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EXHIBIT NO.

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Ohio Power Company,)
)
Complainant,)
)
v.)
)
Consolidated Electric Cooperative, Inc.,)
)
Respondent,)
)
Relative to Violations of the)
Certified Territory Act.)

Case No. 06-890-EL-CSS

DIRECT TESTIMONY
OF
SELWYN J. DIAS
ON BEHALF OF
OHIO POWER COMPANY

Filed: January 29, 2007

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SELWYN J. DIAS
CASE NO. 06-890-EL-CSS

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THE PUBLIC UTILITIES COMMISSION OF OHIO
DIRECT TESTIMONY OF
SELWYN J. DIAS
ON BEHALF OF
OHIO POWER COMPANY
CASE NO. 06-890-EL-CSS

I. INTRODUCTION

1
2
3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Selwyn J. Dias and my business address is 88 East Broad Street, Suite 800,
5 Columbus, Ohio 43215.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by American Electric Power Service Corporation (AEPSC), a subsidiary
8 of American Electric Power Company, Inc., as Director of Regulatory Services – Ohio. I
9 am responsible for regulatory affairs and economic development pertaining to AEP's
10 Ohio electric operating companies. AEP owns two electric operating companies in Ohio
11 that provide retail electric service, Ohio Power Company (OPCo) and Columbus
12 Southern Power Company (CSP).

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **PROFESSIONAL EXPERIENCE.**

15 A. I graduated from the University of Central Oklahoma with a bachelor's degree in
16 Business Administration (Accounting Major) in 1981. I have also completed the
17 Executive Management Program at the University of Virginia Darden School of
18 Business. I hold the professional designations of Certified Internal Auditor and Certified
19 Fraud Examiner administered by the Institute of Internal Auditors and the National
20 Association of Certified Fraud Examiners, respectively.

1 I began my career in 1981 as an international internal auditor with Kerr-McGee
2 Corporation, an oil and gas drilling and exploration conglomerate. In 1985, I joined
3 Central and South West Corporation (CSW) as an internal auditor and progressed to a
4 management level position within the internal auditing organization. During my tenure
5 with CSW I held several other leadership positions within the company including
6 manager of corporate services, director of pricing development and director of regulatory
7 administration.

8 After the merger of CSW and AEP in 2000, I continued as director of regulatory
9 administration with responsibilities expanded to include the remainder of AEP's
10 regulated jurisdictions. In June 2003 I was appointed to my current position overseeing
11 Ohio regulatory matters under the jurisdictional authority of the Public Utilities
12 Commission of Ohio. In this capacity I am directly responsible for regulatory affairs
13 pertaining to public policy development and implementation, Ohio Administrative Code
14 compliance and reporting, state filing requirements, retail electric tariffs and economic
15 development within OPCo's and CSP's certified service territories.

16 17 **II. PURPOSE OF TESTIMONY**

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

19 A. First, I will provide information regarding the electric service that Consolidated Electric
20 Cooperative (Consolidated) has initiated, or offered to initiate, in the Village of
21 Lexington to several customers located in OPCo's certified territory. This information
22 supports the factual allegations of OPCo's Complaint. Second, my testimony addresses
23 certain policy concerns raised by Consolidated's practice of initiating service to

1 customers in the portion of OPCo's certified territory that lies within Lexington's
2 boundaries.

3
4 **III. FACTUAL CIRCUMSTANCES OF OPCO'S COMPLAINT**

5 **Q. PLEASE DESCRIBE THE CIRCUMSTANCES THAT LED OPCO TO FILE ITS**
6 **COMPLAINT.**

7 A. OPCo discovered in 2006 that Consolidated had constructed distribution facilities to four
8 residential customers located within what appeared to be a portion of OPCo's certified
9 territory in the Village of Lexington. After looking into this matter, we confirmed that
10 Consolidated was serving the four customers in OPCo's certified territory. The street
11 addresses within Lexington of the four customers are 155 Woodside Court; 163
12 Woodside Court; 113 Woodside Boulevard; and 121 Woodside Boulevard. We also
13 found that Consolidated had offered to provide service to a fifth residential customer, at
14 176 Woodside Court, located near the four customers mentioned above and also within
15 OPCo's certified territory in Lexington. I believe that since then Consolidated has
16 initiated service to the customer at 176 Woodside Court.

17 **Q. PLEASE EXPLAIN THE BASIS FOR THE CONCLUSION THAT THE LOAD**
18 **CENTERS FOR THOSE CUSTOMERS ARE WITHIN OPCO'S CERTIFIED**
19 **TERRITORY, NOT CONSOLIDATED'S.**

20 A. Attached as Exhibit A to my testimony is a map that depicts the location of each of the
21 five customers that Consolidated is serving within OPCo's certified territory. It also
22 shows that the location of the fifth customer to whom Consolidated is now providing
23 electric service also is within OPCo's certified territory. Exhibit A also shows the

1 boundaries of OPCo's and Consolidated's certified territories in the portion of Lexington
2 where those customers are located. They are the boundaries for that locale that the
3 Commission has included in the official certified maps that it has issued for Consolidated
4 and OPCo. Exhibit A illustrates where Consolidated is currently providing electric
5 service to the five customers described above, whose load centers are within OPCo's
6 certified territory.

7 **Q. PLEASE IDENTIFY THE COMMISSION'S OFFICIAL CERTIFIED**
8 **TERRITORY BOUNDARY MAP THAT INCLUDES THE AREA DEPICTED IN**
9 **EXHIBIT A.**

10 A. The local area depicted in detail by Exhibit A resides on the Commission's certified
11 territory boundary map I-19. Exhibit B to my testimony is a copy of map I-19. The
12 portion of map I-19 that covers the local area depicted in Exhibit A has been highlighted
13 on Exhibit B.

14 **Q. HAS THE VILLAGE OF LEXINGTON ISSUED A FRANCHISE TO OPCO**
15 **AUTHORIZING OPCO TO PROVIDE SERVICE WITHIN THE VILLAGE?**

16 A. Yes. By Ordinance No. 69-21, enacted on June 16, 1969, Lexington granted to OPCo a
17 non-exclusive franchise to construct, operate and maintain facilities for distribution of
18 electric energy within the streets, thoroughfares, alleys, bridges and public places of the
19 Village in order to provide electric service in the Village and to its inhabitants, for a term
20 of fifty (50) years. A copy of the franchise ordinance is attached to my testimony as
21 Exhibit C.

22 **Q. IS CONSOLIDATED'S PRACTICE OF EXTENDING ITS FACILITIES AND**
23 **PROVIDING ELECTRIC SERVICE TO CUSTOMERS IN OTHER ELECTRIC**

1 **SUPPLIERS' CERTIFIED TERRITORIES LIMITED TO LOAD CENTERS**
2 **LOCATED IN OPCO'S CERTIFIED TERRITORY AND/OR TO LOAD**
3 **CENTERS LOCATED NEXT TO CONSOLIDATED'S CERTIFIED**
4 **TERRITORY BOUNDARIES?**

5 A. No. In a separate circumstance involving CSP's certified territory within the City of
6 Delaware, Consolidated has extended its facilities into CSP's certified territory in order
7 to serve an industrial customer located approximately two miles within CSP's certified
8 territory.

9 Q. **ARE YOU AWARE OF ANY OTHER RURAL ELECTRIC COOPERATIVES**
10 **(OR INVESTOR-OWNED ELECTRIC SUPPLIERS) THAT ARE EXTENDING**
11 **THEIR FACILITIES AND PROVIDING ELECTRIC SERVICE TO**
12 **CUSTOMERS LOCATED IN THE CERTIFIED TERRITORIES OF OTHER**
13 **ELECTRIC SUPPLIERS IN THE MANNER THAT CONSOLIDATED IS**
14 **DOING?**

15 A. No, I am not aware of any other electric suppliers that have engaged in this practice.
16

17 **IV. IMPACTS OF CONSOLIDATED'S POSITION**

18 Q. **WHAT IS OPCO'S POSITION REGARDING THE PROCEDURE FOR**
19 **MODIFYING COMMISSION-APPROVED CERTIFIED TERRITORY**
20 **BOUNDARIES?**

21 A. OPCo follows the existing procedure, which we believe has worked well. When two
22 electric suppliers consent that a boundary line should be changed in order to serve a
23 customer, they jointly apply to the Commission for approval of a boundary line change

1 and, if appropriate, the Commission approves the change. The two electric suppliers also
2 modify their boundary maps and file the revised maps with the Commission. All parties
3 are aware of any changes in the rights and responsibilities for serving customers.

4 **Q. WHAT IS YOUR UNDERSTANDING OF CONSOLIDATED'S POSITION**
5 **REGARDING ITS AUTHORITY TO PROVIDE ELECTRIC SERVICE TO**
6 **CUSTOMERS LOCATED IN THE VILLAGE OF LEXINGTON THAT ARE**
7 **WITHIN OPCO'S CERTIFIED TERRITORY?**

8 A. Consolidated's position, as I understand it, is that because it has obtained a franchise
9 from the Village, it may extend its lines and provide electric service to customers who are
10 located in the portion of OPCo's certified territory within the Village without first
11 obtaining OPCo's consent and the Commission's approval. I further understand
12 Consolidated's view to be that inside the Village's boundaries, OPCO's exclusive right to
13 provide electric service within its certified territory does not apply.

14 **Q. UPON WHAT DO YOU BASE YOUR UNDERSTANDING OF**
15 **CONSOLIDATED'S POSITION?**

16 A. My understanding is based on Consolidated's installation of distribution facilities and
17 provision of electric service, and its efforts to provide service, to the five customers
18 described above. My understanding is also based on my review of Consolidated's
19 Answer to OPCo's Complaint.

20 **Q. WHAT CONCERNS DOES CONSOLIDATED'S POSITION RAISE IN YOUR**
21 **VIEW?**

22 A. First, I am not an attorney. Accordingly, while my counsel has advised me, and our
23 Complaint indicates, that OPCo's position is that Consolidated's construction of facilities

1 to serve and its provision of service to customers located in OPCo's certified territory
2 under the circumstances of this case violate Ohio law, my testimony does not address that
3 legal issue. Instead, I address certain impacts that Consolidated's position, if upheld,
4 would have. In particular, I discuss its impact on OPCo's obligation to provide electric
5 distribution service, including its obligation to provide default generation service, to
6 customers inside municipal boundaries. I also discuss the impact on OPCo's existing
7 investment in distribution plant and the recovery of the costs of stranded distribution
8 facilities. I note that Mr. Ivinskis discusses adverse impacts on distribution network
9 planning and operations.

10 **Q. PLEASE DESCRIBE THE ISSUE THAT CONSOLIDATED'S POSITION**
11 **RAISES REGARDING THE OBLIGATION TO PROVIDE ELECTRIC**
12 **DISTRIBUTION SERVICE TO CUSTOMERS WITHIN LEXINGTON.**

13 **A.** OPCo operates its electric distribution service business in Ohio under the assumption that
14 it has both the exclusive right, in comparison to other electric suppliers, and the
15 obligation to provide electric distribution service to customers located in its certified
16 territory. This assumption applies within our certified territory, including within
17 municipalities from which we have a franchise, as is the case in the Village of Lexington.
18 The point here is that our operating assumption is not simply that we have an exclusive
19 right, but also an obligation, to provide electric distribution service in our certified
20 territory.

21 If one or more other electric suppliers, such as Consolidated, also has a right to
22 provide electric distribution service to customers within the portion of OPCo's certified
23 territory that lies within the Village, then a question that arises is whether OPCo has any

1 obligation to provide electric distribution service to any customers in its certified territory
2 within the Village. Logically, the obligation is tied to the exclusive right to serve because
3 the costs of being in a position to fulfill an obligation to serve customers must be
4 recovered from those customers. The way that we recover costs from customers is by
5 selling them our services. Consequently, the rational conclusion, in my view, is that if
6 OPCo does not have the exclusive right to provide electric distribution services to
7 customers in its certified territory within the Village, it should not have an obligation to
8 serve them either.

9 **Q. WHAT ELECTRIC SUPPLIER WOULD HAVE THAT OBLIGATION?**

10 A. If Consolidated's position is upheld, it is not obvious to me which, if any, electric
11 supplier would have an obligation to serve customers in OPCo's certified territory within
12 the Village.

13 **Q. DOES OPCO PROVIDE TEMPORARY POWER TO DEVELOPERS AND**
14 **CONTRACTORS WHILE THEY ARE CONSTRUCTING CUSTOMERS'**
15 **PREMISES IN ITS CERTIFIED TERRITORY?**

16 A. Yes, OPCo often extends distribution facilities and furnishes power on a temporary basis
17 to developers and contractors which they use to build improvements and structures that
18 owners and tenants then occupy on a permanent basis.

19 **Q. WHAT WOULD BE THE CONSEQUENCE OF CONSOLIDATED'S POSITION**
20 **ON OPCO'S PROVISION OF TEMPORARY CONSTRUCTION POWER?**

21 A. Again, if OPCo does not have the right to provide electric service to the consumer once
22 construction at the premises is complete, it should not be required to provide service on a
23 temporary basis during the construction phase. And, similarly, it is not obvious to me

1 which, if any, electric supplier would have an obligation to provide temporary service
2 during construction.

3 **Q. PLEASE DESCRIBE THE IMPACT OF CONSOLIDATED'S POSITION ON**
4 **THE OBLIGATION TO PROVIDE DEFAULT GENERATION SERVICE TO**
5 **CUSTOMERS.**

6 A. Again, the rational conclusion, in my view, is that if OPCo does not have the obligation
7 to provide electric distribution service, it also should not have an obligation to provide
8 default generation service to customers within the Village or, at least, not to those
9 customers who were customers of Consolidated. And, similarly, it is not clear to me
10 which, if any, other electric supplier would assume that obligation.

11 **Q. IF CONSOLIDATED'S POSITION THAT IT MAY PROVIDE ELECTRIC**
12 **SERVICE TO CONSUMERS IN OPCO'S SERVICE TERRITORY WITHIN**
13 **LEXINGTON IS UPHOLD, WHAT OBLIGATIONS TO PROVIDE SERVICE TO**
14 **CONSUMERS IN THAT AREA WOULD CONSOLIDATED HAVE?**

15 A. It is not clear to me what, if any, service obligation Consolidated would have to
16 customers located in OPCo's certified territory. Similarly, I am not aware of any
17 regulatory mechanism that would allow consumers in OPCo's certified territory to
18 require Consolidated to extend facilities and furnish service to them.

19 **Q. PLEASE EXPLAIN YOUR CONCERN REGARDING THE IMPACT THAT**
20 **CONSOLIDATED'S POSITION WOULD HAVE ON OPCO'S EXISTING**
21 **INVESTMENT IN DISTRIBUTION PLANT?**

22 A. My concern is that distribution facilities already constructed to provide service to existing
23 and future customers within OPCo's certified territory in the Village will be idled or

1 underutilized. As a result, the costs of those idled or underutilized distribution facilities
2 that OPCo would have recovered through electric distribution services provided to
3 customers that, instead of remaining or becoming OPCo customers, take service from
4 Consolidated, will not be recovered from those customers. I also share the concerns Mr.
5 Ivinskas discusses in his testimony regarding the consequences of undersizing facilities
6 and regarding safety issues.

7 **Q. HOW WOULD OPCO RECOVER THOSE COSTS?**

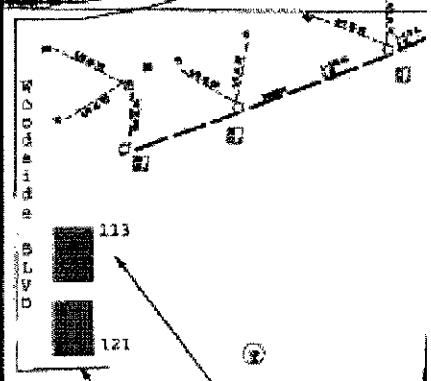
8 **A.** Those costs would have to be recovered from other customers.

9 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

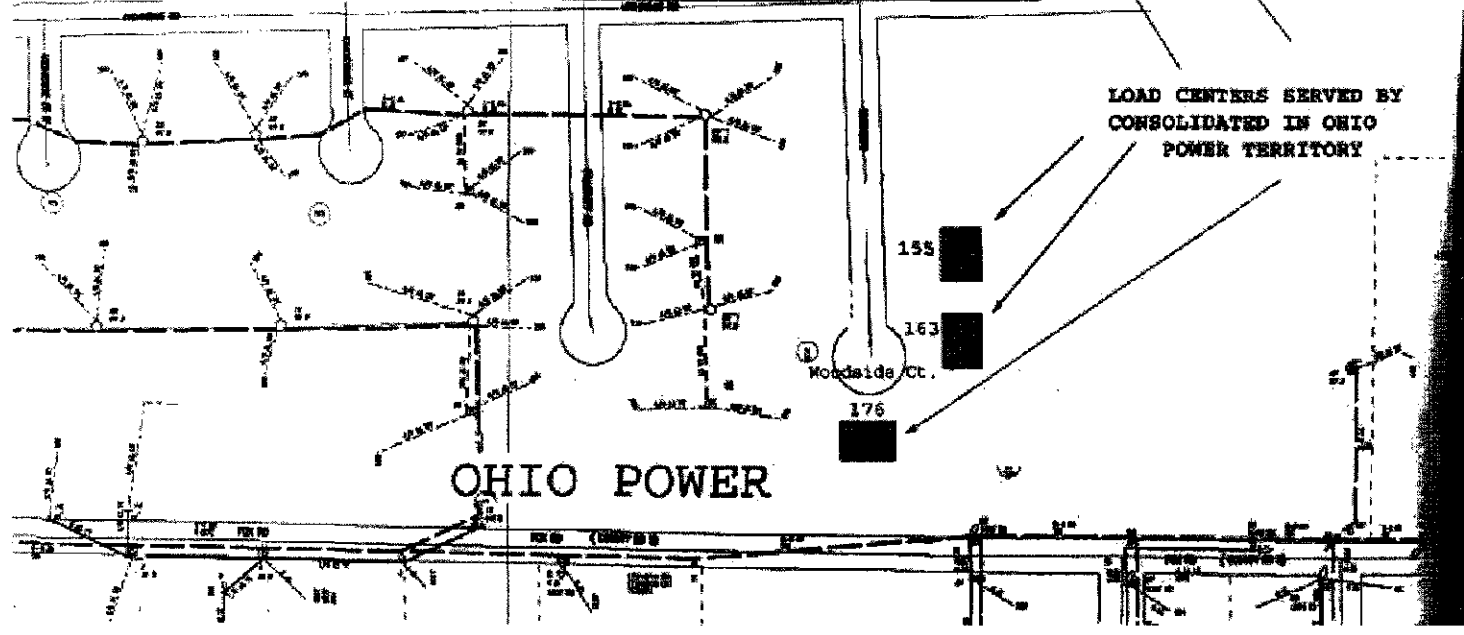
10 **A.** Yes, it does.

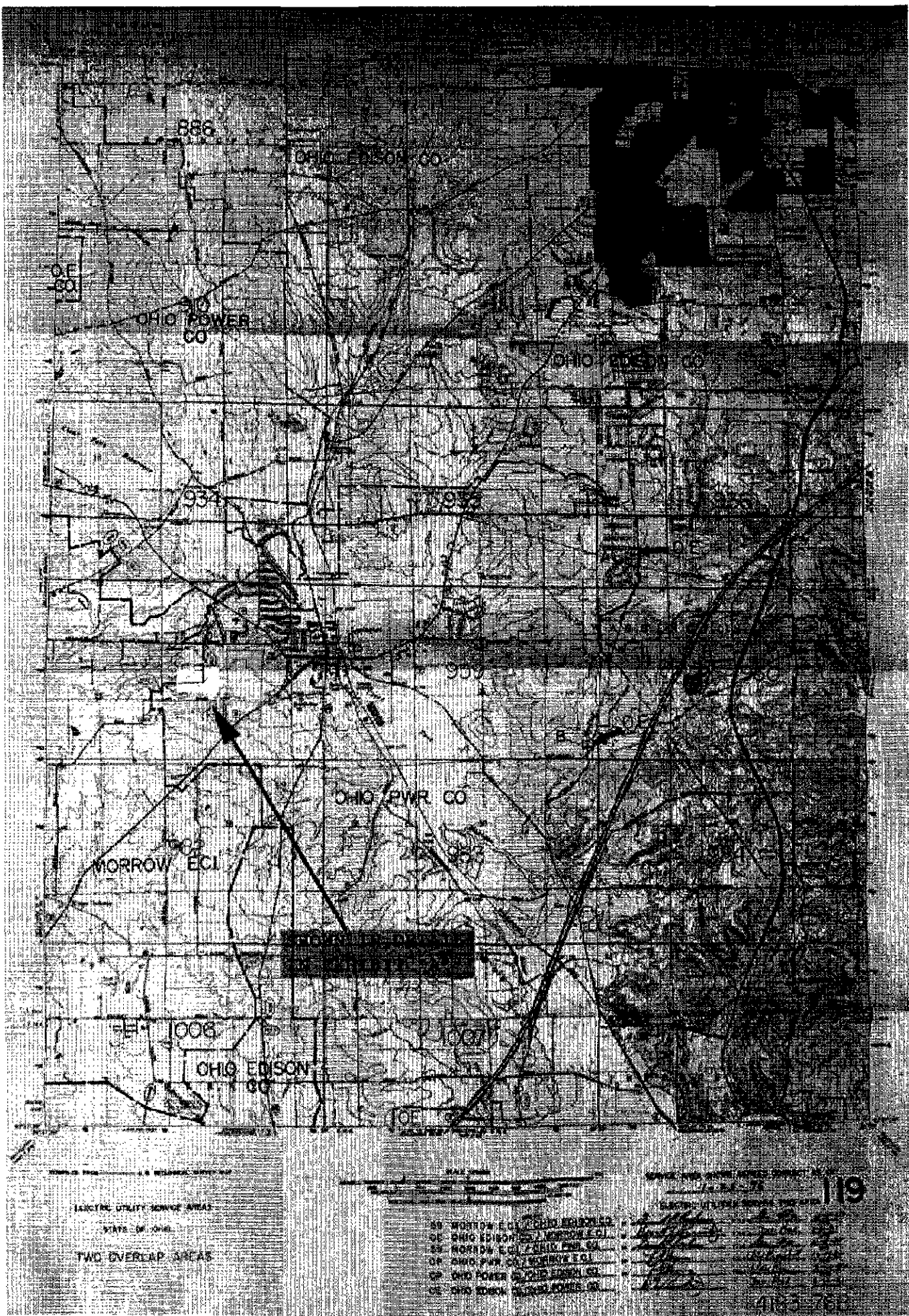
Exhibit A

CONSOLIDATED



LOAD CENTERS SERVED BY
CONSOLIDATED IN OHIO
POWER TERRITORY





UTILITY SERVICE AREAS

STATE OF OHIO

TWO OVERLAP AREAS

- AS MORTON ECI / OHIO EDISON CO
- OF OHIO EDISON CO / MORTON ECI
- OF MORTON ECI / OHIO PWR CO
- OF OHIO PWR CO / MORTON ECI
- OF OHIO PWR CO / OHIO EDISON CO
- OF OHIO EDISON CO / OHIO PWR CO

SCALE AND SERVICE AREAS
1:25,000
UTILITY SERVICE AREAS

119

4183-761

ORDINANCE NO. 6921

An Ordinance granting to Ohio Power Company, its successors and assigns, the right to acquire, construct, maintain and operate in the streets, thoroughfares, alleys, bridges and public places of the Village of Lexington State of Ohio, and its successors, lines for the distribution of electric energy to the Village of Lexington and the inhabitants thereof for light, heat, power and other purposes and for the transmission of the same within, through or across said Village of Lexington, State of Ohio.

Be it ordained by the Council of the Village of Lexington, State of Ohio, and it is hereby ordained by authority of the same that:

Section I.

Ohio Power Company, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, bridges and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the distribution of electric energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission of the same within, through or across the said Village of Lexington, State of Ohio.

Section II.

Said lines and appurtenances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges and public places. The location of all poles, or conduits, shall be made under the supervision of the proper board or committee of the Village government.

Section III.

The rights, privileges and franchise hereby granted shall be in force and effect for a period of fifty (50) years from the date of the passage of this ordinance.

The rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.

Section IV.

Said grantee shall save the Village harmless from any and all liability arising in any way from negligence in the erection, maintenance or operation of said lines for the distribution of electric energy.

Section V.

Whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

Section VI.

Wherever in this ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

Section VII.

This ordinance shall be accepted by the grantee within Sixty (60) days from the date of the passage of same.

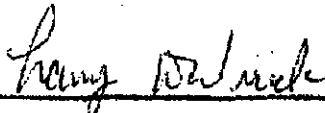
Passed in Council, this 16 day of June, 1969.


Mayor

of the Village of

Lexington, Ohio

Clerk



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Direct Testimony of Selwyn J. Dias was served by First-Class United States Mail, postage prepaid and electronic mail, upon the following counsel of record this 29th day of January, 2007:

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