations, on the assumption that all other things are equal.

Q And how many years did you calculate that would take?

A May I refer to these tables?

Q Yes.

{After an interval.}

Wein - redirect

A Well, what I did was to take certain assumed switches --

THE COURT: Dr. Wein, please

listen to the question.

THE WITNESS: I'm sorry.

A For 500 customers a year switching, it would take
159 years for Muny Light and CEI to be of the same
size.

If 1,000 customers switched from CEI to
Muny Light, it would take 80 years.

And if 1,500 customers switched from Muny Light --
from CEI to Muny Light, it would take 53 years.

Q Dr. Wein, is there -- has there been any time since
1960 where 1,500 customers switched from CEI to
Muny Light?

A No, not that many.

Q Has there been any time in that period where 1,000
customers have switched from CEI to Muny Light?

A I think in 1970 we had that order of magnitude.

Q From CEI to Muny Light?

A No, no.

I mean, from Muny Light to CEI; I'm sorry.

I can't think of any. The exhibit that Mr.
Lansdale put on the board as back in the early
years, the highest average 10-year rate that I

Wein - redirect

could compute on that was about 800 a year, and --

Q Can you estimate how long it would take for the systems to be of equal size within Cleveland if CEI lost 800 a year to Muny Light?

A Well, it's somewhere between 159 years and 80 years, so I would just say it probably -- let's say that's a difference of, say, 120 years at that rate.

Q Dr. Wein, for CEI to have no customers in Cleveland at all in 1971?

A In 1971 --

Q I'm sorry, that was poorly phrased.

If CEI were to lose 1,000 customers a year, which you have testified hasn't occurred since 1980, how long would it be before CEI lost all customers in the City of Cleveland?

A Well, if we start with the 1966 actual figure of CEI, which was 215,000, and they lost 1,000 customers a year, it would take 115 years.

Q Now, Dr. Wein, what, if you know, has been CEI's experience throughout its service area in terms of lost or gained customers?

A Well, actually --

MR. LANSDALE:

I object, if your

Honor please.

Wein - redirect

THE COURT: Approach the bench.

{The following proceedings were had at the
bench:}

MR. LANSDALE: I don't think this
witness has any knowledge concerning that except
what he's been told. It's not his area of
expertise. I don't know what the record shows
on that.

THE COURT: Read the question,
please.

MS. COLEMAN: He's working off of
public record and I will qualify that to make
sure it is clear.

THE COURT: Read the question.
{Question read by reporter.}

MS. COLEMAN: I will rephrase the
question.

THE COURT: What we are
concerned with, assuming what he's testified to
in the last three or four weeks is true, what
difference does it make? How is it material to
the issues in this case?

MS. COLEMAN: Well, Mr. Lansdale --

Wein - redirect

1
2 THE COURT: If they lost all
3 their customers --

4 MS. COLEMAN: Mr. Lansdale
5 evidently intends to make some argument that
6 CEI was going to be run out of business by Muny
7 Light and these questions address that and what
8 time frame it is.

9 THE COURT: Would you say that
10 was anticipating a defense that may or may not
11 occur?

12 MS. COLEMAN: No, because the
13 questions Mr. Lansdale has asked seem to be
14 pointing in that direction, so I am redirecting
15 on the questions he asked.

16 THE COURT: Sustain the
17 objection.

18 If you want to bring it in on rebuttal, you
19 might, but let's proceed.

20 {End of bench conference.}

21
22 THE COURT: Sustain the objection.

23 MS. COLEMAN: I have no further
24 questions.

25 THE COURT: Do you have any

1 Wein

2 recross-examination, Mr. Lansdale?

3 MR. LANSDALE: No further questions.

4 THE COURT: Thank you, Dr. Wein.

5 You may step down.

6 THE WITNESS: Thank you.

7 MR. LANSDALE: May I approach the
8 bench, your Honor?

9 THE COURT: Yes, you may.

0 Ladies and gentlemen, do you want to take
1 an early recess, a five-minute early recess?
2 Very well. Please during the recess keep in
3 mind the Court's admonitions.

4 {The jurors left the courtroom.}

5
6
7 {The following proceedings were had at
8 the bench:}

9 MR. LANSDALE: I merely wanted to
0 allude to the fact that I think we have an
1 order in this case requiring plaintiff to list
2 witnesses so we have some notice thereof when
3 they are to be called, and I have had allusions
4 the last several days to calling of some
5 mysterious witness whose identity was not known
and I merely want to get on the record that I

1 believe under the Court's order we are entitled
2 to some notice of the identity of the witness in
3 this case. We are all required to list
4 witnesses at the beginning and when we know we
5 are going to call witnesses.

6 MR. NORRIS: I have no objection
7 to disclosing the name of this person. I don't
8 accept the suggestion it is a mysterious witness.

9 I have not decided whether or not to call
0 him because I met with him for 15 minutes this
1 morning and -- his name is Chuck Minadeo and he
2 runs a business out on East 156th Street; he's
3 got several businesses -- and he's an owner who
4 was switched with the payment of free-wiring
5 services in late 1973.

6 The reason I haven't decided, your Honor,
7 whether to call him or not is I do not want to
8 burden the record with cumulative testimony and
9 unless I can make a determination that he will
0 contribute something different than has already
1 been testified to, I am not going to call him.

2 MR. LANSDALE: My only purpose in
3 raising it now is I thought perhaps we were
4 going to be confronted with it.

5 THE COURT: I will tell you

1 something, fellows, the witness list is for the
2 Court's benefit and I think, historically, you
3 will find that the Court requires the witness
4 list so that the Court may project and estimate
5 the period of time that the case is going to
6 take. They may be exchanged by counsel the same
7 as trial briefs. They need not be exchanged by
8 counsel the same as trial briefs. I prefer that
9 they be exchanged.

0 Off the record.

1 {Further discussion was had off the record.}

2 {End of bench conference.}

3 -----
4 {Recess taken.}

5 MR. NORRIS: Your Honor, could
6 the record reflect that counsel has entered into
7 joint stipulations of fact 290 to 293
8 inclusive, and at the right time during the
9 trial the City will ask that those be read to
0 the jury.

1 THE COURT: Very well.

2 {The jury returned to the courtroom.}

3 THE COURT: Please be seated.

4 You may proceed, Mr. Norris.

5 MR. NORRIS: Would you please

1 call Theodore L. Tsevdos?
2
3
4

THEODORE L. TSEVDOS,
5 of lawful age, called as a witness by the City,
6 being first duly sworn, was examined and
7 testified as follows:
8

9 THE COURT: You may proceed,
10 Mr. Norris.
11

12 DIRECT EXAMINATION OF THEODORE L. TSEVDOS
13

14 BY MR. NORRIS:
15

16 Q Good morning.
17

18 A Good morning.
19

20 Q Would you please state your full name?
21

22 A Theodore L. Tsevdos.
23

24 Q Would you spell your last name for the record?
25

A T-s-e-v-d-o-s.

Q What is your address, Mr. Tsevdos?

A 28900 Gates Mills Boulevard.

Q What is your educational background?

A I'm a mechanical engineer.

Q Do you have a degree in mechanical engineering?

Tsevdos - direct

A Yes. I graduated with a degree in -L B.S. in mechanical engineering.

Q When and where?

A 1953, Case-Tech.

Q What is your business?

A Owners of three different companies.

Q Could you please state the names of the companies that you operate?

A Pentagon Industries, Deluxe Bumpers and Pentagon Cycle Products.

Q Let's take Pentagon Plating; when did that business get started?

A In 1966.

Q Where did that business operate?

A 3301 King Avenue.

Q What was the nature of the business of Pentagon Plating?

A We used to electroplate chrome parts mainly for Ford, Ford Motor.

Q And you say that was on King --

A On King Avenue.

Q -- Avenue?

And is that in Cleveland?

A Yes.

Tsevdos - direct

Q And what electric power company served the Pentagon Plating on King Avenue?

A Illuminating Company.

Q All right.

Take Deluxe Bumpers, where does that business operate?

A At 7502 Carnegie.

Q Is that in Cleveland?

A In Cleveland.

Q And when was that business, Deluxe Bumpers, started, Mr. Tsevdos?

A Well, Deluxe Bumpers was actually started in 1958, but it was a running change.

It was Tsevdos Plating before.

Q Tsevdos Plating?

A Right.

Q And was Tsevdos Plating originally at the same Carnegie Avenue address?

A Yes.

Q And Tsevdos Plating, when did Tsevdos Plating get started?

A In 1931.

Q Now, at the Carnegie Road address, Mr. Tsevdos, what electric power company served the company there?

Tsevdos - direct

1
2 A Muny Light.

3 Q And how long was either Tsevdos Plating or Deluxe
4 Bumpers a customer of Muny Light?

5 A Since 1936.

6 Q And what is the nature of the business at the
7 Carnegie Avenue address of the Deluxe Bumpers and
8 the Tsevdos Plating?

9 A We recycle automobile bumpers and electroplate them.

0 Q Approximately how much do you -- well, strike that.

1 Is the King Avenue address still part of your
2 business operation?

3 A No.

4 Q And are all of your operations now concentrated at
5 7502 Carnegie?

6 A Yes.

7 Q Approximately how much do you spend every year for
8 electric energy, Mr. Tsevdos, in all three of your
9 businesses?

0 A Between 50 to 60 thousand dollars.

1 Q Now, bringing your attention to the King -- King
2 Road or King Avenue?

3 A King Avenue.

4 Q Bringing your attention to the King Avenue business,
5 during the time -- strike that.

1 Tsevdos - direct

2 When did you go out of business on King Avenue?

3 A The plant was destroyed by a fire in 1972.

4 Q And did you ever rebuild the plant on King Avenue?

5 A No, it was a complete loss.

6 Q And what did you do with Pentagon Plating, that had
7 been working there on King Avenue, after the fire?

8 A Well, it didn't do anything, and then we started
9 operating Pentagon Plating Industries on King

10 Avenue -- I mean, on Carnegie Avenue.

11 Q Now, during the time up to the fire in 1972, you
12 stated that CEI was serving your company, Pentagon
13 Plating, on King Avenue, is that correct?

14 A Right.

15 Q What kind of reliability of service did you have from
16 CEI on King Avenue?

17 A Normal reliability.

18 Q And during the period on Carnegie Avenue, during
19 the period that you had been a customer of Muny
20 Light, what has been your experience from a
21 reliability standpoint with Muny Light service on
22 Carnegie?

23 A It's the same. There isn't any difference.

24 Q Now, Mr. Tsevdos, what would be the impact in your
25 business of an outage or a power failure either by

Tsevdos - direct

1
2 CEI or Muny Light?

3 A Well, any parts that would be in process in the
4 plating would be scrap and would have to be stripped
5 and repolished and replated.

6 Q During the time that Muny Light was serving you during
7 the 1971 to 1975 period of time, did Muny Light
8 make any efforts to warn you of outages that would
9 be anticipated?

0 A Repeat that?

{Question read by reporter.}

1 A That was Muny Light?

2 Q Yes.

3 A No, not really.

4 Q Now, at the time you determined to expand your
5 business on Carnegie, did you have occasion to
6 discuss the electrical requirements of that expansion
7 with anyone?

8 A Yes. I discussed it with Muny Light and a CEI
9 salesman, Bill Bush, stopped and contacted me.

0 Q Just to fix the time frame again, when did this
1 expansion start on Carnegie Avenue?

2 A Late fall -- no, I would say it would be started
3 early winter of '73 and was not completed until
4 late '74.

Tsevdos - direct

1
2 Q When you say early winter of '73, would you place
3 the months? Do you mean November, December, or what
4 do you mean?

5 A About then.

6 Q Pardon me?

7 A About late October to November is when they actually
8 started.

9 Q In 1973?

0 A Yes.

1 Q And when was it completed?

2 A Late 1974.

3 Q Now, you mentioned that Mr. Bill Bush of CEI had
4 occasion to discuss with you the matter of this
5 electrical expansion; is that correct?

6 A Yes.

7 Q What did Mr. Bush say to you with respect to your
8 expansion needs on Carnegie Avenue?

9 A Well, he stated that they had plenty of capacity to
0 take care of me so that I wouldn't have any
1 problems as far as outages or anything.

2 Q Did Mr. Bush make any offers of any kind to you,
3 Mr. Tsevdos?

4 A Yes, he did.

5 Q What offers did Mr. Bush make to you?

Tsevdos - direct

1
2 A In order for me to bring in new service to the new
3 building, he offered to -- the interconnection in
4 my plant between the old service and where the new
5 service would be would cost me approximately 18 to
6 21 thousand in wiring.

7 And he said that they would pick up that bill
8 for me.

9 Q And what did you have to do in order to have CEI
10 pick up that bill for you?

11 A To convert to CEI.

12 Q From Munny Light?

13 A From Munny Light.

14 Q What did you say to Mr. Bush in response to that
15 suggestion?

16 A That I wasn't interested, mainly because I'm satisfied
17 with Munny Light as far as reliability, their power
18 was cheaper, and in the long run I would be ending
19 up paying for the wiring myself just in the cost of
20 the usage.

21 Q Now, can you place at what period of time approximately
22 Mr. Bush was making these offers to you?

23 A Well, this was a running contact all the time. I mean,
24 it wasn't a question that he came up in once and
25 talked to me once.

1 Tsevdos - direct

2 He probably stopped in five, six, seven times.

3 Q During what period of time did those visits take place?

4 A Early '74.

5 Q Early '74?

6 A Yes. Probably was going up through March, April.

7 Q Now, did you ultimately accept the CEI offer that
8 Mr. Bush made to you?

9 A No, I did not.

0 Q What was Mr. Bush's response to your not accepting it?

1 A That I was very foolish because he didn't think that
2 Muny Light was going to be in business very long.

3 Q Well --

4 A And the fact that it would be totally their service
5 because of the size of the expansion, they wouldn't
6 have the capacity to take care of me and that that
7 service would be -- I would be confronted with a lot
8 of outages.

9 Q Did Mr. Bush indicate any reason that Muny Light was
0 going out of business?

1 A Well, because of their financial structure and the
2 fact that they had no way of getting power in outside
3 of their own boilers that were breaking down.

4 Q Did the subject of interconnection between Muny Light
5 and CEI come up in your conversations at any time?

Tsevdos - direct

A Yes, it did.

Q How did that subject come up and what was said about it?

A That they couldn't even afford to pay for the interconnection.

Q What interconnection was Mr. Bush referring to?

A Interconnection between CEI and Muny Light.

Q Did Mr. Bush have any occasion to relate the lack of an interconnection to Muny Light's reliability?

A Yes, he did.

Q What did he say?

A He said that, you know, when they run -- I have to remember what he said -- that the fact that Muny Light did not have an interconnection and they were right up to capacity and that without the interconnection they would have outages.

MR. NORRIS: Mrs. Richards,

would you give Mr. Tsevdos PTX-2748?

Q Can you identify PTX-2748, Mr. Tsevdos?

A Yes.

Q What is it?

MR. LANSDALE:

I object, if your

Honor please.

THE COURT:

Approach the bench.

Tsevdos - direct

{The following proceedings were had at the bench:}

MR. LANSDALE: Mr. Norris wants Mr. Tsevdos to identify this letter to the Director of Utilities in 1975 saying somewhat the same things he said here. I submit that --

THE COURT: Wait a minute. What are you talking about?

MR. NORRIS: 2748.

THE COURT: Oh, 48.

MR. LANSDALE: 748, isn't it?

MR. NORRIS: 2748, I think it is. Yes.

THE COURT: He can use this to refresh his memory.

MR. LANSDALE: I know he can, but it is simply repetitious and the material he has in here, it's --

THE COURT: What is the question? All he is doing is identifying it.

MR. NORRIS: I just asked him to identify it.

MR. LANSDALE: I have no objection

1 Tsevdos - direct

2 to his identifying it, if that's all he does.

3 THE COURT: What else is it
4 intended for?

5 MR. LANSDALE: We will object to
6 the exhibit; that was kept out last time.

7 MR. NORRIS: Well, I think it is
8 a contemporaneous document. I want him to
9 identify it, of course, and then I am going to
10 offer it in evidence because it is a
11 contemporaneous document that was written at
12 the time of the event.

13 MR. LANSDALE: Well, I have no
14 objection to identifying it. I'm sorry, I
15 shouldn't have come up here.

16 THE COURT: Let's proceed.

17 {End of bench conference.}

18
19
20 THE COURT: Overrule the
21 objection.

22 BY MR. NORRIS:

23 Q Mr. Tsevdos, could you identify PTX-2748?

24 A Yes.

25 Q What is 2748?

A It's a letter that was written by me to Mr. Kudukis.

1 Tsevdos - direct

2 Q And under what date?

3 A May 1st, 1975.

4 MR. NORRIS:

No further questions.

5 -----
6
7 CROSS-EXAMINATION OF THEODORE L. TSEVDOS
8

9 BY MR. LANSDALE:

0 Q Mr. Tsevdos, directing your attention to your
1 Carnegie Avenue address.

2 In May or June of 1970, if you can cast your
3 mind back there?

4 A Right.

5 Q You had a series of outages of from one to two hours
6 during May and early June of that year, did you not?

7 A Yes.

8 Q And following that, you placed a call to The
9 Cleveland Electric Illuminating Company for them to
0 call on you with respect to your service problems,
1 did you not?

2 A I don't remember that.

3 Q You don't remember that.

4 Now, if my notes are correct, you stated that
5 Mr. Bush made his calls on you in early 1974.

Tsevdos - cross

1
2 I ask if your -- because of the long time it's been
3 since then, if you didn't make a mistake, and
4 wasn't that 1973 rather than 1974?

5 A I said he started contacting me in late '73.

6 Q All right. If that's what you said; my notes showed
7 you talked about early '74.

8 A But the contacts were still made in '74.

9 Q All right.

0 And, in any event, in 1973, the work which had
1 been discussed between you and Mr. Bush with respect
2 to the wiring in your place so that service could
3 be taken at one point in the new building as well as
4 the old was the subject of rather extensive discussion
5 between you and Mr. Bush, was this not so?

6 A What do you mean by "extensive"?

7 Q More than once?

8 A Yes.

9 Q And in point of fact --

THE WITNESS: May I say something?

THE COURT: Sure.

THE WITNESS: First of all, I
never entered into any discussion as far as the
costs or anything.

These are his figures, and he was making

1 Tsevdos - cross

2 these proposals. I was not answering him back
3 as far as this because I had made up my mind
4 that I was going to stay with Muny Light.

5 BY MR. LANSDALE:

6 Q I wasn't attempting to suggest that --

7 A All right.

8 Q -- the figures, Mr. Tsevdos.

9 I was going to allude to the fact that rather
10 detailed plans were drawn up of the work which
11 needed to be done which was the subject of discussion
12 between you and Mr. Bush.

13 Do you recall that?

14 A I did not request anything to be drawn up for me.

15 MR. LANSDALE: May I have the
16 question read?

17 THE COURT: Yes. The question
18 is not whether you requested it or not. Listen
19 to the question and respond to the question.

20 {Question read by the reporter.}

21 A Yes, I do.

22 Q And in point of fact, you signed a copy of those
23 plans expressing your approval of them, did you not?

24 A I don't remember signing that.

25 {Defendant's Exhibit 1,300 was marked for

Tsevdos - cross

identification.}

THE COURT: What is the number?

MR. LANSDALE: 1,300.

THE COURT: 1,300.

BY MR. LANSDALE:

Q Mr. Tsevdos, I show you what has been marked for identification Defendant's Exhibit 1,300 and I invite your attention to the lower right-hand corner thereof and I will ask you if that is not your signature appearing there?

A That is my signature.

Q Now, Mr. Tsevdos, I will ask you if it is not the fact that within a few weeks after you signed that plan you were called on by Mr. Ackmann of the Municipal Electric Light Plant, one of the engineers from that plant; do you recall that?

A I don't know the fellow's name.

Q But you do recall it was an engineer from Muny Light that called on you?

A Yes.

Q Did he advise you, Mr. Tsevdos, that your service was provided by the East 79th / Ansel Road -- through the East 79th / Ansel Road Substation of Muny Light, which substation was operated by load

CIVIL LAW - 10/11/11

1 Tsevdos - cross

2 transfer point by CEI?

3 A I found out about that but I don't know if that's
4 who I found it out from.

5 Q Okay.

6 MR. LANSDALE: Thank you. I have
7 no further questions.

8 THE COURT: Redirect?

9 Do you want to take that back?

10 MR. NORRIS: No, I want him to
11 keep it, your Honor.

12 THE COURT: All right.

13
14
15 REDIRECT EXAMINATION OF THEODORE L. TSEVDOS

16
17 BY MR. NORRIS:

18 Q Mr. Tsevdos, referring to CEI Exhibit 1,300, the
19 plan, what is the date on that?

20 A 2-26-73.

21 Q And when did you have your conversation with Mr.
22 Bush with respect to his offers of free service?
23 About a year later?

24 A I said it was a running conversation with him.
25

Tsevdos - redirect

Q Were those running conversations still running
from October of 1973 up until April or May, 1974?

A Yes.

MR. NORRIS: No further questions.

THE COURT: Thank you, Mr.

Tsevdos.

THE COURT: Call your next
witness, please. Call your next witness.

MS. COLEMAN: Thank you, your
Honor. We will call Bill Mayben, please.

1 Mayben - direct

2 engineering services and management consulting
3 services to various clients throughout the United
4 States and abroad.

5 Q What kinds of professions are embraced by the
6 members and staff of R. W. Beck?

7 A Primarily engineering of all education and discipline.

8 We also have several accountants, economists,
9 scientists, management consultants in the firm as
10 well as owners of the firm.

11 Q What is your educational background, Mr. Mayben?

12 A I have a B.S. in electrical engineering from the
13 University of Colorado.

14 Q Are you a registered engineer?

15 A Yes, I'm a registered engineer in about 13 states
16 including the State of Ohio.

17 Q What was your work experience before you joined R. W.
18 Beck?

19 A Well, prior to joining R. W. Beck & Associates, I
20 was an electrician for the Rural Electric Company
21 in and around Denver, Colorado.

22 I also worked for a consulting engineering
23 firm in Denver, Colorado while I was attending the
24 University of Colorado.

25 Q How did you come to join the firm of R. W. Beck?

1 Mayben - direct

2 A Well, it was a recruiting process during my senior
3 year, and having had some experience with a
4 consulting engineering firm while I was attending
5 college, I elected to join that firm and become a
6 consulting engineer.

7 Q What are your present responsibilities at R. W. Beck?

8 A My responsibilities at R. W. Beck & Associates from
9 a management point of view are to direct the
0 activities of our management consulting group.

1 Approximately half of the firm's human resources
2 and capital resources are committed to management
3 consulting operations, and I direct those activities.

4 Q What professional societies, if any, do you belong to?

5 A I belong to the IEEE, the Electrical and Electronic
6 Engineers Association, the National Society of
7 Professional Engineers and the Consulting
8 Engineers Council.

9 Q What date were you first employed by R. W. Beck,
0 what year?

1 A I joined them upon graduation in June of 1962.

2 Q What were your immediate responsibilities there?

3 A I was assigned to our firm's office in Seattle,
4 Washington to the design group, the architect
5 engineering group there.

1 Mayben - direct

2 Q What types of facilities did you participate in
3 designing?

4 A Primarily electric utility facilities. I was
5 involved in the electrical design of a hydroelectric
6 power plant. I was involved in the design of a
7 69,000-volt transmission line and some substations.

8 Q Following your responsibilities, your work in the
9 design phase, what was your work at R. W. Beck?

10 A Well, in about 1964, I began to receive assignments
11 in the management consulting side of our business,
12 primarily involved in electric utility planning,
13 power supply planning, transmission planning,
14 distribution planning.

15 Q Could you describe generally the clients of R. W.
16 Beck; who are they?

17 A Well, we work for primarily electric utilities and
18 I would say the public sector of the electric
19 utility industry. We have several clients, however,
20 that are cities owning and operating water
21 systems, sewer systems, things of that nature, and
22 we have several industrial-type clients.

23 Q What is the nature of work you have done for the
24 past 10 years?

25 A Well, the past 10 years I have been primarily involved

1 Mayben - direct

2 in directing a staff of engineers, economists and
3 accountants in the area of electric utility planning,
4 assisting clients in raising substantial amounts of
5 money for capital projects that they are undertaking,
6 working on rate matters, designing rates, determining
7 revenue requirements for rate purposes; generally of
8 a management and operating nature for electric
9 utilities.

0 Q Do you have any particular responsibilities with
1 regard to utilities in the State of Nebraska?

2 A Beginning in about 1970, I was assigned as the
3 senior consultant to the Nebraska Public Power
4 District, which is the utility that provides electric
5 service both at retail and wholesale throughout the
6 State of Nebraska with the exception of Omaha and
7 Lincoln.

8 Our firm is designated as the engineer of
9 record under the terms of their bond indenture,
0 and we have certain ordinary things that we have
1 to perform annually to apprise the bondholders of
2 the performance of that particular utility under
3 the terms of the bond resolution.

4 In addition, as senior consultant, I have
5 worked very, very closely with the senior management

1 Mayben - direct

2 of that utility on virtually all matters that came
3 up before this utility with the exception of major
4 construction projects, such things as rates, finance,
5 management organization, planning, virtually
6 everything that was of a management matter with the
7 exception of construction.

8 Q Have you represented clients other than the Nebraska
9 Power District?

10 A Oh, yes; I have clients in many states around the
11 country.

12 Q Have you done any work for small electric utilities
13 such as municipally-owned systems?

14 A Yes; I have worked for several small or municipally-
15 owned electric utilities.

16 Q Have you conducted power supply studies for such
17 utilities?

18 A Yes, I have.

19 Q And what is involved in making a power supply
20 study, generally?

21 A Well, it's a rather complex process; but, generally
22 speaking, the power supply study for a municipal
23 electric utility would be the process of forecasting
24 what the future power energy requirements might be,
25 identifying the various alternative ways in which

1 Mayben - direct

2 nature.

3 I have also been involved in assisting clients
4 in the sale of pollution-control bonds which were to
5 be applied toward the cost of construction of
6 certain portions of power plants.

7 I have been involved in the sale of general
8 obligation bonds for certain types of municipal
9 projects, such as sewer plants and water systems,
10 things of that nature.

11 Q Can you give us an estimate of the amount of
12 financing issued by utilities with which you have
13 been involved?

14 A Approximately \$3 billion is the amount of financing
15 that has been accomplished that I have been directly
16 involved in.

17 Q What services do you normally provide in connection
18 with such financing?

19 A Well, it depends upon the client, of course, the
20 degree of sophistication that the client has, and it
21 depends upon the completeness of the proposition at
22 the time that we are brought into it, but it can
23 range all the way from assisting the client in
24 negotiating various contracts which are necessary
25 for his capital project to be able to be

1 Mayben - direct

2 constructed and to be able to be operated onto making
3 investigations of whether or not, when the project
4 is completed, it will be able to derive revenues
5 sufficient to meet whatever obligations the
6 authority has incurred in selling the debt.

7 We have been involved in working with the
8 client's financial advisor in structuring the
9 financial deals.

10 I, personally, had been involved in meeting
11 with rating agencies and major investors in
12 explaining the technical and financial aspects of
13 the financial arrangements.

14 Q I notice you use sometimes the term "we" and sometimes
15 the term "I."

16 Have you, personally, been involved in the things
17 you have described?

18 A Yes, I have.

19 Q And your firm has as well?

20 A Yes.

21 Q Have you ever appeared as a witness before State or
22 Federal agencies?

23 A Yes, I have.

24 Q Without going into any detail, can you describe
25 generally the topics to which your testimony has been

1 Mayben - direct

2 addressed?

3 A I have been involved as an expert witness in basically
4 four areas.

5 The first area is in the process of establishing
6 need and feasibility of major power projects where
7 a certificate is to be issued by a Public Utility
8 Commission, if you will, and I have testified as to
9 the necessity of the project and the feasibility of
10 the project on behalf of the client who was
11 attempting to build these projects.

12 I have appeared as an expert witness in matters
13 involving interconnection disputes and tariff
14 provisions for interconnection contracts.

15 I have appeared as an expert witness in matters
16 pertaining to power supply, coordinated power supply
17 operations and development among utilities, and I
18 have appeared as an expert witness in matters
19 pertaining to transmission service and transmission
20 rates.

21 Q Mr. Mayben, were you engaged by the City of
22 Cleveland as an expert in this case?

23 A Yes, I was.

24 Q And have you worked with me and Mr. Norris during
25 this assignment?

Mayben - direct

A Yes, I have.

Q Would you please describe the assignment that was given you?

A Basically, the assignment given me was to work with Dr. Wein in determining the economic and financial impact upon Muny Light for certain alleged activities which your firm had outlined to Dr. Wein and I of the Cleveland Electric Illuminating Company.

Q Did you or your firm have any familiarity with the Cleveland Muny System before your engagement to make the study you have just described?

A Yes. I, personally, have been involved since 1973 consulting with management of Muny Light and with other people in the City from time to time about Muny Light's business and operations.

My firm has also done other types of engineering studies for MELP over the same time frame.

Q With whom did you work at Muny Light in your personal work there before your engagement to make the study you described?

A Well, I first worked with Mr. Warren Hinchee and the staff that was assigned to Mr. Hinchee. Those people included Mr. Pofok, Mr. Titus and Mr. Milan. Those were some of the people that we worked with.

Mayben - direct

Q You mentioned in the development of the assignment to your firm Dr. Wein was involved.

What specific requests did he make of you growing out of the conferences that you held?

A Dr. Wein asked me to estimate for him the difference in profitability of MELP operations as it actually is or will be in the future and what that profitability would be had certain events occurred back in the early 1970's.

Q Did you carry out that assignment?

A Yes, I did.

Q What approach did your firm use to measure the difference in profitability?

A Well, first of all, we constructed what you might term engineering models of MELP's operation.

By engineering models I mean the way in which MELP would go about carrying out its electric utility function -- how it buys fuel, how it sells energy over its system, how it produces that energy -- that sort of thing. Then we constructed some financial models of MELP operations reflecting the financial and economic results of these engineering models' functioning.

Q Now, I gathered from the use of the term "models",

1 Mayben - direct

2 there was more than one of these, more than one
3 model created in your studies; is that correct?

4 A That's true.

5 Q What experience does the R. W. Beck firm have in
6 preparing models to study changes in circumstances
7 in the nature of Dr. Wein's assignment to you?

8 A Well, we have extensive experience. In fact, the
9 firm got its start modeling the operations of the
10 state-wide utility business in the State of
11 Nebraska back in the late '30's and early '40's.

12 Mr. Beck himself did the modeling to show to
13 the potential investors of debt or of bonds that
14 a utility in Nebraska would be able to meet its
15 obligations and repay the loans that were being made
16 at that time.

17 Q And since Mr. Beck began the operations, has your
18 firm been involved in similar types of investigations?

19 A Yes, that's true.

20 Q Now, how does the R. W. Beck firm respond to an
21 assignment like that of Dr. Wein that you have
22 chosen to carry out through the creation of models?

23 A Well, because the modelling involves several
24 disciplines such as power supply engineering,
25 transmission and distribution system operations.

1 Mayben - direct

2 distribution planning, finance, accounting and
3 whatnot, we customarily bring together a team of
4 people who are qualified in these various disciplines.

5 This team of people are normally headed up by a
6 team leader who has the background experience in the
7 particular field that we are talking about. In this
8 particular instance, it was, of course, the
9 operation of a municipally-owned electric utility
10 with generation or with production capability.

11 I was designated as the team leader because of
12 my background in all aspects or various aspects of
13 a municipal utility operation.

14 Q Had you had previous experience as a team leader in
15 dealing with this kind of analysis?

16 A Yes.

17 Q Would you give me an example of your own experience
18 in working as a team leader to do this type of
19 analysis prior to this assignment?

20 A Well, we have a client in the Dakotas which happens
21 to be a, what is known as a power agency, providing
22 electric power to about 46 or 47 municipal electric
23 utilities in the Dakotas, and in Iowa and in
24 Minnesota.

25 I was the team leader that initiated the power

1 Mayben - direct

2 supply planning for this agency, recommended a
3 particular power supply program, worked with them
4 in raising the capital for them to fund the cost
5 production of the power supply program, and
6 subsequently assisted them in creating an
7 infrastructure so that the power agency could
8 accomplish a function of providing wholesale power
9 to these 46 municipal utilities.

10 I was the team leader, we probably had at one
11 time or another as many as 25 or 30 people working
12 on that particular assignment.

13 Q I see. Now, in terms of this assignment, which you
14 and Dr. Wein worked on, who at R. W. Beck worked on
15 the studies made for Cleveland for this case?

16 A Well, for this particular assignment, we staffed it
17 primarily from our Indianapolis office.

18 Mr. Bill Cheeseman was initially involved in
19 directing the activities of the various people to
20 begin the engineering modeling and the financial
21 modeling. Mr. Cheeseman is an engineer that came
22 to us from the Illinois Power Company.

23 Subsequent to that time, Mr. Sam Ross, an engineer
24 who came to us from the Public Service Company
25 of Colorado after 20 years of experience with that

1 Mayben - direct

2 company, joined us and became the director of the
3 various activities.

4 In addition to those two individuals, we had
5 Mr. Gene Anderson who assisted us in distribution
6 planning matters, we had Mr. Bernie Friedrichsen,
7 a Certified Public Accountant, doing much of the
8 accounting treatment for our financial models; we
9 had Mr. Vintonkoff, a CPA working on many of the
0 calculations.

1 We had people from our Denver design office
2 assisting on certain questions with respect to
3 design and construction of power generating
4 facilities and on transmission substations.

5 Q I believe you stated that Mr. Cheeseman and then
6 Mr. Ross had the responsibility after you for
7 coordinating the teamwork.

8 Could you describe Mr. Cheeseman's background?

9 A Mr. Cheeseman's?

0 Q Yes.

1 A Yes. He joined our firm I believe in about 1973,
2 after I believe around seven or eight years as a
3 District Engineer for the Illinois Power Company.
4 He is a Registered Professional Engineer in several
5 states.

Mayben - direct

Q And Mr. Ross, what is his background?

A Mr. Ross's background is that of he is a mechanical engineer from Purdue University. He was with the Public Service Company of Colorado for around twenty years primarily involved in power production, regulatory matters and power supply.

Q Did you draw on the expertise of anyone outside the R. W. Beck firm in the course of preparing your studies?

A Well, of course we drew upon Dr. Wein in the sense that he and I had several conferences with respect to assumptions and criteria that should be used in the modeling that we were going to do.

We did have discussions with MELP personnel from time to time. Of course, we talked to the investment banker selected by MELP to provide them some advice for purposes of this assignment, Mr. Frank Martin.

We talked to a lawyer from Phelps-Dodge acting in the capacity of bond counsel.

Q You mean Palmer and Dodge?

A Palmer and Dodge, I'm sorry, Mr. Jim Perkins.

Q What was Dr. Wein's role in respect to your team carrying out its assignment?

1 Mayben - direct

2 A Well, Dr. Wein provided us with the forecast of the
3 numbers of customers and the electric sales that we
4 were to use in our engineering and our financial
5 modelling for MELP.

6 Additionally, Dr. Wein provided us with
7 certain factors reflecting the effects of
8 inflation for purposes of our financial modeling.

9 Q Now, Mr. Mayben, did your firm use computers in the
0 course of doing the studies?

1 A Yes, we did.

2 Q How were the computers used in these studies?

3 A The computers were used primarily in establishing
4 the financial models. Basically we computerized the
5 various financial functions or economic functions
6 of MELP such as their sales of electricity, the
7 revenues to be derived from the sale of electricity,
8 the expenses to be incurred as a utility in
9 producing, transmitting and delivering of this
0 electricity.

1 So the computer was basically used to generate
2 the financial models that we gave to Dr. Wein.

3 Q If I understand you correctly, you put a lot of
4 information into the computer about MELP?

5 A That's correct.

Mayben - direct

Q What did you mean by "functions," that you placed certain functions in the computer?

A Well, the computer did a fair amount of calculations for us for purposes of projecting what the operating expenses were going to be into the future, let's say, or in the historic period under certain different engineering models.

So it performed a lot of calculations that would have taken a lot of time had someone been doing that by hand.

But it also was designed to prevent the financial results in a classical model or classical method that is useful to the accountants and engineers in looking at the operations of a utility.

Q When you talk about the presentation of the information, just to give us a point of reference, perhaps, Mrs. Richards, you could place this slide on the screen so we can see what the display looks like.

Is this an example of what the computer feeds back out to you in terms of information, Mr. Mayben?

A Yes, it is.

Q And in terms of engineering versus financial models, how do you refer to this?

1 Mayben - direct

2 submitted to Dr. Wein setting forth the results of
3 the engineering and engineering-economic studies
4 which we conducted.

5 Q Had you performed -- pardon me.

6 Had you prepared reports on the same subject
7 previous to the one which is before you here?

8 A Yes, we had.

9 Q And does this represent your most recent study?

10 A Yes, it does.

11 Q Mr. Mayben, would you describe the standards which
12 you and your team at R. W. Beck followed in
13 carrying out your assignment and in preparing this
14 report?

15 A Well, we used the same standards of care and
16 engineering effort as we normally would in advising
17 a client with respect to a planning effort where a
18 client might be contemplating the installation of
19 some facilities and we were asked to make a plan
20 which reflected the best alternative for him.

21 Q Over what time period have you and your team spent
22 performing your assignments to study the profitability
23 of MELP?

24 A We have been involved in this particular assignment
25 since early 1978.

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Mayben - direct

Q In working on this assignment, Mr. Mayben, did your team have need to refer to various data, documents and other kinds of information?

A Yes, we did.

Q Could you describe generally the categories of data and documents that you referred to?

A With respect to MELP we looked at various statistical as well as accounting information that MELP would regularly prepare, such things as their annual report to the Federal Power Commission, Form 12 and Form 1-M. We looked at the audited statements of MELP, we looked at the annual reports of the Fiscal Control Department with respect to MELP's operations. We looked at the various other statistical information that would be available to us from MELP.

Q Did you in the course of your studies have any need to refer to costs and other information of the CEI company?

A Yes, we did.

Q Why was that?

A Well, part of our financial modeling involved forecasting CEI's future wholesale power rates, and so we had to look into the items which would affect those future wholesale power rates such as cost of

1 Mayben - direct

2 some additional information so as to project on
3 our engineering models and our financial models a
4 consistency between the historic period and the
5 future period.

6 Q Could you give us an example of one of the studies
7 which R. W. Beck performed to supplement the
8 recorded information?

9 A Well, one of the studies that we conducted had to do
10 with presenting a number each year for what was to be
11 MELP's peak demand or maximum load during the year.

12 We had found that the information that had been
13 filed with the Federal Power Commission during part
14 of the 1970's changed from one year to the next and
15 so we had to do certain calculations in order to
16 put those on a consistent basis. That changed
17 primarily because they were not taking into
18 consideration the effects of station service and
19 the effects of the load transfer service, and we
20 put it all on a consistent basis for the history and
21 for the future.

22 MS. COLEMAN:

Thank you.

23 Your Honor, I am about to turn to another
24 subject.

25 THE COURT:

Fine. This would be

Mayben - direct

an ideal time for us to recess for lunch.

Ladies and gentlemen, please keep in mind the Court's admonition during the luncheon recess, namely, you are not to discuss the case either among yourselves or with anyone else. You are to keep an open mind until such time as you have heard all the evidence in this case, until the Court has instructed you on the law, the application of the law to the facts as you find them to be, and until such time as the matter is submitted to you for your final deliberation and judgment.

With that, ladies and gentlemen, until 1:30. Thank you.

{Court recessed for the luncheon period.}

- - - - -

1 THURSDAY, AUGUST 27, 1981; 1:35 O'CLOCK P.M.

2
3 THE COURT: Please be seated.

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

7 {The Court made an off-the-record comment
8 to the jury regarding the chilliness in the
9 jury room.}

10
11
12 W I L L I A M R. M A Y B E N
13 resumed the stand and testified further
14 as follows:

15
16 THE COURT: You may proceed.

17 MS. COLEMAN: Thank you, your
18 Honor.

19
20 DIRECT EXAMINATION OF WILLIAM R. MAYBEN {Resumed}

21
22 BY MS. COLEMAN:

23 Q Mr. Mayben, would you please explain, generally, how
24 the Beck team approached responding to Dr. Wein's
25 assignment?

Mayben - direct

A Well, of course, the first important step was to confer with Dr. Wein with respect to the nature of the studies that we would be performing, and then to gather the basic data and information that we would be using in the determination of the engineering models and of the financial models.

With that, we began to put together the basic engineering models of MELP's electric operations and began to prepare the formulas, the functions, if you will, of translating the engineering model into a financial model.

Q Could you explain what you have to do to come up with an engineering model?

A Well, the engineering model, basically, is a set of assumptions which describe the manner in which MELP would be operating over a period of time.

Such assumptions go to the matter of what are the sales in kilowatt hours, how is the power supply obligation met, is it met by purchases, is it met by generation.

How does the transmission and distribution system perform, function, if you will, to deliver the power and energy to the customers; how do they

1 Mayben - direct

2 go about getting fuel; how they man their power plants,
3 this sort of thing.

4 That's the engineering model of MELP's operations.

5 Q How is the financial model put together?

6 A Well, the financial model is basically a translation
7 of the operations assumed in the engineering model
8 into dollar figures. Basically, it is translating
9 sales of kilowatt hours to the various customers into
10 estimated revenues. It is translating fuel
11 purchases and power purchases into dollars of
12 expenses.

13 Q Mr. Mayben, you mentioned the term "function" a
14 few times in your testimony thus far.

15 What do you mean by that?

16 A Well, that is basically a formula which would
17 translate an assumed rate of energy sales into
18 estimated revenues. In other words, for each
19 kilowatt hour that is sold we know that for a
20 particular class of customer that is going to derive
21 so much money in revenues based upon the rates for
22 electricity.

23 Q Did you use the same approach in projecting expenses?

24 A Yes. We have estimated expenses as a function of,
25 in some instances, the amount of fuel that is

1 Mayben - direct

2 burned, in some instances as to the amount of utility
3 plant that is actually being utilized and in some
4 cases as a source of the amount of labor that is
5 being expended in order to carry out a particular
6 utility operation.

7 Q Mr. Weiner, would you move this up for me?

8 {The easel was moved to the front of the
9 courtroom.}

10 THE COURT: Can the jury see it?

11 I think you ought to swing it around a
12 little more. I think that's better. Yes,
13 everybody nods affirmative.

14 Q Mr. Mayben, in a case where you might study Muny
15 Light having more sales than it actually did, would
16 you show how you go from the amount of assumed sales
17 to the revenues that would be associated with those
18 sales just as an example of a function?

19 A If I might, using some numbers that were taken from
20 the 1980 financial report of MELP's operations --
21 some of these numbers, by the way, appeared in the
22 operating statement that you had previously displayed
23 to me on the board -- but just taking 1980 as a
24 for instance, the operating records indicate that
25 in the residential class of customer MELP had sales

1 Mayben - direct

2 of 182,477,300 kilowatt hours. That's the amount of
3 electricity that MELP actually sold to its
4 residential customers in 1980. They collected
5 revenue for those sales of \$10,837,825.

6 Now, that translates into an average price of
7 sales by dividing the hours by the kilowatt hours
8 of 5.9393 cents per kilowatt hour.

9 Now, on the financial modeling where we
10 assumed more sales than was actually made in 1980,
11 and I will take another example that will show up in
12 some of the pages of my report, the one in which
13 Dr. Wein told us to assume that sales to the
14 residential class would have been 183,634,000 kilowatt
15 hours. So you can see that there is an increased
16 sales to the residential class.

17 Q How would you figure out how much revenue was
18 associated with the assumed greater sales?

19 A Again, we took the average price or the average
20 return for these sales in the actual case and
21 multiplied it times the amount of assumed sales.

22 5.9393 cents times 183,634,000 kilowatt hours,
23 and that gave us a dollar figure of \$10,906,600.

24 Now, you can see that the assumed increase in
25 sales resulted in an estimated increase in revenues in

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2 that particular year.

3 Q Thank you.

4 And is something like that process used for
5 moving from actual expenses to assumed expenses in
6 your study cases?

7 A Yes.

8 Q Can you tell us how the information about the
9 engineering model is presented in your report?

10 A The engineering report to Dr. Wein contains a
11 statement of the various assumptions which comprise
12 the engineering model of MELP under various
13 circumstances.

14 Q How is the financial model presented?

15 A The financial model is presented in two ways: The
16 first is an operating statement, a typical
17 operating statement that an accountant would prepare
18 to present the results of financial operations during
19 a year's time.

20 And also a balance sheet to show the assets and
21 the liabilities of the enterprise.

22 Q In your studies, what was the purpose of developing
23 the balance sheet?

24 A Well, the balance sheet basically was to -- was a
25 control function. It was to keep track of assets and

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2 liabilities and to be able to compare how the assets
3 and liabilities might be treated by an accountant as
4 we moved from one year to the next and as we moved
5 from one engineering model to another.

6 Q Now, is the way that you prepared the balance sheet
7 necessarily the way that Muny Light accountants
8 would prepare it given the assumptions of the
9 particular case?

10 A No.

11 In my judgment, it merely reflects the one way
12 that it could be treated, and it was a way in which
13 based upon conference with the accountants that were
14 giving me the accounting treatment, we decided to
15 make the presentation.

16 But it could be handled differently by Muny
17 Light.

18 Q Did you make any special accounting assumptions in
19 setting up the balance sheets?

20 A Well, in setting up the balance sheet, with respect to
21 the model of MELP as it actually was in the past, we
22 pretty well adhered to the audited statements that
23 the MELP auditors prepared.

24 With respect to some of the alternative
25 engineering models, we did make some accounting

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2 assumptions particularly with respect to the treatment
3 of accounts payable and with respect to the amounts
4 of cash necessary to meet working capital
5 requirements.

6 Q Would you describe your assumption with regard to
7 accounts payable?

8 A Yes.

9 If you look at an actual balance sheet for MELP
10 in the 1970's, you would find that the accounts
11 payable are high in relationship to the revenues
12 being derived and the expenses being incurred,
13 higher than you would expect.

14 In our special accounting treatment, we assumed
15 that the accounts payable would be ranging in the
16 neighborhood of \$3 million a year, which is more like
17 the amount of working capital or amount of accounts
18 payable that would be expected for the level of
19 business they were doing.

20 in order to balance out a lower accounts payable,
21 we had cash being transferred from the City to MELP
22 in order to meet their cash obligations.

23 Q Now, what was the basis for the last assumption that
24 you mentioned?

25 A Basically, it was on the basis of the actual practice

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2 of the City at certain times during the 1970 decade
3 and based upon conversation that I had with City
4 officials back in 1978, and confirmed again when we
5 revised the report for this case that that was the
6 way to treat MELP's cash requirements.

7 Q Now, you stated that your source in the first
8 instance of the balance sheet was basically the
9 audited statements?

10 A Yes.

11 Q Do those reflect the charge of interest for transfers
12 from the City?

13 A For the assumed transfers from the City and --

14 Q Excuse me. For the actual transfers from the City?

15 A No, they do not.

16 Q And how did you then treat those in your model?

17 A Again, we assumed that it was an interest-free line
18 of credit from the City General Fund and no interest
19 was charged.

20 Q Consistent with what you found in the audits?

21 A Yes.

22 Q Now, what was the first model that you prepared in the
23 course of your studies?

24 A Well, the first model we prepared was, of course,
25 MELP as it actually was in the 1970 decade.

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2 Q Was there a term that you used to refer to that model?

3 A We call it the base case historic.

4 Q And "base case" is intended to signify something like
5 a base line?

6 A Yes; it was the case against which we compared the
7 effects, the financial effects, if you will, of the
8 various alternative engineering models that we
9 studied.

10 Q What was the source of the engineering model for the
11 base case?

12 A Well, basically, it was the statistical information
13 that was available in various reports of MELP, plus
14 our knowledge of how MELP actually operated, gained
15 through discussions with MELP personnel.

16 Q And what was the source of the financial model of the
17 base case?

18 A The audited statements and the reports of the Fiscal
19 Control Department on MELP's operations each year.

20 MS. COLEMAN:

Mrs. Richards, would

21 you place the transparency of the operating
22 statement for I-A on the projector, please?

23 {Mrs. Richards complies.}

24 MS. COLEMAN:

Thank you.

25 Q Mr. Mayben, I have taken the first page in the

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2 appendix of your report, Appendix Page I-1, and made
3 it into a transparency, and it's on the screen here.

4 Which form of financial model does this represent?

5 A That is an operating statement -- actually, it's a
6 series of operating statements for the years 1971
7 through 1980, although 1980 seems to be cut off by
8 the projector at the moment.

9 Q Now, if we read information going down the chart, is
10 that information all for a single year?

11 A Yes, it is.

12 Q And if we read information going across, what do we
13 learn?

14 A We find across is the line items for the various
15 years.

16 Q And those are identified by the year indications
17 across the top?

18 A Yes.

19 Q I wonder if we might focus on the labeling here.

20 Let me ask you this, first:

21 Is this the standard form in which your financial
22 model is presented in this report?

23 A Yes, it is.

24 Q So that the labels used on this page are used on other
25 pages as well, is that right?

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2 A That's correct.

3 Q Now, let's first look at the uppermost information
4 where the statement "System Requirements, Annual
5 System Demand in MW, and Annual System Energy in
6 KWH" is found.

7 What information is provided there; what does
8 that mean?

9 A That's basically an expression of MELP's load and
10 energy requirements in each one of the years.

11 The first item being "Annual System Demand"
12 in 1971, it is 105.7 megawatts, or 105,007 kilowatts.

13 That is the demand achieved at the peak hour
14 of its load in that particular year.

15 Q Is the second item, "Annual System Energy" --

16 A The "Annual System Energy" in kilowatt hours is the
17 amount of energy MELP had to produce for purchase in
18 order to supply the energy to its customers.

19 Q What is the next group of information that is
20 under the caption "Sales by Customer Classes"?

21 A This is the amount of electricity expressed in
22 kilowatt hours that was recorded to have been sold
23 to MELP's various customer classes.

24 Q So we should understand that first group of
25 information is kilowatt hours or, in the case of the

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2 first line, kilowatts, right?

3 A Yes.

4 Q Now, the next line item is "Revenues."

5 Pardon me. Let me go back.

6 I notice there is a difference between "Total
7 Sales" and "Annual System Energy"; is that right?

8 A Yes, it is.

9 Q What does that reflect?

10 A That reflects the heat loss on the distribution and
11 transmission system of MELP as well as certain
12 unaccounted-for energy losses.

13 Q And is the existence of such heat losses or
14 unaccounted-for losses an unusual thing in the
15 electric industry?

16 A No, it's common to all electric systems.

17 Q All systems have that?

18 A Yes.

19 Q Let's continue down. The item that indicates
20 "Revenues," are we switching now to dollar figures
21 when we reach that point?

22 A Yes. When we reach the point of operating revenues,
23 those would be dollar figures.

24 Q What is the source of that information?

25 A That information came off the MELP financial statements

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2 earnings on them.

3 Q I see. Thank you.

4 MS. COLEMAN:

Mrs. Richards,

5 perhaps, Mr. Lansdale, you might just turn the
6 switch off. Thank you.

7 Q After you prepared the statement of Muny expenses and
8 revenues that we just looked at, what was the next
9 work that was done?

10 A Well, the next work that was done was to prepare
11 financial models of some alternatives to MELP
12 operations as it actually occurred.

13 Q Did you look first at the question of actual MELP
14 as it will be in the future?

15 A Oh, yes, I'm sorry.

16 We did carry on the modeling of the base case
17 from 1981 to 1988.

18 Q Why do your projections go out to the year 1988?

19 A Well, at the time we started these studies, and still,
20 we feel that it will probably be 1988 before MELP is
21 going to be in a position to do anything which will
22 materially affect its mix of resources reflecting
23 ownership or control of power supply facilities
24 which have economy of scale and modern technology.

25 Q How did you project the engineering model of Muny

1 Mayben - direct

2 operations in the future?

3 A Well, basically we took a look at what MELP is
4 today; namely, a distribution-only utility, buying
5 power from CEI, from the Power Authority of the
6 State of New York, and from Buckeye. And we merely
7 projected into the future how they would go about
8 meeting their electric utility obligations with the
9 plant that is now in existence.

10 Q What specific assumptions did you make about source
11 of power for sale to MELP's customers during this
12 future time period?

13 A We assumed the use of the power and energy that they
14 are now purchasing from CEI and from PASNY through
15 1985 and from Buckeye through 1985.

16 Q What assumption did you make about interconnection
17 between MELP and CEI?

18 A Well, of course, there is the interconnection that
19 was placed in service in 1975. We assumed that would
20 remain in service.

21 And MELP and CEI are presently constructing a
22 second interconnection, and we assumed that that
23 would be in service by the end of 1981.

24 It would be simply utilized in MELP's purchases
25 of power and energy in the former period.

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2 A Well, what we actually did was we made a study of what
3 CEI's total revenue requirements would be into the future,
4 and then we determined by a cost-of-service method how
5 much would be charged to the wholesale customers.

6 Q That's as opposed to retail customers?

7 A Yes.

8 Q How much PASNY power is included in the base case,
9 the historic and future?

10 A The amount that's actually being purchased, which I
11 believe is 23 megawatts from PASNY at its busses.

12 Q And that's located in New York?

13 A Yes.

14 Q How did you go about estimating the cost of PASNY
15 power for the base case?

16 A We utilized the rates that are presently in effect
17 for the PASNY power and applied it to the amounts of
18 power and energy which MELP is presently purchasing
19 and expects to be purchasing throughout the term
20 of the contract.

21 Q How did you estimate the cost of the Buckeye Power
22 which is in the base case?

23 A We took the charges that are presently in effect
24 under the terms of Buckeye contract, and escalated
25 those for 1982 and beyond.

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2 Q Did you make an estimate of the amount of Buckeye
3 Power for the purpose of constructing the engineering
4 model of the base case?

5 A Yes.

6 Q And how was that estimated?

7 A That was estimated based upon the contract terms and
8 our own economic dispatch of the amount of energy --
9 the amount of Buckeye energy that we thought MELP
10 could take on an economic basis.

11 Q Is that available throughout the year?

12 A No. Buckeye Power is seasonal type power. It's
13 available at the time which MELP meets its peak but
14 off-peak as far as Buckeye is concerned.

15 Q How did you go about calculating other items of
16 expense for the future base case?

17 A Well, of course, we had 1980 actual experience.
18 We estimated what 1981 would be based on what the
19 costs are now being -- as being incurred and as we
20 estimated that they will be by the end of the year.
21 And we used 1981 basically as our base line for
22 projecting these various expenses forward and we
23 projected these expenses forward based upon
24 inflation factors Dr. Wein asked us to use, with
25 the exception, of course, of our forecast of CEI's

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2 wholesale power rates which reflected some other
3 factors besides what Dr. Wein gave us, and with
4 respect to transmission we had an inflation factor
5 which was a little bit different than Dr. Wein gave
6 us.

7 Q Can you refer us to where in the report the
8 inflation factors are set forth, if they are?

9 A I believe they are found on page 14 of my report to
10 Dr. Wein.

11 Q Now, as to revenues, which was one of the items on the
12 operating statement, did you actually project what
13 Muny Light's rates are going to be or might be in the
14 future?

15 A No, we did not.

16 Q What approach did you take to estimating the revenues?

17 A With respect to the future base case --

18 Q Right.

19 A -- we calculated what Muny Light's expenses, or we
20 estimated what Muny Light's expenses would be into
21 the future, including the cost of purchased power,
22 the cost of operating and maintaining the transmission
23 system, the interest on debt, and the depreciation
24 allowance on their plant in service, and we set the
25 net revenue equal to zero.

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2 Then, based upon the sales that Dr. Wein told
3 us to assume for the various classes of customers,
4 we calculated what the revenues would have to be to
5 meet all those expense items and derived zero net
6 revenues or zero profit in the base case.

7 Q Now, Mr. Mayben, you stated that you made a number of
8 studies and you were examining the effect of alleged
9 acts of CEI.

10 Can you list for us which acts were studied?

11 A Well, Dr. Wein asked us to assume that an
12 interconnection would have been placed in service
13 earlier than was actually placed in service; Dr.
14 Wein asked us to assume that PASNY power would have
15 been wheeled to Muny Light by MELP -- excuse me --
16 to MELP by CEI earlier than was actually wheeled;
17 and he also asked us to assume that MELP would not
18 have lost certain of its customers as a result of
19 CEI's sales practices.

20 Q What approach did you take to measuring the effect on
21 Muny Light, making the assumptions which you just
22 listed?

23 A Well, taking each one of the assumptions separately,
24 we prepared a separate engineering model of how
25 MELP would have met its obligations, assuming each

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2 Dr. Wein told us to assume, which were in excess of
3 what was in the base case.

4 Q And that's a computation essentially like what you
5 showed us on the board?

6 A Yes.

7 Q Now, what effect does that approach have, using the
8 same revenue rates?

9 A Well, the effect is that we assume that the rates
10 in place in the alternative engineering models were
11 the same rates as were actually in place in the
12 historic period.

13 Q What assumption did you make about revenues in your
14 study of future time periods for these alternative
15 cases?

16 A We calculated the average revenue per total kilowatt
17 hours sales in the future period base case, and we
18 applied that average revenue per total kilowatt hour
19 sales to the total kilowatt hour sales that Dr. Wein
20 told us to assume in the various engineering models.

21 Q Now, I believe I understood you to say you made a
22 variety of studies of the effect of the assumptions
23 that you have stated.

24 Did you study these all together or separately?

25 Would you just explain how they were done?

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2 A We studied them separately and we studied them in
3 various combinations, including all three together.

4 Q I see.

5 And there is an engineering model and a
6 financial model for each one of those studies, is
7 that correct?

8 A Yes.

9 Q Would you summarize essentially what are the
10 differences between the alternative case and the base
11 case, how you get from one to another?

12 A Well, of course, the base case, again, is what MELP
13 actually was in the past and what it is today and on
14 into the future.

15 The alternative cases -- I'll just take the
16 first one, being the first case where Dr. Wein
17 assumed the existence of an interconnection prior to
18 the time it was actually placed in service in 1975.

19 Q Excuse me, I must not have been very clear.

20 Just generally, what are the differences between
21 the alternative cases and the base case with respect
22 to where they differ?

23 A Well, they'll differ in the respect of power supply
24 primarily where an interconnection is in place; in
25 the one assumption where Dr. Wein said assume that

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2 Muny Light didn't get the interconnection until it
3 actually got it but had no more customers, power
4 supply essentially was the same as it was in the
5 base case.

6 Fundamentally, power supply is the overriding
7 difference between the alternative cases and the
8 base case.

9 Q What things are encompassed in power supply?

10 A The existence of generation, for the most part.

11 Q Are there also cases in which sales are different
12 than the base?

13 A Yes.

14 {The Court and Law Clerk Schmitz conferred
15 off the record.}

16 BY MS. COLEMAN:

17 Q How did Buckeye Power figure into the alternative
18 cases?

19 A Well, Buckeye Power figures into the alternative
20 cases where we assume that the interconnection was in
21 service when it actually was placed in service and
22 MELP did not rehabilitate and utilize its steam
23 production capabilities.

24 Buckeye Power purchased and utilized as it is
25 today and is projected to be in the future is a

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2 little less expensive than power purchases from CEI.

3 So, basically, Buckeye Power is used as an
4 offset or as a substitution for power from CEI
5 because of its price differential.

6 Q Is it used in that way in cases where MELP is
7 assumed to be generating now into the future and --

8 A No.

9 In the cases where we had MELP producing some
10 of its power and energy with rehabilitated equipment,
11 it does not prove to be a more economic source of
12 power and energy than using its own generation.

13 Q I see.

14 Now, Mr. Mayben, I would like to turn to each
15 of the groups of assumptions in order separately.

16 Speaking, first, about the engineering model
17 and financial model relating to interconnection:

18 What is the description of the engineering
19 model relating to assuming an earlier interconnection?

20 A Well, we have identified that as the series II,
21 Roman Numeral II cases.

22 Q And what are the major features of the engineering
23 model for those cases?

24 A The major features are that the interconnection would
25 have been placed in service the first of 1973; that

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2 the MELP generation would have been repaired,
3 rehabilitated and, in one instance, retrofitted with
4 pollution-control equipment.

5 So that MELP would be able to utilize its steam -
6 generating capability to meet a portion of its load
7 in the historic period as well as the future period.

8 Q What was the basis of your assumption that an
9 interconnection could be in service about two years
10 earlier than it actually was?

11 A It was on the basis that an agreement would have
12 been reached between MELP and CEI in July of 1971
13 that an interconnection would be installed, that the
14 engineers of the two parties were in agreement as to
15 the basic features of that interconnection, and that
16 there was cooperation going on between the parties
17 with respect to the installation of that
18 interconnection, and that the engineers at least had
19 a sense of urgency to get that interconnection in
20 service as quickly as possible.

21 Q Well, is the time between July of 1971 and January, '73
22 sufficient in your opinion based on your background
23 as an engineer, is that time sufficient to complete the
24 construction of the line and install the necessary
25 terminal equipment?

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2 A Yes.

3 Q Mr. Mayben, in your engineering modeling, what are
4 the assumed effects on Muny Light operations of
5 having an interconnection in place in January, 1973?

6 A In the assumed engineering models, the effect is that
7 MELP could have comfortably begun a repair,
8 improvement, rehabilitation program on their
9 existing steam electric facilities which were in a
10 state of disrepair at that particular time.

11 Having the interconnection, they would have
12 been assured of a supply of energy on a reliable
13 basis, and they could have comfortably taken these
14 units out of service and begun to do the work on
15 them.

16 Q What consequence would completing the rehabilitation
17 program have on MELP's operations after the point
18 when that program was completed?

19 A Well, they would have been meeting a substantial
20 portion of their apparent energy requirements from
21 their own generating equipment as opposed to
22 purchasing it as they are now.

23 Q What information did you take into account in
24 projecting what this assumed rehabilitation program
25 would be?

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2 in '73 and thereafter, and caused them to purchase
3 power and energy from CEI differently than they did.

4 However, with respect to the amount of power
5 and energy that they purchased from CEI, we assumed
6 that they paid the same basic price for that energy
7 as they did in the actual case.

8 Q What assumption did you make about the cost of fuel
9 for Muny's generating units in this financial model
10 associated with the earlier interconnection?

11 A Well, we assumed that the fuel would be purchased at
12 about the same price that it was being purchased in
13 actuality during that same time period, although it
14 was necessary, once certain equipment was placed back
15 in service, to make some modifications to the
16 assumed efficiencies of the units to determine the
17 amount of coal that would be burned and to determine
18 the amount of dollars that would be paid for that
19 coal.

20 Q Let me ask you, if you would, to specify the
21 assumptions of the engineering model concerning the
22 work on the generation equipment.

23 A Could I have that read back?

24 {The question was read by the reporter.}

25 THE COURT:

Again?

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A If I understand the question, the work that was going to be done was the work that was set forth in the financing documents in the 1974 efficient statement.

Q I should rephrase the question.

Which generating units were involved in the work?

A Basically, they were the boilers and generators at that time.

Q What assumption did you make about the capacity and efficiency of the equipment prior to rehabilitation -- I'm sorry, after the rehabilitation?

I'm mixing time periods.

A Well, we assumed that the 325 megawatt steam electric units would be returned to their basic capacity and efficiency that they had prior to the time of the rehabilitation period.

With respect to the large unit, No. 6 and 11, we assumed that shortly after it was rehabilitated and placed in service it experienced an explosion, as in fact it did, and the repair of that explosion caused us to believe that it would probably have had less capacity than it did prior to the time prior to the explosion.

So we derated the equipment to reflect that.

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2 Q Have you assumed the explosion occurred at the same
3 time it actually occurred?

4 A No. In our modeling, in our engineering modeling we
5 actually had the equipment under repair and it was
6 not being fired at that time, therefore, an
7 explosion wouldn't have occurred.

8 What we assumed was that shortly after repair
9 was completed it was brought back on line and the
10 explosion occurred.

11 Q Why did you assume it happened in your modeling?

12 A Well, we don't know why it happened. I told Dr.
13 Wein I didn't believe we could attribute it to the
14 lack of an interconnection. There was nothing in
15 my mind that would indicate that. We didn't know
16 that we could attribute it to operator failure or
17 operator error. We didn't know that we could
18 attribute it to an Act of God. So we said, "Let's
19 assume it happened for whatever reason it happened."

20 Q What assumption did you make, if any, concerning
21 the efficiency of the rehabilitated equipment?

22 A Well, as I indicated, the 325-megawatt unit, we
23 assumed that had its same basic efficiency that it
24 had prior to the time they rehabilitated.

25 Part of our engineering model where MELP returned

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2 to production contemplated the retrofitting of some
3 environmental control equipment on Boiler No. 6 and
4 with the installation of this equipment we assumed
5 further derating of the equipment, at least in
6 terms of net capability and less-efficient conversion
7 of coal to steam energy.

8 Q Could you explain what the term "retrofit" means?

9 A Yes. When the Boiler No. 6 was constructed, it was
10 constructed to comply with then current
11 environmental pollution laws and regulations. As we
12 all know, those laws have changed over time, and it
13 was determined in doing an engineering study that
14 my firm undertook back in 1975 that it would be
15 necessary for MELP to install some equipment to
16 scrub the flue gases to remove more particulate and
17 remove sulfur dioxide that was being emitted from
18 the kind of coal that was burned.

19 So the installation of this equipment is known
20 as retrofitting onto an existing power plant.

21 Q Is that retrofitting something that was in fact
22 done by Muny Light?

23 A No, it was not.

24 Q What was your basis for assuming that it would be
25 done in this engineering model related to the

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earlier interconnection?

A Well, we assumed that had Muny Light spent the money on repairing and rehabilitating No. 6 boiler and No. 11 turbine generator and having repaired the explosion that occurred, they would have been well advised to go ahead and retrofit the environmental control equipment onto that particular boiler so as to be able to use that as dependable capacity.

Q Did you state your firm had been involved in a study of precisely that work?

A Yes. MELP had engaged our firm back in 1975, as I recall, to make a study of what would be necessary to install on the equipment in order to bring them into compliance with the air pollution regulations, and we studied various alternatives and recommended a particular one.

Q What assumption did you make about the handling of pollution control devices like this for the three smaller boiler turbines?

A We assumed that with respect to the age of those units and their efficiency of conversion that MELP would not retrofit environmental control equipment onto those units.

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2 Q What assumption did you make about how long each of
3 the generating units would continue to be operated
4 after the rehabilitation you described?

5 A Well, the small units were actually shut down in
6 1977 because of their inability to comply with the
7 regulations. So we assumed that, similarly, they
8 would be shut down at that point in time.

9 With respect to the rehabilitated and
10 retrofitted large unit, we assumed it would be
11 in service throughout the study period into the
12 future.

13 Q What was the reason for your assumption that it would
14 be continued to be operated into the future?

15 A Well, because repaired and retrofitted, it would be
16 able to produce electricity at fairly attractive
17 marginal cost in comparison to going out and buying a
18 comparable amount of power and energy.

19 Q How did Muny's gas turbines figure in your engineering
20 modeling for this alternative case, if they did?

21 A We assumed that they would be utilized to meet
22 apparent energy requirements during the repair and
23 rehabilitation stage. However, when we dispatched
24 the various generating units along with the purchases,
25 we found they would not be utilized as much.

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2 Therefore, we assumed that they would have been
3 kept in good repair and would have been useful for
4 peaking purposes on into the future.

5 Q Now, you used the phrase they would not have been
6 used as much.

7 - As much compared to what?

8 A As much as compared to the way they were actually used
9 in the 1970 decade to meet energy requirements.

10 Q What was your assumed source of fuel for the gas
11 turbines in the study cases?

12 A It was the actual source of fuel that they were
13 purchasing at the time.

14 Q And your assumption as to the cost of that fuel came
15 from what source?

16 I'm sorry. What was your assumption as to the
17 cost of the fuel?

18 A Basically the price that they were paying for that
19 fuel at the time.

20 Q Now, did you find it necessary to make assumptions
21 concerning plant personnel in developing these
22 engineering models?

23 A Yes, we did.

24 Q What assumption did you make?

25 A During the repair and rehabilitation stage, we found

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1
2 that it was possible to utilize some of the plant
3 personnel working on the actual repairs and
4 rehabilitation.

5 Since those costs were being capitalized rather
6 than expensed, that labor cost was being included as
7 a part of the cost of rehabilitation and repair.
8 After the rehabilitation and repair was completed,
9 we assumed the trimming of the plant sources --
10 excuse me -- after the repair and rehabilitation was
11 completed and after the small units were shut down,
12 we assumed trimming of the plant forces down to a
13 level necessary to operate the large unit.

14 Q Now, that brings us to something like the 1978-79
15 time period?

16 A Yes.

17 Q And what is the fact as to Muny's actual generating
18 plant staffing in that time period?

19 A I don't believe they had any.

20 Q You had then to make an assumption about such
21 staffing through this engineering model; is that
22 right?

23 A That's correct.

24 Q What assumption did you make?

25 A Well, we talked to our power plant people and asked

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2 them what would be necessary normally to run a power
3 plant of this nature, considering that they had
4 retrofitted scrubbers on it, and they told us what
5 they thought it could be operated with.

6 We then applied a factor increasing those
7 numbers to reflect the way MELP normally hired people
8 to run their power plants.

9 So we had more operators in that power plant
10 than we thought was necessary, but nevertheless
11 reflecting the practices of MELP with respect to
12 staffing of projects of this nature.

13 Q I see. And after having made all of these
14 engineering -- well, back up.

15 Have we omitted any significant features of the
16 engineering model in the discussion?

17 A I don't believe so.

18 Q And after having --

19 THE COURT: Would this be a good
20 time when you finish this question to take our
21 recess?

22 MS. COLEMAN: That's fine, your
23 Honor.

24 THE COURT: Why don't you
25 finish this question.

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2 other kinds of the electric utility equipment.

3 It was installed in the late 1960's, so I
4 would expect it to have 35, 40 years of service
5 left from that date.

6 Q Turning go the point where we were at the recess.

7 After you completed all of the engineering
8 models for the studies assuming an earlier
9 interconnection, did you then translate these
10 figures into a financial model?

11 A Yes, I did.

12 Q And was that expressed in the same form base case
13 we looked at?

14 A Yes, it was.

15 MS. COLEMAN: Mrs. Richards, would
16 you place the operating statement for Case II-A
17 on the screen?

18 {Mrs. Richards complies.}

19 Q Would you identify this exhibit, please?

20 A Yes. That is Page 1-9 in the report prepared and
21 submitted to Dr. Wein. It's a summary operating
22 statement for the years 1971 through 1984 Case II-A.

23 Q What does the information right at the top of the
24 asterisk signify?

25 A Those are the basic engineering assumptions

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2 associated with this case as it relates to the base
3 case.

4 Q Can you tell us generally which categories of
5 engineering information, revenues and expenses
6 are different in this presentation than on the
7 base case we looked at earlier this afternoon?

8 A Yes, I can.

9 Q Tell us first, perhaps, which ones are you saying?

10 A Well, in accordance with the asterisk that says
11 "Actual customers and no PASNY power," those would
12 be the same as the base case.

13 The asterisk indicating there is an
14 interconnection and 1-1-73 would indicate that
15 certain of the items relating to power supply would
16 have been different than the base case, such items
17 as production steam fuel, gas turbine fuel and
18 labor, purchased power from CEI would have been
19 different.

20 Q What about the presentation as to transmission and
21 distribution operations?

22 Let's take transmission separately, first,
23 transmission operation and maintenance.

24 A Transmission operation and maintenance would be a
25 little bit higher because we estimated their