

## Confidential Release

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**94-1176-EL-CMR**  
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Transcript - Vol. 4

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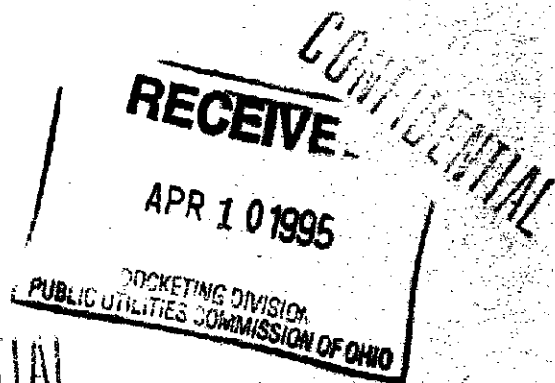
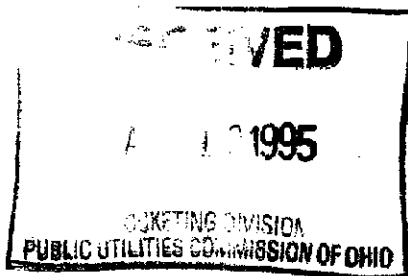
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\*\*\* CONFIDENTIAL PORTION \*\*\*

BY MR. ECKHART:

Q. Mr. Wack, I'll show you what's been marked for purposes of identification --

MR. REGULINSKI: Your Honor, before we get started with this, did you want to go on the record and state the transcript is sealed?

EXAMINER NODES: I did.

MR. REGULINSKI: Your Honor, I have an additional comment to make also on the record.

I would note that we have also been provided a contract between the State of Ohio and the Court Reporters. The contract contains a confidentiality clause in that contract.

I would also note for the record that the courtroom now contains only Company representatives, the counsel for the City, and the City's expert, and Staff, and Staff counsel. Thank you.

MR. COLBERT: Your Honor, I would ask that we -- we would object to questioning on the basis of that document unless it can be determined that this witness can sponsor the document. This is no different than questioning on a newspaper article. It's not been authenticated.

EXAMINER NODES: Well, I think that's

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1 what he's trying to do right now. I assume he's trying  
2 to authenticate it with this witness, but he hasn't  
3 asked any questions yet.

4 MR. COLBERT: Okay.

5 MR. ECKHART: And since counsel for  
6 the Company has raised the issue of the contract that  
7 was provided to me by Mr. Colbert, which I was waiting  
8 on some further answers from Mr. Colbert on, I'll make  
9 a note on the record that the contract on it's own face  
10 has expired, and is no longer in force, and unless the  
11 Commission has some new contract which they have  
12 submitted to the Department of Administrative Services  
13 and had approved by the State Department of  
14 Administrative Services and/or the Controlling Board,  
15 there is no contract. But be that as it may.

16 EXAMINER NODES: Hold on a minute.

17 Miss Hammerstein?

18 MS. HAMMERSTEIN: Apparently there was  
19 an additional page that was left off the copy given to  
20 Mr. Eckhart. There is an additional page which extends  
21 the contract for a period of one year.

22 MR. ECKHART: I asked Mr. Colbert  
23 that, and I was waiting on his response to that.

24 MS. HAMMERSTEIN: He wasn't aware of  
25 it. That's all there is to it.

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1 MR. ECKHART: I assume you will  
2 provide me with a copy of that?

3 MS. HAMMERSTEIN: And we will provide  
4 you with a copy.

5 MR. ECKHART: Thank you.

6 BY MR. ECKHART:

7 Q. Now, back to Garfield Heights Exhibit 7.  
8 Mr. Wack, will you look at that document, please?

9 (Pause.)

10 Have you had a chance to review that now?

11 A. Quickly.

12 Q. All right. Have you ever seen that or any  
13 similar document?

14 A. I've never seen this document.

15 Q. Do you know who prepares that?

16 MR. COLBERT: Objection, your  
17 Honor.

18 MR. REGULINSKI: Objection.

19 MR. ECKHART: The question was does  
20 he know, your Honor.

21 MR. REGULINSKI: The question was does  
22 he know who prepares this document? He's never seen  
23 it.

24 MR. ECKHART: That doesn't mean he  
25 doesn't know who prepares it. You can't presume the

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1 answer to the question, and the question is not  
2 improper simply because he says he's never seen that  
3 particular document.

4 MR. COLBERT: Your Honor, to start  
5 with, this needs to be limited to whether this witness  
6 or his Staff prepared it so that they can sponsor it.  
7 Whether he knows who sponsored it does not authenticate  
8 the document.

9 EXAMINER NODES: Well, hold off on  
10 your authentication. I'll overrule the objection. You  
11 can answer the question. Do you know who prepared this  
12 document?

13 THE WITNESS: I don't know who  
14 prepared this document.

15 EXAMINER NODES: Okay. Go ahead,  
16 Mr. Eckhart.

17 BY MR. ECKHART:

18 Q. What information on that document is provided  
19 by the Company?

20 MR. REGULINSKI: Objection.

21 MR. COLBERT: Object.

22 MR. REGULINSKI: This document could  
23 be prepared by Columbia Gas, for all we know. It could  
24 be prepared by the only person who seems to know  
25 anything about it, and that's the City's expert. We

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1 have no idea what this document is.

2 EXAMINER NODES: Mr. Eckhart?

3 MR. ECKHART: Well, we're just  
4 trying to find that out, trying to lay a foundation. I  
5 should be allowed to cross-examine the witness on the  
6 subject. He's the witness on the special contract.

7 EXAMINER NODES: Yeah, but you are  
8 asking him to -- He's already indicated he's not  
9 familiar with the document, never seen it before. He  
10 doesn't know who prepared the document, and now you're  
11 asking him to pull figures off the document or report  
12 on who provided the numbers that are on the document.

13 MR. ECKHART: It hasn't gone that  
14 far yet, your Honor.

15 EXAMINER NODES: You just asked that.

16 MR. ECKHART: No, I asked him what  
17 information the Company provides that goes into that  
18 document. All that requires is start off on the  
19 column, names of the companies.

20 EXAMINER NODES: Objection sustained.  
21 It's not a proper authentication of the document.

22 BY MR. ECKHART:

23 Q. Mr. Wack, what does CEI provide to the Staff  
24 in the way of information on the special contracts?

25 MR. REGULINSKI: Objection. Asked and



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1 answered.

2 EXAMINER NODES: Overruled.

3 THE WITNESS: Would you repeat the  
4 question?

5 (Record read back as requested.)

6 THE WITNESS: Every six months we  
7 provide a report.

8 BY MR. ECKHART:

9 Q. What's in the report?

10 A. Within that report is sales, that being kWh,  
11 kWd, revenues, that being the revenues associated with  
12 the contract, revenues if billed under a tariff rate.

13 Q. I'm sorry, I can't hear you. Revenues that  
14 would be billed under a tariff, right; is that what you  
15 said?

16 A. That's correct.

17 Q. Would you speak up a little bit? The -- This  
18 fan in the back behind me is louder than you are.

19 A. Certainly.

20 Q. Okay.

21 A. And also information on employment.

22 Q. What is the information on employment that you  
23 provide?

24 A. Number of jobs within the various facilities.

25 Q. The facilities of the customers who have the

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1 special contracts; is that correct?

2 A. Yes.

3 Q. Do you provide anything else?

4 A. I think, in general, that describes what we  
5 provide.

6 Q. Well, do you know specifically if you provide  
7 any narrative explanation or proof of the facts  
8 contained in those numbers you provide?

9 A. There's a cover letter that essentially says,  
10 as required under the order, the following information  
11 is provided, something to that effect.

12 Q. And how long have you been providing those  
13 reports to this Commission?

14 A. This was my second time that I provided it.

15 Q. Well, how long has the Company been providing  
16 that information?

17 A. I don't know the answer to that.

18 Q. Have you had any occasion to look back over  
19 the practice of the Company in the past as to this  
20 reporting before you prepared and filed your reports?

21 A. I'm not sure I understand the question.

22 Q. Well, in the preparation of the two reports  
23 that you have personally been responsible for, did you  
24 make any effort to look back at the practices, previous  
25 practices of the Company in filing the previous

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1 reports?

2 A. The process was underway. There had been no  
3 indication of change.

4 Q. Well, the question was: Did you look back at  
5 the previous reports?

6 A. I have seen previous reports.

7 Q. The reports that were made to this Commission  
8 as a result of the orders you referred to?

9 A. As a result of the orders.

10 Q. What orders are you referring to?

11 A. When they approve a contract --

12 Q. Yes.

13 A. -- within that approval they say that the  
14 Company should report on the various -- on that  
15 contract.

16 Q. All right. That's each of the AEC cases?

17 A. That's correct.

18 MR. ECKHART: Your Honor, I'd like  
19 to have marked for purposes of identification now as  
20 Garfield Heights Exhibit 9 a slightly redacted version  
21 of this report which was provided to me by the Attorney  
22 General's office of this Commission.

23 MR. REGULINSKI: Your Honor, I object  
24 to the --

25 EXAMINER NODES: Go ahead, Mr.

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1 Regulinski.

2 MR. REGULINSKI: I object to this  
3 document. Whatever this document purports to be, this  
4 is not the document that has been provided the City of  
5 Garfield Heights, and I don't know that the  
6 representation has any basis in fact whatsoever.

7 MR. ECKHART: Let me inquire, your  
8 Honor. It's my understanding that this was the  
9 document that they provided me.

10 EXAMINER NODES: Okay. Let's go  
11 through authentication again.

12 MR. ECKHART: Let me check  
13 something.

14 MR. COLBERT: Can we go off the  
15 record?

16 EXAMINER NODES: Yeah, let's go off  
17 the record.

18 (Discussion held off the record.)

19 (Recess taken.)

20 - - -

21 Thereupon, Garfield Heights Exhibit  
22 No. 9 was marked for purposes of  
23 identification.

24 - - -

25 EXAMINER NODES: Back on the record.

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1 MR. COLBERT: Your Honor, while we  
2 would acknowledge that the document marked GH 9 was  
3 prepared by Staff, it was obtained through direct  
4 contact by counsel with Staff without going through  
5 Staff's counsel. That's improper under DR 7-104, which  
6 we can make available to your Honor and the parties  
7 shortly; but, because it was improperly obtained, we  
8 would ask that it be excluded.

9 MR. REGULINSKI: Company would join,  
10 your Honor.

11 MR. ECKHART: May I be heard, your  
12 Honor?

13 EXAMINER NODES: Mr. Eckhart.

14 MR. ECKHART: Yes, your Honor.

15 I'm not aware of specific language of  
16 DR 7-104, but I'm sure it has something to do with  
17 direct dealings between a lawyer and another lawyer's  
18 client, I would assume.

19 And I'd like to point out that the Staff  
20 of this Commission are public employees and there are  
21 two laws that make the documents at this Commission  
22 public documents, and those are 4901.12 and Section  
23 149.43 of the Ohio Revised Code.

24 And if the Attorney General Section of  
25 this Commission thinks that they can bar me, as a

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1 representative of the City of Garfield Heights, or as a  
2 public citizen from talking to the Staff, I think  
3 they're in error. I don't think that's the law. I  
4 don't think that's the ethical considerations, and I  
5 don't think that it's proper for them to even suggest  
6 such a thing on this record.

7 Now --

8 MR. COLBERT: Your Honor --

9 MR. ECKHART: Wait a minute; I'm  
10 not done. You just wait. You've accused me of an  
11 unethical act, and I'm going to defend myself, and I'm  
12 going to make it very clear on this record that I  
13 resent it, I think it's improper, and I think that it  
14 is an excessive effort by the Staff to protect The  
15 Cleveland Electric Illuminating Company.

16 This document is a Staff document, which  
17 I've been trying to obtain this information from this  
18 Staff going back into early 1994, before there was ever  
19 any appeal filed, before I was ever contacted. Since I  
20 was contacted by the Attorney General's Section and  
21 told that I should deal through them, I have not dealt  
22 directly with the Staff since that point in time.

23 But, I got this stuff directly from some  
24 Staff member, and I don't even remember exactly who or  
25 how. I have a note that was stuck to one of these

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1 reports that looks like what I do typically, have a  
2 delivery service pick up documents over here, and this  
3 thing says, "Special contract, semi-annual report, CEI,  
4 for Eckhart", and somebody apparently on the Staff  
5 said, "Okay, Eckhart, you can come pick this up." I  
6 sent a delivery service over and they picked it up.

7 It is a Staff document. There's nothing  
8 improper about the way I obtained it. If this counsel  
9 wants to tell the Staff not to deal with me, that's up  
10 to them, but to exclude this as evidence in this record  
11 is not proper.

12 MR. COLBERT: Your Honor, if I can  
13 respond for just a moment.

14 There are a number of considerations in  
15 regard to documents that leave this Commission, to my  
16 knowledge, and to the knowledge of counsel, regarding  
17 this particular document. There was no public  
18 information request that was made by Mr. Eckhart.

19 At any rate, there are other statutes  
20 besides the public information statutes that pertain,  
21 among them 4905.16, which is a confidentiality statute.

22 At any rate, DR 7-104 says specifically  
23 that, "During the course of his representation of a  
24 client a lawyer shall not: Communicate or cause to --  
25 another to communicate on the subject of the

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1 representation with a party he knows to be represented  
2 by a lawyer...."

3 Mr. Eckhart, after this case was  
4 commenced, contacted, had communication with our client  
5 in this case and caused information that should not  
6 have been given to him, without knowledge of counsel,  
7 given to him. We would -- We would assert that that  
8 is, indeed, improper, and for that reason the  
9 information should be excluded.

10 I did misspeak. The statute I was  
11 referring to is 4901.16.

12 Thank you, your Honor.

13 EXAMINER NODES: Well, I assume we're  
14 going to have the same authentication situation as we  
15 just had on the prior document with this witness,  
16 anyway.

17 MR. ECKHART: I don't know that,  
18 your Honor. Only way we can find that out on the  
19 record is to ask.

20 May I proceed?

21 EXAMINER NODES: Go ahead.

22 MR. ECKHART: Thank you.

23 BY MR. ECKHART:

24 Q. Mr. Wack, let me show you what's been marked  
25 for purposes of identification as Garfield Heights



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1 Exhibit 9 and ask if you have seen that document or a  
2 similar document?

3 MR. REGULINSKI: Objection, your  
4 Honor. We object to the question. The question is  
5 whether or not -- The proper question is whether or  
6 not --

7 EXAMINER NODES: Have you ever seen  
8 this document.

9 MR. REGULINSKI: Thank you, your  
10 Honor.

11 THE WITNESS: I've never seen this  
12 document.

13 BY MR. ECKHART:

14 Q. Do you provide the information that's shown in  
15 the column there marked "Jobs - Beginning and Current"  
16 from the Company to the Staff?

17 MR. REGULINSKI: Objection. Asked and  
18 answered.

19 EXAMINER NODES: That wouldn't have  
20 been my objection.

21 MR. REGULINSKI: I have others, your  
22 Honor, if you'd like to hear some of them.

23 MR. COLBERT: The document is still  
24 not authenticated, your Honor.

25 MR. ECKHART: This is

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1 cross-examination, your Honor. I'm just trying to lay  
2 a foundation to find out what this witness knows about  
3 the information. I think I'm entitled to that.

4 MR. REGULINSKI: No, he's not doing  
5 that, your Honor.

6 MR. ECKHART: I've only asked two  
7 questions, one of which he hadn't seen this particular  
8 document. That doesn't mean he doesn't know anything  
9 about the information contained in the document.

10 EXAMINER NODES: Yeah. The problem I  
11 had was you said you provided job information such as  
12 are on this sheet and if he has never seen the sheet  
13 before, it's kind of difficult for him to say that, and  
14 he's answered about the job information; however, I'll  
15 overrule the objection to that extent.

16 Rephrase the question, if you would.

17 BY MR. ECKHART:

18 Q. Let me step back a step further.

19 Do you, in your preparation and filing of this  
20 information with the Staff, ever have any  
21 communications with the Staff subsequent to providing  
22 that information?

23 MR. REGULINSKI: Question of  
24 clarification. What information are we speaking of,  
25 Mr. Eckhart?

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1 MR. ECKHART: Information regarding  
2 the Delta revenues that are contained on Exhibit 9.

3 MR. REGULINSKI: Your Honor, he  
4 already testified he has never seen Exhibit 9.

5 MR. ECKHART: That does not have  
6 anything to do with it, your Honor. This is pure  
7 harassment.

8 EXAMINER NODES: C'mon now,  
9 Mr. Eckhart.

10 MR. ECKHART: It is.

11 EXAMINER NODES: No, it's not. He's  
12 representing his client just like you are.

13 The question -- Phrase the question in  
14 such a way you don't have -- The question's not  
15 objectionable until you start trying to tie in the  
16 document that he said he's never seen before. If you  
17 ask the questions without --

18 MR. ECKHART: I'll try.

19 EXAMINER NODES: Okay. Thank you.

20 BY MR. ECKHART:

21 Q. Mr. Wack, you've testified that you provide  
22 information on the special contracts to the Commission  
23 Staff; isn't that true?

24 A. Yes.

25 Q. And you've testified that you have done that

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1 at least on the last two semi-annual reports; is that  
2 true?

3 A. That's correct.

4 Q. And have you, as a result of providing that  
5 information on those last two reports, had any further  
6 contact with the Commission Staff in regard to the  
7 information you provided?

8 A. Not to the best of my recollection.

9 Q. Do you know if anybody under your supervision  
10 or anybody that you work with at the CEI Company has  
11 had any communication with the Staff as a result of  
12 that information you've provided in these last two  
13 reports?

14 A. I've had discussions with our lawyers, who I  
15 believe have talked to the Staff.

16 Q. Was that about the substance of the  
17 information or about the confidential nature of the  
18 information?

19 MR. REGULINSKI: Objection.

20 MR. ECKHART: Your Honor, he  
21 testified he had conversations with the lawyers.  
22 That's a waiver of the privilege.

23 EXAMINER NODES: Oh?

24 MR. ECKHART: He raised it, your  
25 Honor, I didn't.

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1 MR. REGULINSKI: Do I need to respond?

2 EXAMINER NODES: That's a waiver of  
3 the attorney/client privilege because he said he talked  
4 to his lawyers? I don't think so.

5 Sustained on the last question.

6 BY MR. ECKHART:

7 Q. Have you talked to anybody other than your  
8 counsel about the substance of the information that was  
9 filed in those two reports in regard to the PUCO Staff?

10 A. I don't understand that question as to who  
11 you're referring to.

12 Q. All right. All I'm trying to find out is do  
13 you have any knowledge of any feedback or reaction from  
14 the PUCO Commission Staff as a result of your having  
15 filed the information on the special contracts for the  
16 last two semi-annual reports?

17 MR. COLBERT: Objection, your  
18 Honor. I fail to see the relevance of testifying  
19 about -- to this case of testifying about the reaction  
20 of Staff to communication we don't know yet has  
21 occurred.

22 EXAMINER NODES: I think he's answered  
23 it a couple of times already. I'll overrule the  
24 objection.

25 "Have you had any feedback from Staff", I

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1 think that was the question, "based on the last two  
2 semi-annual reports?" Is that the question,  
3 Mr. Eckhart?

4 MR. ECKHART: Not directly, your  
5 Honor. He's already testified that he personally  
6 didn't have any feedback. Now the question goes one  
7 step farther, to try to find out if he knows if anybody  
8 in the Company has had any feedback.

9 EXAMINER NODES: Okay. Do you know  
10 the answer to that question?

11 THE WITNESS: I'm not aware of  
12 anybody that specifically was contacted by the Staff  
13 about those reports that were filed.

14 BY MR. ECKHART:

15 Q. In the information that you provide to the  
16 Staff, is it the jobs at the beginning of the contract  
17 and the jobs currently at the time of the report?

18 A. I don't understand the question, what you're  
19 referring to.

20 Q. Well, I'm referring to Exhibit 9 and the  
21 column "Jobs - Beginning and Current", and those  
22 numbers.

23 MR. REGULINSKI: Objection.

24 EXAMINER NODES: Sustained. You don't  
25 have to tie in Exhibit 9, which he can't authenticate.

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1 You can ask the same question without --

2 MR. ECKHART: Your Honor, I asked the  
3 question that way and the witness said he didn't  
4 understand, so I was just trying to enlighten the  
5 witness of what I was talking about. I didn't want to  
6 refer to Exhibit 9. Let me go back to the original  
7 question.

8 BY MR. ECKHART:

9 Q. Do you provide to the Commission Staff the  
10 number of jobs at the beginning of these special  
11 contracts and currently?

12 A. Within the report, we provide the information  
13 at that time, so if a contract is sometime in between a  
14 period, the actual job number may reflect sometime  
15 after a beginning period.

16 Q. Does anybody at CEI make any effort to obtain  
17 these reports that are prepared by the Staff and  
18 compare them to the information provided by the Company  
19 to see if the Staff's information is correct?

20 A. I don't know what you're talking about, the  
21 Staff reports.

22 Q. Well -- Well, let me try to clear that part  
23 up.

24 These Exhibits 7 and 9 that I've showed you,  
25 do you know whether anybody at the Company ever makes

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1 any effort to verify whether that information is  
2 accurate?

3 MR. COLBERT: Objection, your  
4 Honor.

5 EXAMINER NODES: He stated it a couple  
6 times, at a minimum, that he has no knowledge of, he  
7 personally or anyone else, having seen these reports.  
8 I don't know how he can respond to the question.

9 MR. ECKHART: That may be his  
10 answer, your Honor, but that doesn't make the question  
11 improper.

12 EXAMINER NODES: Well, I think it  
13 does. I think it does because you're assuming  
14 something that he's already claimed he hasn't seen.

15 BY MR. ECKHART:

16 Q. All right. Let me try it this way: Does CEI  
17 make any effort to determine whether the Commission has  
18 properly analyzed the information that you provide in  
19 the special contract reports?

20 A. I do not perceive it as my job to review what  
21 the Staff does.

22 Q. Well, I didn't ask you whether it was your job  
23 or not, I asked you if anybody at the Company makes any  
24 effort to determine what the Staff does with that  
25 information you give them is accurate?



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1 A. No.

2 Q. Isn't it fact that these reports that you file  
3 are just filed and forgotten, nothing happens to them?

4 MR. COLBERT: Objection, your  
5 Honor.

6 EXAMINER NODES: Rephrase the  
7 question.

8 BY MR. ECKHART:

9 Q. Do you know of anything that happens to this  
10 information after you file it with the Commission  
11 Staff?

12 MR. REGULINSKI: Objection to the use  
13 of the word "filed", your Honor. It's not filed, it is  
14 provided to the Staff.

15 EXAMINER NODES: With that --

16 MR. ECKHART: Excuse me.

17 EXAMINER NODES: -- amendment.

18 BY MR. ECKHART:

19 Q. Do you know of anything that happens at the  
20 Staff with this information after you provide it to the  
21 Staff?

22 A. I'm not aware of what the Staff does with a  
23 number of things, including this.

24 Q. I believe you have my copy of Exhibit 9; is  
25 that correct?

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1 A. I have a copy.

2 Q. Well, I think it's the one with the sticker on  
3 it that -- Yes. Thank you.

4 MR. ECKHART: Your Honor, just a  
5 point of clarification. I believe I'm about done with  
6 the witness.

7 We had a ruling earlier on Exhibit 7 and  
8 I don't believe that same situation applies to Exhibit  
9 9, but I'm at your pleasure, if you thought or intended  
10 that --

11 EXAMINER NODES: What ruling regarding  
12 Exhibit 7 are you referring to?

13 MR. ECKHART: The fact that the  
14 transcript regarding the examination of 7 was under  
15 seal.

16 EXAMINER NODES: Yes. And to be  
17 honest, I'm not sure that given what's occurred so far  
18 that we're probably even going to need to have it under  
19 seal, because I don't think any of the details of the  
20 exhibits have been brought out because the witness  
21 couldn't authenticate the documents.

22 Mr. Regulinski.

23 MR. REGULINSKI: Yeah, we would prefer  
24 that it remain under seal for the time being, your  
25 Honor.

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1 EXAMINER NODES: All right.

2 MR. REGULINSKI: Again, the Company is  
3 harmed by release and the City is not harmed by its not  
4 being released and the time being given the parties,  
5 sufficient time, and the Commission sufficient time to  
6 ponder those actions. So in the meantime, we prefer it  
7 remain under seal.

8 EXAMINER NODES: Well, I haven't heard  
9 anything at all in this section that would lead me to  
10 conclude that any of it needs to be kept under seal,  
11 but I think we'll stick with the prior ruling, that you  
12 can address it on the brief and the Commission can take  
13 it up in the order that's issued. I don't think anyone  
14 is prejudiced by that procedure.

15 MR. ECKHART: I'm inclined to  
16 agree, and I just wanted to make sure that we had  
17 that -- .

18 EXAMINER NODES: We're still in the  
19 sealed portion of the transcript.

20 Now, if you're done with this type of  
21 document, we can go back out, and not that it's going  
22 to have any meaningful purpose, but do you think  
23 there's anyone that's going to be hurrying back into  
24 the hearing room? But, in any event, if you're  
25 finished with the Delta revenue type questions, we can

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1 go off the sealed record.

2 MR. ECKHART: I am, your Honor, and  
3 just for purposes of understanding what that means,  
4 having never run into that particular process here, I  
5 assume that the questions and answers will still be  
6 reported in the transcript, is that your understanding?

7 EXAMINER NODES: Not exactly. They'll  
8 be reported in a separate sealed portion of the  
9 transcript, which will be kept under seal in the  
10 Docketing Division until such time as the Commission  
11 orders otherwise.

12 MR. ECKHART: And will I be able to  
13 obtain a copy of that after it is filed in Docketing?

14 EXAMINER NODES: Yes; but with the  
15 understanding, and I should probably make the direction  
16 clear, that I would direct you at this point not to  
17 disclose the contents of the sealed portion of the  
18 transcript to anyone other than you and Mr. Yankel.

19 MR. ECKHART: What about my client?  
20 I think the client's entitled to have that information  
21 if they are willing to accept the ruling of the Bench  
22 that it's under seal.

23 EXAMINER NODES: Well, we have a  
24 problem with dissemination to your client at this  
25 point, I guess.

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1           The thing is, there's nothing in this  
2   that's going -- in this portion of the transcript  
3   that's going to have any impact, and that's why I said  
4   I don't think that any -- it really matters one way or  
5   the other. I don't think there was anything  
6   confidential disclosed on the record in the sealed  
7   portion.

8           MR. ECKHART:           I would agree and,  
9   therefore, I would move that we eliminate the ruling  
10   that it be sealed and not -- not be bothered with even  
11   having to argue it on brief.

12           EXAMINER NODES:       Mr. Regulinski.

13           MR. REGULINSKI:       I'll respond to the  
14   first matter, and then I'll respond to the second  
15   matter raised by Mr. Eckhart.

16           We would urge the Bench to limit the  
17   circulation and direct counsel to limit the circulation  
18   of the sealed portion of the transcript to himself and  
19   to Mr. Yankel, the expert witness, and that the  
20   information not be provided outside of that very narrow  
21   scope.

22           I would also ask the Bench to direct both  
23   of these gentlemen that they shall treat the documents  
24   as if they would treat their own documents that they  
25   themselves would not want others to see, which is

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1 consistent with the treatment of confidential  
2 information.

3 The information contained in what has  
4 been marked, not identified, certainly not admitted,  
5 but marked as Garfield Heights No. 7 and No. 9, to the  
6 extent they are actual Delta revenue figures, it is  
7 highly secret, secretive, and extremely confidential  
8 and very detrimental, as we have argued beforehand,  
9 your Honor. So we would, as to the second point,  
10 oppose the moving out of seal of this transcript.

11 EXAMINER NODES: Mr. Colbert, do you  
12 care to make any comment?

13 MR. COLBERT: We would not have a  
14 preference, I believe, at this time as to the  
15 transcripts themselves, but we would certainly second  
16 the Company's concern concerning -- concerning the  
17 documents themselves.

18 The record, I don't believe, is clear as  
19 to whether the documents are to be -- are to remain  
20 under seal. We believe that they should be kept under  
21 seal at this point, and certainly we would oppose them  
22 being admitted into this record.

23 MR. ECKHART: Your Honor, can I be  
24 heard?

25 Again, I think it's going to be locking

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1 the barn door after the horse is gone. I have kept my  
2 client informed, particularly Mayor Longo of the  
3 developments, not only in this case here, but in my  
4 prior representation and in our entire efforts in this  
5 case, and provided him, I am relatively sure, I can't  
6 be positive of this particular document, I've got 3 --  
7 at least 3 or 4 of these Delta revenue reports, plus  
8 the ones we got back in the Board of Education case and  
9 I've been feeding that information to Mayor Longo  
10 regularly. So if it turns out that he has that  
11 document, it's not anything that any order of this  
12 Commission at this time can resolve.

13 MR. COLBERT: Your Honor, the only  
14 documents that I'm aware of that have been made public  
15 are the documents Exhibits 4 and 5 from the Board of  
16 Education case, which I think everybody is aware are  
17 public documents and out at this point and a redacted  
18 version of Delta revenues that have been supplied by  
19 this office to Mr. Eckhart. I am unaware that any  
20 other documents have been made public documents, and I  
21 would -- and the Staff would not at this time be  
22 prepared to make the determination as to whether any of  
23 those documents are public documents.

24 MR. ECKHART: Let me just say, your  
25 Honor, that when I got them, they became public

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1 documents, and particularly Exhibits 7 and 9, and have  
2 been put into the public domain prior to this hearing.

3 MR. REGULINSKI: Your Honor, not if  
4 the documents were obtained in a manner contrary to  
5 law, your Honor.

6 EXAMINER NODES: All right. Well,  
7 we're not going to go down that road again.

8 I agree with Mr. Eckhart, as a practical  
9 matter, he's disseminated the documents, at least 7 and  
10 9, it's probably not going to do much good to order him  
11 to prohibit dissemination, but I think I'll stick with  
12 the prior ruling, the transcript will remain under seal  
13 and, Mr. Eckhart, I would direct you not to further  
14 disseminate Exhibits 7 and 9 until further order of the  
15 Commission. The Commission will take it up -- You can  
16 address it on brief. The Commission will take it up in  
17 the Opinion and Order and decide how the documents  
18 should be treated, as well as the transcript.

19 MR. COLBERT: Your Honor, we would  
20 request that you, to the extent that the Commission has  
21 jurisdiction over those, for example, Mr. Eckhart's  
22 clients, that you would instruct them to have no  
23 further dissemination of those documents at this time.

24 EXAMINER NODES: I thought I just did.

25 MR. COLBERT: I'm not referring



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1 just to Mr. Eckhart or Mr. Yankel, but also to  
2 Mr. Eckhart's client, the City.

3 MR. ECKHART: Your Honor, I would  
4 strenuously object to that. I don't believe you have  
5 any authority to direct Mayor Longo, an elected public  
6 official of the City of Garfield Heights, not to  
7 disseminate information that he has in his files. That  
8 is far beyond the jurisdiction of you or this  
9 Commission.

10 EXAMINER NODES: Well, I'm not going  
11 to concede anything on behalf of the Commission's  
12 jurisdiction, but I am, on the other hand, not going to  
13 go quite that far, either, so I think the order that  
14 I've given is sufficient to cover the extent of what's  
15 happened at the hearing thus far.

16 Okay. So with that, we will move from  
17 the sealed transcript at this point and into the open  
18 record.

19 \*\*\* END OF CONFIDENTIAL PORTION \*\*\*  
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