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B-134138, Jul. 21, 1958

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B-134138, JUL. 21, 1958

TO THE SECRETARY OF AGRICULTURE:

REFERENCE IS MADE TO OUR LETTERS OF OCTOBER 28, 1957, AND APRIL 14, 1958 (B-134138), TO YOU, CONCERNING A LOAN OF $11,173,000 MADE BY THE RURAL ELECTRIFICATION ADMINISTRATION (REA) TO THE CENTRAL IOWA POWER COOPERATIVE (CIPCO), PART OF THE PROCEEDS ($120,000) OF WHICH WAS TO BE USED TO ENABLE CIPCO TO FURNISH POWER TO A MEMBER COOPERATIVE FOR RESALE BY THE MEMBER TO LEHIGH SEWER PIPE AND TILE COMPANY (LEHIGH), LEHIGH, IOWA.

THE RECORD BEFORE US DISCLOSES THAT THE LOAN IN QUESTION WAS APPROVED BY THE ACTING ADMINISTRATOR, RURAL ELECTRIFICATION ADMINISTRATION ON SEPTEMBER 9, 1955, FOR THE PURPOSE OF FINANCING THE CONSTRUCTION BY CIPCO OF CERTAIN ELECTRIC GENERATION AND TRANSMISSION FACILITIES INCLUDING ONE 44,000 KW GENERATING UNIT, 128 MILES OF 115 KV TRANSMISSION LINE, 176.5 MILES OF 34.5 KV TRANSMISSION LINE, AND RELATED SUBSTATION AND SWITCHING FACILITIES, FOR THE PURPOSE OF FURNISHING ELECTRIC ENERGY TO CIPCO'S EIGHT REA-FINANCED MEMBER COOPERATIVES. INCLUDED IN THE 176.5 MILES OF 34.5 KV TRANSMISSION LINE WERE 20 MILES DESIGNATED THE "LEHIGH TAP," THE PURPOSE OF WHICH WAS TO ENABLE CIPCO TO FURNISH ONE OF ITS MEMBER COOPERATIVES, GREENE COUNTY RURAL ELECTRIFICATION COOPERATIVE (GREENE COUNTY), A SUPPLY OF POWER FOR A LARGE POWER LEAD IN THE VICINITY OF LEHIGH, IOWA. THE LARGE POWER LOAD NEEDED IN THE VICINITY OF LEHIGH APPARENTLY WAS FOR A NEW BUILDING OR PLANT THAT LEHIGH PROPOSED TO CONSTRUCT NEAR AN EXISTING PLANT IT OWNED. THE COST OF THIS 20 MILES OF LINE WAS ESTIMATED AT $120,000.

YOUR DEPARTMENT, BY LETTER DATED DECEMBER 3, 1957, ADVISED US THAT THE LOAN WAS MADE PURSUANT TO THE RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED, 7 U.S.C. 901-924, AND IN ACCORDANCE WITH THE ADMINISTRATIVE FINDINGS REQUIRED BY SECTION 4 OF THAT ACT (7 U.S.C. 904). THIS LATTER CODE SECTION PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"THE ADMINISTRATOR IS AUTHORIZED AND EMPOWERED * * * TO MAKE LOANS FOR RURAL ELECTRIFICATION * * * FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND OPERATION OF GENERATING PLANTS, ELECTRIC TRANSMISSION AND DISTRIBUTION LINES OR SYSTEMS FOR THE FURNISHING OF ELECTRIC ENERGY TO PERSONS IN RURAL AREAS WHO ARE NOT RECEIVING CENTRAL STATION SERVICE * * *.'

SECTION 2 OF THE SAME ACT (7 U.S.C. 902) ALSO CONTAINS AN UNSERVED PERSON OR CENTRAL STATION SERVICE LIMITATION.

THE RECORD DISCLOSES THAT A PLANT OF LEHIGH LOCATED ON A TRACT OF GROUND OUTSIDE THE TOWN OF LEHIGH, IOWA, WAS BEING FURNISHED 25-CYCLE ELECTRIC SERVICE BY THE

FORT DODGE, DES MOINES AND SOUTHERN RAILWAY COMPANY (THE PREDECESSOR OF THE IOWA-ILLINOIS GAS AND ELECTRIC COMPANY) AT THE TIME THE LOAN TO CIPCO WAS MADE. PRIOR TO THE MAKING OF THE ABOVE REFERRED-TO LOAN LEHIGH DECIDED TO BUILD ANOTHER BUILDING OR PLANT ON THE SAME TRACT OF GROUND APPROXIMATELY 160 FEET AWAY FROM ITS EXISTING PLANT AND OPERATE BOTH PLANTS OR BUILDINGS, APPARENTLY AS SEPARATE ENTITIES. LEHIGH CONTEMPLATED USING MACHINERY IN THE NEW PLANT WHICH WOULD REQUIRE 60-CYCLE ELECTRIC SERVICE. IT APPEARS THAT BY LETTER DATED MAY 19, 1955, THE RAILWAY COMPANY OFFERED TO SUPPLY 60 CYCLE ELECTRIC SERVICE TO LEHIGH. FURTHER IT APPEARS FROM THE RECORD THAT THE RAILWAY COMPANY AGAIN, ORALLY, ON SEPTEMBER 28, 1955, OFFERED TO FURNISH LEHIGH 60-CYCLE SERVICE FOR ITS PROPOSED NEW PLANT AND CONFIRMED SUCH OFFER IN WRITING BY LETTER DATED OCTOBER 4, 1955. LEHIGH, HOWEVER, APPARENTLY DID NOT DESIRE TO ACCEPT SUCH SERVICE FROM THE RAILWAY COMPANY ON THE GROUND THAT THE RATE QUOTED BY THE COMPANY WOULD PREVENT LEHIGH FROM PRODUCING ITS PRODUCTS AT A COMPETITIVE PRICE. LEHIGH THEREFORE ENTERED INTO NEGOTIATIONS WITH GREENE COUNTY FOR 60-CYCLE SERVICE AND SUBSEQUENT TO THE DATE OF THE ABOVE REFERRED TO LOAN ENTERED INTO A CONTRACT WITH GREENE COUNTY FOR SUCH SERVICE.

GREENE COUNTY IN OCTOBER 1955, IN ACCORDANCE WITH ITS REA LOAN AGREEMENTS, SUBMITTED FOR REA APPROVAL A CONTRACT FOR ELECTRIC SERVICE BETWEEN IT AND LEHIGH. ALSO, CIPCO SUBMITTED PLANS AND SPECIFICATIONS PROVIDING FOR CONSTRUCTION OF THE LEHIGH TAP TO SERVE GREENE'S NEW SUBSTATION. IT APPEARS THAT THE PROPOSED ELECTRIC SERVICE TO LEHIGH WAS THE PRINCIPAL JUSTIFICATION FOR THE TRANSMISSION LINE TAP AND NEW SUBSTATION. AS INDICATED ABOVE THE FUNDS ($120,000) FOR CONSTRUCTION OF THIS LINE WERE INCLUDED IN THE $11,173,000 LOAN MADE BY REA TO CIPCO ON SEPTEMBER 9, 1955. IT APPEARS FROM THE RECORD THAT THE POWER CONTRACT WAS RETURNED TO GREENE WITHOUT APPROVAL IN NOVEMBER 1955, AND THAT REA APPROVAL TO CONSTRUCT THE TRANSMISSION LINE AND SUBSTATION WAS ALSO WITHHELD. APPARENTLY REA WITHHELD APPROVAL OF THE POWER CONTRACT AND CONSTRUCTION OF THE LEHIGH TAP ON THE GROUND THAT LEHIGH WAS ALREADY RECEIVING "CENTRAL STATION SERVICE" FROM THE RAILWAY COMPANY, SINCE, AS INDICATED ABOVE, THE RECORD DISCLOSES THAT LEHIGH AT ITS EXISTING PLANT WAS RECEIVING 25-CYCLE SERVICE FROM THAT COMPANY.

IN APRIL 1956 GREENE COUNTY AND CIPCO AGAIN REQUESTED APPROVAL OF A CONTRACT FOR ELECTRIC SERVICE BETWEEN GREENE COUNTY AND LEHIGH, AND APPARENTLY REA APPROVAL TO USE $120,000 OF THE LOAN FUNDS TO CONSTRUCT THE LEHIGH TAP. IT FURTHER APPEARS FROM THE RECORD THAT THE GREENE COUNTY- LEHIGH POWER CONTRACT WAS APPROVED IN JUNE OF 1956 TOGETHER WITH THE APPROVAL OF THE PROPOSED CONSTRUCTION OF THE LEHIGH TAP. THE BASIS FOR THIS APPROVAL IS EXPLAINED BY YOUR DEPARTMENT IN A LETTER TO US DATED MAY 5, 1958, SIGNED BY MR. E. L. SCOTT, DIRECTOR, AGRICULTURAL CREDIT SERVICES, AS FOLLOWS:

"THE FINDINGS AND DETERMINATIONS MADE BY REA WITH RESPECT TO THE USE OF LOAN FUNDS IN THIS CASE ARE SUMMARIZED IN AN AFFIDAVIT, COPY OF WHICH IS ENCLOSED, FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA BY FRED E. STRONG, DEPUTY ADMINISTRATOR, REA. MR. STRONG'S AFFIDAVIT STATES IN PART THAT "AN ADMINISTRATIVE DETERMINATION WAS MADE, PURSUANT TO 7 U.S.C. 904, THAT LEHIGH, AT ITS NEW PLANT, WAS NOT RECEIVING CENTRAL STATION ELECTRIC SERVICE.' IT THUS APPEARS THAT REA DID NOT BASE ITS DETERMINATION ON THE NON AVAILABILITY OF POWER FROM ANOTHER SUPPLIER, BUT, AS REFLECTED IN MR. STRONG'S AFFIDAVIT, ON THE FACT THAT THE NEW PLANT WAS A PERSON NOT RECEIVING CENTRAL STATION ELECTRIC SERVICE.'

IT APPEARS FROM THE DEPARTMENT'S LETTER TO US DATED DECEMBER 3, 1957, THAT THE

DETERMINATION THAT LEHIGH'S SO-CALLED "NEW PLANT" WAS A PERSON NOT RECEIVING CENTRAL STATION SERVICE WAS BASED ON CERTAIN FACTS PRESENTED BY GREEN COUNTY AND CIPCO TO THE EFFECT THAT THE "PROPOSED CONTRACT CONTEMPLATED SERVICE NOT TO THE EXISTING LEHIGH PLANT NOR TO AN EXTENSION OF OR ADDITION TO THE EXISTING PLANT, BUT TO A COMPLETELY NEW, SEPARATE AND INDEPENDENT PLANT.' MOREOVER, YOUR DEPARTMENT CONTENDS, IN EFFECT, THAT EVEN IF LEHIGH IS CONSIDERED A SINGLE PERSON WITH RESPECT TO ITS OLD AND NEW PLANT, AT THE TIME THE LOAN WAS MADE, SEPTEMBER 9, 1955, AN ADMINISTRATIVE FINDING ON THE ASSUMED FACTS, THAT LEHIGH WAS NOT RECEIVING ADEQUATE CENTRAL STATION SERVICE FROM THE RAILWAY WOULD HAVE BEEN ADMINISTRATIVELY JUSTIFIABLE AND LEGALLY SUPPORTABLE. SEE YOUR DEPARTMENT'S ABOVE REFERRED-TO LETTER OF MAY 5, 1958.

IT IS CLEAR FROM THE ABOVE QUOTED PROVISIONS OF SECTION 4 OF THE RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED (7 U.S.C. 904), AND ALSO FROM SECTION 2, THAT THE ADMINISTRATOR HAS NO AUTHORITY TO MAKE A LOAN FOR THE PURPOSE OF FURNISHING ELECTRIC SERVICES TO PERSONS IN RURAL AREAS WHO ARE RECEIVING CENTRAL STATION SERVICE. THE QUESTION AS TO WHETHER THE BASIC PURPOSE OF A PROPOSED LOAN IN A PARTICULAR CASE IS TO PROVIDE ELECTRIC SERVICE TO UNSERVED PERSONS IN RURAL AREAS IS A MATTER PRIMARILY FOR DETERMINATION ADMINISTRATIVELY AFTER A THOROUGH CONSIDERATION OF THE PERTINENT FACTS AND CIRCUMSTANCES IN THE CASE IN THE LIGHT OF THE PURPOSE AND INTENT OF THE CONGRESS IN INCLUDING THE CENTRAL STATION SERVICE LIMITATION IN SECTIONS 2 AND 4. HOWEVER THE RURAL ELECTRIFICATION ACT DOES NOT APPEAR TO MAKE THIS DETERMINATION FINAL AND CONCLUSIVE.

IT MAY BE THAT LITERALLY ACCEPTED THE TERMINOLOGY OF SECTION 4 (AND SECTION 2) IS SUFFICIENTLY BROAD TO AUTHORIZE A LOAN FOR THE PURPOSE OF FURNISHING CENTRAL STATION ELECTRIC SERVICE TO A PERSON NOT RECEIVING SUCH SERVICE, EVEN THOUGH THE SERVICE IS AVAILABLE TO SUCH PERSON AND THAT THE EFFECT OF THE LOAN WILL BE TO CREATE COMPETITION WITH AN EXISTING PRIVATE UTILITY. HOWEVER, IN CONSTRUING OR CONSIDERING THE APPLICATION OF A STATUTE IT IS PERMISSIBLE TO LOOK AT ITS EVIDENT SPIRIT AND PURPOSE AS WELL AS THE STRICT LETTER OF THE LAW AND THE STRICT LETTER MUST YIELD TO ITS EVIDENT SPIRIT WHEN THIS IS NECESSARY TO GIVE EFFECT TO THE INTENT OF THE CONGRESS.

THE LEGISLATIVE HISTORY OF THE CENTRAL STATION SERVICE LIMITATION INDICATES THAT THE LIMITATION WAS INCLUDED BECAUSE OF A LEGISLATIVE INTENT TO EXCLUDE LOANS FOR THE PURPOSE OF PARALLELING EXISTING SYSTEMS AND THUS CREATING COMPETITION FOR THE ESTABLISHED UTILITIES. THAT THIS IS THE PURPOSE OF THE LIMITATION WAS ACKNOWLEDGED BY A FORMER SOLICITOR OF YOUR DEPARTMENT IN OPINION NO. 4506 DATED NOVEMBER 24, 1942, APPEARING AT PAGE 498, RURAL ELECTRIFICATION PLANNING, HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, 79TH CONGRESS, 1ST SESSION ON N.R. 1742. THE SOLICITOR SAID IN THIS OPINION THAT--- QUOTING FROM THE OPINION AS IT APPEARS IN THE HEARING:

"A STUDY OF THE DEBATES IN CONGRESS AND THE COMMITTEE HEARINGS INDICATES THAT THIS PROVISION WAS INSERTED BECAUSE OF A LEGISLATIVE INTENT TO EXCLUDE LOANS FOR THE PURPOSE OF PARALLELING EXISTING SYSTEMS AND THUS CREATING COMPETITION WITH ESTABLISHED UTILITIES. * * *

"* * *. IT SEEMS CLEAR FROM THE LEGISLATIVE HISTORY THAT THE INTENT OF THE LIMITATION WAS TO PREVENT LOANS THAT WOULD CREATE FEDERALLY FINANCED COMPETITION WITH EXISTING UTILITY ENTERPRISES. * * *

"WHERE THE EFFECT OF A PROPOSED LOAN, REGARDLESS OF ITS ESSENTIAL PURPOSE, WOULD

BE TO SUBSTITUTE A COMPETITIVE REA-FINANCED SERVICE TO PERSONS ALREADY SERVED, THE LOAN MAY NOT BE MADE. FOR EXAMPLE, IT IS MY OPINION THAT A COMPETING LINE COULD NOT BE FINANCED EVEN THOUGH IT WERE ONLY A SMALL PART OF A SYSTEM DESIGNED TO REACH UNSERVED PERSONS AND EVEN THOUGH THE PROJECT COULD NOT PROPERLY BE DEVELOPED WITHOUT SUCH COMPETING LINE. * * *

"IN THE ABOVE ANALYSIS I HAVE ENDEAVORED TO DELIMIT AND POINT THE ISSUE BY REFERENCE TO SITUATIONS WHICH FALL CLEARLY WITHIN THE IMPLIED PROHIBITION OF THE CLAUSE HERE UNDER DISCUSSION: (1) THE FINANCING OF FACILITIES WHICH COMPETE DIRECTLY WITH EXISTING BUSINESS, REGARDLESS OF THE FACT THAT SUCH COMPETING FACILITIES MIGHT CONTRIBUTE MATERIALLY TO THE CONSTRUCTION OF A SYSTEM TO SERVE UNSERVED PERSONS: * * *.'

ALSO, IN THIS SAME CONNECTION, NOTE THE FOLLOWING STATEMENTS MADE ON THE FLOOR OF THE HOUSE AND SENATE DURING DEBATE ON THE BILL WHICH BECAME THE RURAL ELECTRIFICATION ACT OF 1936, AS THEY APPEAR IN THE CONGRESSIONAL RECORD, VOLUME 80:

"MR. MCNARY. I HAVE MY OWN IDEA AS TO THE INTERPRETATION AND DEFINITION OF THE EXPRESSION ,ELECTRIFICATION OF RURAL AREAS NOT RECEIVING CENTRAL- STATION ELECTRIC LIGHT AND POWER SERVICE.' WHAT INTERPRETATION DOES THE SENATOR PLACE UPON THAT LANGUAGE? COULD HE ILLUSTRATE IT?

"MR. MORRIS (AUTHOR OF THE BILL). THAT MEANS, AS I UNDERSTAND, AND AS I THINK THE PRESENT ADMINISTRATION IS NOW DOING, THAT THERE WILL NOT BE SET UP AN ORGANIZATION AND MONEY LOANED TO IT FOR THE PURPOSE OF ELECTRIFYING A RURAL AREA WHICH IS NOW SUPPLIED. THERE ARE NOW, OF COURSE, A LARGE NUMBER OF RURAL DISTRICTS ALREADY SUPPLIED WITH ELECTRICITY FROM CENTRAL POWER STATIONS. * * *

"MR. MCNARY. WE PROBABLY ARE TOGETHER GENERALLY, BUT UNDER THE LANGUAGE USED, IT SEEMS TO ME, WHERE A PLANT IS NOW IN EXISTENCE WHICH IS ADEQUATELY SUPPLYING A CERTAIN AREA WITH ELECTRICITY NONE OF THE MONEY PROVIDED BY THE BILL COULD BE USED FOR THAT PURPOSE.

"MR. MORRIS. THAT IS AS I UNDERSTAND IT.

"MR. MCNARY. I THINK WE WANT A DEFINITE MEANING FIXED, BECAUSE I THINK IT IS AN IMPORTANT PROPOSITION. THE PROHIBITION WOULD RELATE TO A CENTRAL STATION FURNISHING LIGHT AND POWER IN AN AREA THAT IS NOW ENJOYING ADEQUATE SERVICE. IS THAT THE SENATOR'S INTERPRETATION?

"MR. MORRIS. YES. (80 CONGRESSIONAL RECORD 2751, PART 3)

"MR. MORRIS. THE SENATOR SAYS "COME IN COMPETITION.' THEY WOULD NOT COME IN COMPETITION WITH FARMS ALREADY SUPPLIED. THEY MIGHT COME IN COMPETITION WITH THE CENTRAL POWER STATION.

"MR. KING. THAT IS NOT MY QUESTION.

"MR. MORRIS. THERE IS NO INTENTION OF GOING INTO A FARMING COMMUNITY WHICH IS ALREADY SUPPLIED WITH ELECTRIC CURRENT AND FORMING FARM ORGANIZATIONS THERE AND HAVING THEM BUILT UP TO GO INTO COMPETITION, AS THE SENATOR SUGGESTS, WITH FARMERS WHO ARE ALREADY GETTING THEIR ELECTRIC CURRENT FROM A CENTRAL STATION. (80 CONGRESSIONAL RECORD 2752, PART 3)

"MR. KING. * * * I MAY SAY THAT MY UNDERSTANDING OF THE BILL WAS THAT ITS PRIMARY AND ONLY PURPOSE WAS TO TAKE CARE OF FARMERS WHO DID NOT HAVE ELECTRICAL FACILITIES.

"MR. WALSH. THAT INFERS, OF COURSE, THAT THERE IS NO COMPETITION WITH ANY EXISTING PRIVATE OR MUNICIPAL PLANT.

"MR. MORRIS. YES.

"MR. WALSH. THAT IS WHAT I UNDERSTAND TO BE THE MAIN PURPOSE OF THE BILL; THAT IN RURAL SECTIONS WHERE PRIVATE ENTERPRISE HAS NOT UNDERTAKEN TO FURNISH LIGHT OR WHERE A MUNICIPALITY HAS NOT DONE SO, THERE WILL BE OPPORTUNITIES GIVEN FOR GROUPS OF INDIVIDUALS, OR, AS THE SENATOR SAYS, IN SOME CASES A TOWN OR MUNICIPALITY ITSELF, TO SET UP IN SUCH RURAL SECTIONS UNITS FOR LIGHTING PURPOSES. (80 CONGRESSIONAL RECORD 3305, 3306, PART 3)

"MR. RAYBURN. MAY I SAY TO THE GENTLEMAN THAT WE ARE NOT, IN THIS BILL, INTENDING TO GO OUT AND COMPETE WITH ANYBODY. BY THIS BILL WE HOPE TO BRING ELECTRIFICATION TO PEOPLE WHO DO NOT NOW HAVE IT. THIS BILL WAS NOT WRITTEN ON THE THEORY THAT WE WERE GOING TO PUNISH SOMEBODY OR PARALLEL THEIR LINES OR ENTER INTO COMPETITION WITH THEM. IT WAS OUR THOUGHT THAT IN THE STATES WHERE ELECTRICITY IS NOW GENERATED AND DISTRIBUTED THE LAWS OF THAT STATE WOULD CONTROL THE RATES. MAY I SAY FURTHER THAT THE RURAL ELECTRIFICATION ADMINISTRATION WILL HAVE NOTHING WHATEVER TO DO WITH THE RATES THAT MAY BE FIXED IN THESE COMMUNITIES, FOR THE SIMPLE REASON THAT MATTER WILL BE CONTROLLED BY STATE LAW.' (80 CONGRESSIONAL RECORD 5283, PART 5)

WHILE THE ABOVE STATEMENTS (EXCEPT FOR MR. RAYBURN-S) MAY HAVE BEEN MADE IN CONNECTION WITH THE CENTRAL STATION SERVICE LIMITATION IN SECTION 2 OF THE ACT, THE SAME LIMITATION APPEARS IN SECTION 4. THUS, THE QUOTED STATEMENTS WOULD APPEAR EQUALLY APPLICABLE TO EXPLAIN THE INTENT OF THE LIMITATION AS USED IN BOTH SECTIONS. ALSO, WHILE THE LANGUAGE OF SECTION 2, AS ENACTED INTO LAW, IS SOMEWHAT DIFFERENT FROM THE LANGUAGE OF THE SECTION AT THE TIME THE ABOVE STATEMENTS (EXCEPT FOR MR. RAYBURN'S REMARKS) WERE MADE, THE STATEMENTS WOULD STILL APPEAR TO BE FOR APPLICATION.

IT IS CLEAR FROM THE ABOVE QUOTED STATEMENTS THAT THE PURPOSE OF THE CENTRAL STATION SERVICE LIMITATION WAS TO EXCLUDE LOANS FOR THE PARALLELING OF EXISTING SYSTEMS OR CREATING COMPETITION WITH EXISTING FACILITIES BY PROHIBITING THE USE OF LOAN FUNDS FOR CONSTRUCTION OF TRANSMISSION LINES AND SUBSTATIONS TO FURNISH POWER TO AN AREA ALREADY SERVED BY PRIVATE POWER COMPANIES WHEN SUCH COMPANIES ARE WILLING TO PROVIDE ADEQUATE CENTRAL STATION SERVICE TO PERSONS WITHIN THE AREA WHO ARE NOT TIED TO THE POWER LINES.

AS INDICATED ABOVE LEHIGH WAS RECEIVING CENTRAL STATION SERVICE AT ITS EXISTING PLANT AND APPARENTLY DESIRED A MODIFICATION OR ADJUSTMENT OF THAT SERVICE FOR ITS PROPOSED NEW BUILDING OR PLANT. THE POWER SUPPLIER FURNISHING THE CENTRAL STATION SERVICE TO THE EXISTING PLANT OFFERED TO FURNISH ADEQUATE CENTRAL STATION TO LEHIGH'S PROPOSED NEW PLANT LOCATED APPROXIMATELY 160 FEET FROM ITS EXISTING PLANT. IT APPEARS THAT THIS OFFER WAS FIRST MADE PRIOR TO THE DATE (SEPTEMBER 9, 1955) REA APPROVED THE $11,173,000 LOAN TO CIPCO AND, OF COURSE, PRIOR TO THE DATE REA DETERMINED LEHIGH AT ITS NEW PLANT WAS A PERSON NOT RECEIVING CENTRAL STATION SERVICE. IN VIEW OF THESE FACTS THE APPROVAL OF THE USE OF $120,000 OF THE LOAN IN QUESTION FOR CONSTRUCTION OF THE LEHIGH TAP HAD THE EFFECT OF MAKING A LOAN OF $120,000 FOR THE PURPOSE OF PARALLELING AN

EXISTING POWER SYSTEM AND CREATING COMPETITION WITH AN EXISTING FACILITY. AS INDICATED ABOVE THE ONLY REASON LEHIGH REFUSED TO ACCEPT ELECTRIC SERVICE FROM THE RAILWAY COMPANY WAS BECAUSE LEHIGH FELT THAT THE RATE QUOTED BY THE COMPANY WOULD PREVENT IT (LEHIGH) FROM PRODUCING ITS PRODUCTS AT COMPETITIVE PRICES. HOWEVER, YOUR DEPARTMENT ADVISED US IN THE LETTER OF MAY 5, 1958, "THE RATE AT WHICH SERVICE IS OFFERED IS, OF COURSE, NOT A DETERMINING FACTOR.'

SINCE IT IS CLEAR FROM THE LEGISLATIVE HISTORY OF THE CENTRAL STATION SERVICE LIMITATION THAT THE PURPOSE OF THE LIMITATION WAS TO EXCLUDE LOANS WHICH WOULD HAVE THE EFFECT REFERRED TO ABOVE IT IS OUR VIEW THAT THE RURAL ELECTRIFICATION ADMINISTRATION DISREGARDED THE EVIDENT SPIRIT AND PURPOSE OF THE RURAL ELECTRIFICATION ACT WHEN IT AUTHORIZED THE USE OF $120,000 OF THE LOAN FUNDS FOR CONSTRUCTION OF THE LEHIGH TAP.

HOWEVER, ASIDE FROM THE LEGISLATIVE HISTORY OF THE CENTRAL STATION SERVICE LIMITATION WE ARE OF THE VIEW THAT WHERE A NEW BUILDING OR PLANT (OF AN INDUSTRIAL COMPANY) IS LOCATED APPROXIMATELY 160 FEET FROM AN OLD BUILDING OR PLANT OF THE SAME COMPANY ON THE SAME TRACT OF GROUND AND THE OLD PLANT IS RECEIVING CENTRAL STATION SERVICE FROM A POWER SUPPLIER WHO HAS OFFERED TO FURNISH ADEQUATE CENTRAL STATION SERVICE TO THE NEW PLANT, THERE APPEARS LITTLE BASIS FOR CONSIDERING THE NEW PLANT A PERSON NOT RECEIVING CENTRAL STATION SERVICE SO AS TO AUTHORIZE THE MAKING OF A LOAN, OR THE USE OF LOAN FUNDS, UNDER SECTION 4 OF THE RURAL ELECTRIFICATION ACT FOR THE PURPOSE OF CONSTRUCTING FACILITIES TO FURNISH ELECTRIC SERVICE TO THE NEW PLANT.

IN VIEW OF THE FOREGOING THERE APPEARS AMPLE JUSTIFICATION FOR HOLDING THAT THE PORTION OF THE LOAN MADE FOR THE CONSTRUCTION OF THE LEHIGH TAP WAS NOT AUTHORIZED AND STEPS SHOULD BE TAKEN BY YOUR DEPARTMENT TO REDUCE THE $11,173,000 LOAN BY THE AMOUNT ADVANCED TO CONSTRUCT THE LEHIGH TAP AND TO RECOVER IMMEDIATELY FROM CIPCO THAT AMOUNT, I.E., THE AMOUNT ADVANCED TO CONSTRUCT THE LEHIGH TAP. IN THE EVENT SUCH ACTION WILL NOT BE UNDERTAKEN AND YOU SO ADVISE, WE WILL BE REQUIRED TO REPORT THE MATTER TO THE CONGRESS.