

NUCLEAR REGULATORY COMMISSION



DL

IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
CO.

Docket Nos.

(Davis-Besse Nuclear Power
Station, Units 1, 2 and 3)

50-246A
50-500A
50-501A

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

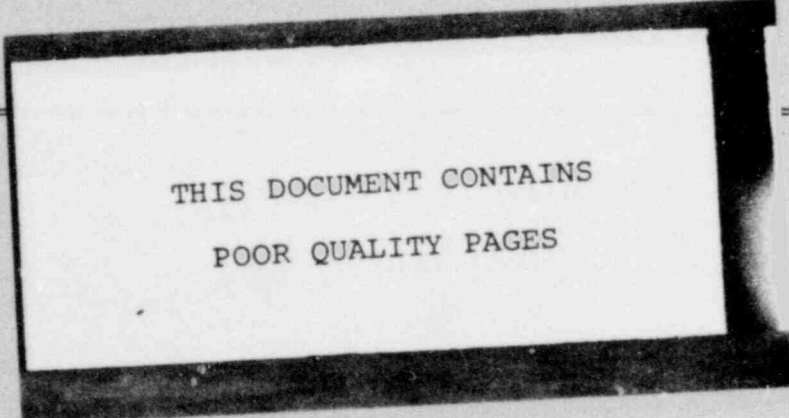
50-440A
50-441A

(Perry Nuclear Power Plant, Units 1 & 2)

Place - Silver Spring, Maryland

Date - Monday, 22 March 1976

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of	:	Docket No.
TOLEDO EDISON COMPANY and	:	50-346A
CLEVELAND ELECTRIC ILLUMINATING CO.	:	50-500A
(Davis-Besse Nuclear Power Station,	:	50-501A
Units 1, 2 and 3)	:	
	:	
and	:	
	:	
CLEVELAND ELECTRIC ILLUMINATING CO.	:	50-440A
<u>et al.</u>	:	50-442A
	:	
(Perry Nuclear Power Plant,	:	
Units 1 and 2)	:	
	:	
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First Floor Hearing Room,
7915 Eastern Avenue,
Silver Spring, Maryland.

Monday, 22 March 1976.

The hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:30 a.m.

BEFORE:

MR. DOUGLAS RIGLER, Chairman.

MR. JOHN FRYSIK, Member.

MR. IVAN SMITH, Member.

APPEARANCES:

(As heretofore noted.)

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C O N T E N T S

1
2 Witness Direct Cross Redirect Recross

3 Dr. Harold Wein
4 (Continued)

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5 Exhibits

6 (None)

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P R O C E E D I N G S

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2 Whereupon,

3 DR. HAROLD WEIN

4 resumed the stand and having been previously duly sworn,
5 was examined and testified further as follows:

6 CROSS-EXAMINATION (Continued)

7 BY MR. REYNOLDS:

8 Q Dr. Wein, I believe at the end of the week last
9 week we were discussing your testimony relating to your
10 concept of natural monopoly.

11 Could you tell me whether it is your belief that
12 the generation of electric power is a natural monopoly func-
13 tion?

14 A Let me interpret that question in the way I think
15 you mean it and if that's right, I'll be glad to answer it.

16 The term "natural monopoly function" is a term
17 which you use but which I don't.

18 Now if you mean by a "natural monopoly function" --
19 and I reinterpret your question as saying is it the case that
20 if there is only one firm engaged in the generation of
21 electricity in a particular market and in that market there
22 were two firms engaged in the generation of electricity and
23 if in that market it could be shown that if there's only one
24 firm engaged in the generation of electricity it would have
25 the lowest cost as compared to two firms, three firms, and

eb2

1 so on, if that's what you mean by your question, then the
2 answer is if that were the case that in a particular market
3 one firm engaged in generation would have lower costs or
4 two firms or three firms or four firms, then the answer is
5 Yes, if that were the case.

6 Q Is it your view that generation is a natural
7 monopoly in the capital area?

8 A No, no, it's not a natural monopoly in the capital
9 area because by definition of "capital area" you have CEI
10 engaged in generation, you have Toledo Edison engaged in
11 generation, you have Ohio Edison engaged in generation, you
12 have Duquesne engaged in generation, you have Pennsylvania
13 Power engaged in generation, you have the City of Cleveland
14 engaged in generation, you have Painesville engaged in
15 generation, you have many others.

16 Now I must have enumerated at least eight firms
17 and if you are to tell me that if we had only one firm
18 engaged in generation and that one firm would be more effi-
19 cient than any other possible combination, then of course by
20 definition it's a natural monopoly.

21 Q If a group of 800-megawatt base load generating
22 units tied together and operated as an integrated part of
23 a single electric system can provide all the power required
24 in a given economic market area at a substantially lower
25 cost than that achieved by any other available alternative,

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1 would that not constitute a natural monopoly regardless of
2 how the system ownership were divided up?

3 A No, because natural monopoly is not -- in economics
4 is not a question of the hardware. Natural monopoly in
5 economics is a question of a firm---

6 Now you said we have more than one firm. Now the
7 question is do the economies come from the fact that we
8 have an integrated system and some other alternative,
9 electrically integrated, technologically integrated, and some
10 other alternative of having such integration involving more
11 firms?

12 Well, then it would not be a natural monopoly
13 because there are many firms involved.

14 Q If generation is in your view not a natural
15 monopoly in the CAPCO area, then as an antitrust economist,
16 what is your basis for your opinion that municipals and
17 cooperatives must have direct access to CAPCO's nuclear units?

18 A This is very clear, the fact that four firms
19 are not a natural monopoly does not imply that these four
20 firms may not be so economic compared to other firms and
21 if they combine and prevent these other firms from gaining
22 access to important factors they are exercising monopoly
23 power.

24 Not only natural monopolies exercise monopoly
25 power. In fact, most of the antitrust cases are brought

eb4

1 against companies where they are not natural monopolies
2 but they nevertheless have monopoly power.

3 Natural monopolies can engage in monopolistic
4 practices but it doesn't follow that all those who engage
5 in monopolistic practices are natural monopolies.

6 Q Let me ask you, Dr. Wein, why is it on pages 46
7 and 47 that you changed the word "market" to "area"?

8 A Well, I was defining the term "horizontal inte-
9 gration" and a firm which has many different plants or
10 stores or whatever the nature of the business is but sells
11 in effect only one product or one line of commerce, it would
12 be horizontally integrated whether it had many of those in
13 a particular market or whether it had many in different
14 geographic areas which constituted separate markets.

15 That's essentially the idea behind it.

16 MR. REYNOLDS: Can I get that answer read back?

17 (Whereupon, the Reporter read from the record
18 as requested.)

19 BY MR. REYNOLDS:

20 Q Let me ask you why did you insert the word
21 "private" on page 47 in the last sentence to your response
22 to question 30?

23 A Well, because I thought of TVA, for example,
24 which does not engage in local distribution.

25 Q What do you mean by local distribution?

eb5

1 A TVA doesn't own, for example, the distribution
2 systems of the municipalities to which it sells wholesale
3 power.

4 Q Does TVA sell power at retail?

5 A I think it does to a certain extent, yes, but
6 not primarily and certainly not in all the regions in which
7 it operates. At least that's what I remember Mr. Kampmeier
8 saying.

9 Q On page 47 of your testimony you address the
10 question of whether economies of scale provide an economic
11 rationale for vertical integration. Have you ever heard
12 the term "economies of vertical integration"?

13 A Yes, I've heard that term.

14 Q How would you define that term?

15 A Well, economies of vertical integration can be
16 said to exist if a firm, by owning two or more levels of
17 production, can operate more cheaply than if it owned only
18 one.

19 So, for example, if I were engaged in making
20 steel ingots or raw steel and also using that raw steel
21 to roll it into a variety of shapes, and if I made my raw
22 steel as we usually do in large plants by having a source of
23 hot iron I would save a great deal of heat which otherwise
24 would be lost if I were to buy hot iron from another company -
25 if I were to buy iron from another company which could of

eb6

1 course exist solely to sell iron, but I would then have to
2 pay the transportation for the iron, I would then have to
3 reheat the iron in order to get it into a molten stage.

4 Similarly, if I were engaged in the rolling of
5 the steel, then if I did not combine the two I would have
6 to take the steel ingot and reheat it and actually have to
7 reheat it more than I would if I bought it in the cold stage.

8 So that some processes are so closely inter-
9 connected that if you break them you will be expending more
10 money rather than if you integrate them and therefore you do
11 it.

12 Now those are the economic efficiencies.

13 Now I've just taken an example from a manufactur-
14 ing process. There are many other sorts of things in which
15 the same thing takes place but that doesn't mean that these
16 are natural monopolies. You can get very integrated and not
17 be a monopoly at all.

18 Q Is there any distinction in your mind between
19 economies of scale and economies of vertical integration?

20 A Well, yes, the two can be distinguished but that
21 doesn't mean that-- Well, yes, the two can be distinguished.

22 Q Your testimony focuses entirely on economies of
23 scale and not at all on economies of vertical integration
24 in the electric utility industry. Isn't that correct?

25 A No, I don't think I would characterize it that

eb7

1 way.

2 Q Where is it that you discuss economies of vertical
3 integration in the electric utility industry?

4 A Well, I think all through there I'm trying to
5 make a distinction that what economies one gets from
6 economies of scale sometimes will lead to vertical integra-
7 tion and sometimes it will not, and if it leads to vertical
8 integration, the economies of scale that you get at one
9 level of integration doesn't necessarily mean you get
10 economies of scale at the other level or that if you do that
11 they are necessarily in equal amount.

12 Then I think I recall saying you may get economies
13 of scale and by using large generation equipment if the
14 market is large enough but it doesn't follow from that that
15 you get economies of scale in local distribution level
16 electricity simply because you have economies of scale in
17 generation.

18 Now that constitutes to me a discussion of verti-
19 cal integration in the electric industry.

20 Q Will you give me what your distinction is between
21 economies of scale and economies of vertical integration?

22 A I thought I had already done this.

23 Q No.

24 MR. MELVIN BERGER: I'll object as asked and
25 answered.

eb8

1 MR. REYNOLDS: The witness has testified what he
2 thought economies of vertical integration was and he testi-
3 fied he thought there was a distinction. I am now asking
4 him to tell me what that distinction is.

5 CHAIRMAN RIGLER: Yes, I understand the question.
6 I think the problem is he covered the distinction in his last
7 answer.

8 Is that what you were intending to do?

9 THE WITNESS: In that answer and also in the
10 example I gave of the steel industry you have economies of
11 vertical integration by saving heat. There may not have
12 been one economy of scale in there in terms of the largest
13 size units, but whatever that was you still got it from
14 saving heat.

15 CHAIRMAN RIGLER: Can you give a very quick
16 summary of the distinction between the two?

17 THE WITNESS: Sure. Yes.

18 You get economies of scale --

19 BY MR. REYNOLDS:

20 Q And in the electric industry context, please.

21 A Well, now, read the question.

22 CHAIRMAN RIGLER: Will you rephrase it, please?

23 BY MR. REYNOLDS:

24 Q What I'm looking for is a concise statement of
25 the distinction between economies of scale and economies of

eb9

1 vertical integration in the context of the electric utility
2 industry, as you understand it.

3 A Well, if you mean by "the electric utility in-
4 dustry" a vertically integrated generation, transmission
5 and distribution company, that's one thing. If for example
6 we have only a local distribution company that's another.
7 In a local distribution company there may not necessarily be
8 any economies of scale. There could be but there may not
9 necessarily be.

10 Q Well, let's take the other situation so that we
11 can define any distinctions.

12 A I'm not finished yet. I'm trying to answer the
13 question.

14 Q That's what I was hoping for.

15 A If you won't interfere I'll try to answer.

16 If you take a generation, transmission and dis-
17 tribution company, it is, under my definition, vertically
18 integrated.

19 Now the question here is do you get advantages
20 by having under one ownership the generation units, the
21 transmission units and the distribution units. And my answer
22 is you do not necessarily get advantages in those three
23 levels of electric power industry by having them all in one
24 firm.

25 Now you could get some advantages.

eb10

1 The way one plans generation and transmission
2 these days is that it would probably facilitate the planning
3 if you were an electrical company who is engaged in genera-
4 tion and transmission. It would facilitate your planning
5 by having both, for example, in the alternate organizational
6 forms I mentioned that take place.

7 It's quite possible you could have a separate
8 transmission company but this would require then coordina-
9 tion with those entities which were engaged in generation
10 and so it is in this sense that you might get through owner-
11 ship an easier way to plan the coordinated development of
12 transmission and generation units and in that sense you might
13 get some advantages from having a generation and transmission
14 company within the same corporate entity.

15 But that's quite different, you see, from the
16 example I gave you of the steel industry. There you lose
17 the heat just by not having them physically interconnected
18 within the same case. In this case you facilitate planning
19 and if **your** planning with two entities was just as good
20 as your planning with one entity you would not have to have
21 one firm doing it. You would simply have their joint plan-
22 ning.

23 So this is why you do not necessarily get
24 economies of vertical integration in the electric industry.

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1 CHAIRMAN RIGLER: Yes, but I thought the
2 question was what is the distinction between the two.

3 THE WITNESS: Okay, I'm sorry, I forgot that
4 part.

5 Now, the economies of scale in the electric
6 industry at different stages are different. If, for
7 example, I was solely concerned with generation and if
8 the markets were large enough the generating units are
9 of such nature that I would get a lower cost by getting
10 into larger scale generation than smaller scale if
11 my market were large enough. For a given size market
12 there would probably be one or several optimal types
13 of generation equipment I could put in. So that the
14 economies of scale in the electrical industry are, as is
15 well known, they depend upon, in the nature of the technologi-
16 cal units involved and we do know that if I had an
17 output, a market which would take 2000 megawatts of
18 power then it would be better for me to put in larger
19 units, say from 500 on up than putting in 40 or 50
20 megawatt units.

21 On the other hand, again if I were isolated
22 I couldn't take advantage, say, of putting in two 1000
23 megawatt units because I would have to carry one as
24 reserve.

25 So that when you talk about the economies of

mpb2 1 scale in the electrical industry you are always talking
2 about with respect to a given market, with respect to
3 a particular kind of unit, with respect to whether there
4 is or there is not coordination and so on.

5 Now, in common parlance, i.e., as engineers
6 or technocrats talk about it, they're looking at a
7 piece of equipment and they're saying, But you know,
8 given today's prices for all the factors of input you
9 could get, by putting in a 1000 megawatt generator, a
10 better heat rate and a lower capital cost than if you
11 put in a 50 megawatt generator. That's what they mean
12 by economies of scale. That is a purely technical sort
13 of thing and it has very little -- you can't simply take
14 that factor and jump to the economic concept which is
15 a firm engaged in a particular question.

16 BY MR. REYNOLDS:

17 Q Are economies of scale always a function
18 of the market to be served in any industry?

19 A Well, it's a function of the size of the
20 market and the technology at the time. The size of the
21 market doesn't give you economies of scale, it's the
22 technologies which give you economies of scale. The
23 factor inputs, the prices of the factor inputs, another
24 question as to whether you could take advantage of it has
25 to do with the extent of the market.

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1 Q Let me ask you this, Dr. Wein:

2 Have you made any studies on which you could
3 base the conclusion that there are not necessarily
4 economies to be derived from vertical integration in
5 the electric utility industry?

6 A I haven't but I've thought about it. I have
7 not seen any studies which have shown that. I've seen
8 studies by my friend Ullo, who used to work for me at
9 the Federal Power Commission, who started out to see
10 whether he could tell whether one electric company was
11 more efficient than another. The answer was he couldn't.
12 And then Dr. Pace tried it in his Ph.D thesis and his
13 answer was it is very difficult to tell whether one
14 electric company is more efficient than another. If I
15 couldn't tell whether one electric company was more
16 efficient than another it would certainly be more
17 difficult to say something about whether there are
18 economies of vertical integration. Apart from that,
19 we don't have very many large private -- Well, I can't
20 think of any large private system which isn't vertically
21 integrated and so it would be very difficult for me
22 to compare that sort of thing.

23 Q Would you agree that generation and transmission
24 must be jointly planned in order to achieve minimum loss?

25 A I assume you mean in a particular market area.

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1 Q Right.

2 A Well, I think they should be jointly planned,
3 sure.

4 Q All right.

5 Now, what possible economic incentives do you
6 see as existing in connection with the creation of a
7 transmission only company which has no affiliation with
8 generation?

9 A What incentives could I see for it?

10 Q What economic incentives can you see to that?

11 A Gee, I can see a lot, depending on which
12 viewpoint one takes, whether one takes the viewpoint of
13 social accounting or private accounting.

14 Q Let's take the viewpoint of private accounting.

15 A Well, if I wanted to plan a transmission system
16 I could probably make as much money in so doing as if
17 I wanted to plan a completely vertically integrated system.
18 I doubt that we would be subject to some sort of regulation.
19 It seems to me that the economic incentives would be
20 just the same, that I could sell transmission services.21 For example, suppose I said, Look, I'm going
22 to build a transmission network, since we're going to start
23 de novo, since obviously right now you can't do it, but
24 I'm going to build a transmission network and I'm going
25 to connect this transmission network and I'm going to take

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1 together the cities of New York, Philadelphia, Washington,
2 Pittsburgh and Cleveland and I will have transmission
3 around there and I know in these areas there are lots of
4 generating companies and I will say, Well, if you're a
5 generating company located in Philadelphia and MELP wants
6 to buy power from you, this is what it will cost you to
7 wheel it; and I might get an awful lot of business that
8 way and there might be, of course, unfortunately, an
9 awful lot of competition between the generating companies,
10 if they had to face that kind of a question, but if I
11 were a transmission company and I had that monopoly
12 over the network that would be a pretty lucrative thing.

13 But of course I charge the same rates for
14 everybody, there wouldn't be any discrimination. It
15 just means that now the local companies would have a
16 wider option from generating companies.

17 CHAIRMAN RIGLER: In order to provide that
18 kind of service, though, you would have to have high
19 voltage lines between all of these service points.

20 THE WITNESS: Yes.

21 CHAIRMAN RIGLER: And isn't it likely that
22 many of these lines would never be used, that there would
23 be inefficiencies in your company?

24 THE WITNESS: If I were a stupid planner, that
25 would be the case, but, in effect, I would not -- you see,

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1 I would not put in a high voltage line unless I knew
2 that there was some pretty heavy generation that's going
3 to go over it. In other words, there are some massive
4 loads of power. So what I would do, in effect, is what
5 the railroads did in the early days and it's really no
6 different. They build big lines, but where do they
7 build them from? Well, first, in the early days the
8 great centers of the population were in the east, so you
9 have got these great lines going from the great cities
10 and that's what they did first. Eventually, as the
11 things grew up they built collatoral lines and in effect
12 that's what they would have done in this.

13 Now, it is not uncommon in other countries to
14 have transmission owned by the government that, in effect,
15 becomes a common carrier.

16 I might add that the transmission integration that
17 the private companies do in effect makes it a common
18 carrier for themselves, but not for others who are not in
19 it.

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1 BY MR. REYNOLDS:

2 Q In the situation that you referred to with respect
3 to transmission as a common carrier system in other countries,
4 is not the generation also owned by the government?

5 A Yes. But it doesn't have to be.

6 Q Do you know of any situation where generation and
7 transmission are separately owned?

8 A You mean in other countries?

9 Q Yes. Or here.

10 A I can't think of any at the moment.

11 All that indicates is that under different
12 conditions, different organizational forms come about.

13 Well, let me just think. Let me just think.

14 Am I not correct, in the Pacific intertie that is
15 built by the government, just a sole transmission line, nothing
16 else? Others use it, not only the power authorities up there
17 use it, but so do privates.

18 Also there was a plan by the Southeast Power
19 Administration to connect their dams all through that area of
20 the country, to build a transmission network. Of course it
21 never did get built, because there was -- it got killed in
22 Congress.

23 Q Those dams are generation though, isn't that right?

24 A Yes, but they were going to build a transmission
25 that was to connect their different hydro to each other in order

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1 to get efficiency of their hydropower and sell it to preference
2 customers. You don't build transmission lines and not
3 connect it with anything, let me put it that way.

4 Q Dr. Wein, let me read you a statement by
5 Dr. Hughes during his testimony in this proceeding, appearing
6 at pages 3899 and 3900 of the transcript.

7 Dr. Hughes testified, and I am quoting:

8 "The natural way to plan, develop and operate
9 a bulk power system is to treat generation and
10 transmission together because in scaling, sizing,
11 locating facilities, designing them, they have
12 to mesh well and good system planners can put the
13 pieces together better than separate organizations
14 operating through the mechanism of the market.

15 "So in general, generation and transmission
16 tend to be integrated. Once you have a territorial
17 base of individual systems it is a logical
18 development for the transmission in that area to
19 reflect whoever is generating and serving the load."

20 Now will you explain to me in what ways you feel
21 that Dr. Hughes is in error in connection with that statement?

22 A Let me have it before me so that -- before I
23 answer that question.

24 (Handing document to the witness.)

25 Well, I want to read the first part of it:

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1 "The way in which the system grew up was to
2 have integration from generation on through
3 distribution. And as systems consolidate within
4 any given area, the consolidation affected bulk
5 power and retail stages. And the natural way to
6 plan and operate a bulk power system once it has
7 grown up and consolidated in that way is to treat
8 generation and transmission together because in
9 scaling, sizing, locating facilities, designing
10 them, they have to mesh well. And good system
11 planners can put the pieces together better than
12 separate organizations operating through the
13 mechanism of the market."

14 Now the first part is the way the systems grew up.

15 I have gone through my discussion on the different
16 organizational forms to cover how the systems grew up. They
17 could have grown up in another way, is which I contend.

18 Now that the systems have grown up, i.e. now that
19 the CEI has a territory, obviously CEI, being a vertically
20 integrated company, when it plans its generation, obviously
21 must plan its transmission.

22 And when it plans its generation it obviously must
23 forecast its loads, all of which are within its own system.

24 Now the natural way to plan and develop CEI once
25 it has already gotten to this stage, obviously is to do it.

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1 Now the next part of his comment:

2 "Once they have done this, good system planners
3 can put the pieces together better than separate
4 organizations operating through the mechanism of the
5 market."

6 That is a little vague to me because if I follow
7 that logic out, then what I would be saying is that in the
8 entire United States we ought really to have only one organiza-
9 tion operating the transmission and generation of this company
10 because good system planners can put the pieces together better
11 than the operation of the market.

12 I don't believe that at all. I think good system
13 planners operating within their given situation such as operating
14 the CEI, or an Ohio Power, given the fact that they are what
15 they are, they don't need the intervention of the market if
16 you mean by that some other independent firm. They are operating
17 within a particular area which is theirs. They obviously use
18 the intervention of the market. If there were no market they
19 couldn't plan it, because good system planners don't plan
20 systems unless they take into account the prices, the
21 alternatives and so on, which is the market.

22 So that part is a little vague, but I assume that
23 that is what he means. He doesn't mean that they don't use
24 the mechanism of the market to plan because that would be
25 absurd. That means they don't use prices to plan and that is

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1 obviously absurd.

2 What he is saying is they don't, in planning
3 within their territory, have to ask Ohio Power what they should
4 do. That is essentially what he is saying.

5 MR. SMITH: Don't you see natural efficiencies,
6 however, when you can substitute a simple executive decision
7 for an arm's length bargaining that would exist if you had
8 separate transmission and generating entities?

9 THE WITNESS: No, I am not sure, Mr. Smith, that
10 there would be natural efficiencies.

11 I can see that it would be an easier conclusion to
12 come to when you have executive decision. But there might
13 be inefficiencies. For example, if I were a transmission
14 company bargaining with a G&T company, I would be constrained
15 to do as efficient a job as I could, or not my rates would be high
16 and the G&T -- generating part of the business, he would say,
17 well, you are too high, we can't sell that. Either you put
18 your rates down or we can't get that business, that is all.

19 And so you might have it, whereas within one company
20 operating on its own, there is nothing to constrain them. They
21 might, for example, because it would add to the rate base of
22 building an excessive transmission system. Who is there to
23 say that it is excessive? No regulatory commission ever goes,
24 to my knowledge, into the details of the design of
25 anything in an electric power system. They don't even know that

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1 they are being charged overprices for electric generation.

2 No regulatory commission ever did that. So how
3 could they ever know whether a transmission system was
4 efficiently designed.

5 So that I think then that the natural efficiencies,
6 if you were to replace that phrase by, it is easier and it
7 may eliminate mistakes -- in other words, I might be a
8 transmission system that made a mistake on where I thought
9 the big development was going to be, and therefore I got a
10 spur out which is empty.

11 But the private systems make those mistakes too.
12 They also make mistakes in forecasting where the development
13 is going to be.

14 BY MR. REYNOLDS:

15 Q If you had a separate transmission company which
16 was charging a high rate, what would you suggest that the
17 generating company do?

18 Go out and shop around for another transmission
19 company?

20 A No, I said if we had a separate transmission
21 system, if that was subject to regulation, now I would have
22 really a good fight on my hands so that a regulatory
23 commission really could get some information.

24 The generating company is, you know, pretty savvy
25 about transmission, and it can go to the regulatory

mm7

1 commission.

2 And there are other transmission systems
3 throughout the country that may be very similar, and it would
4 have that. And so you would have a fight between two
5 elements of relatively equal size and ability and that
6 would be very helpful to a regulatory commission.

7 Q So you are contemplating that your generation
8 company also would have transmission as well as a separate
9 transmission company?

10 A No, I didn't say that at all.

11 I said you would have the generating company
12 which is a pretty big outfit, you have other transmission
13 companies throughout the country, the generating company
14 would be savvy about the transmission business.

15 This is what I said. It would not be a small,
16 uninformed customer.

17 Q Are you advocating the establishment of separate
18 transmission companies?

19 A No, not in this hearing I am not advocating the
20 establishment of separate transmission companies.

21 Maybe at sometime in the future I might.

22 What I am advocating is that the transmission
23 be treated in such a way that anybody who wants to get on it
24 does, and pays a fair charge before using it.

25 CHAIRMAN RIGLER: Dr. Wein, let me ask you a

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1 question.

2 In the CAPCO area if there was separation generation
3 transmission so that you had five generating companies, how
4 many transmission companies would you expect to find in that
5 area?

6 THE WITNESS: You mean right now? As of now?

7 CHAIRMAN RIGLER: Yes, sir.

8 THE WITNESS: And we were starting sort of de novo,
9 right? We have five companies and the question is, would
10 there be five transmission companies, would there be four,
11 would there be three, would there be two, would there be one?

12 I don't know. I really don't know what would
13 happen. I could conceive that there might be several.
14 Some -- and they would be interconnected just like a railroad
15 is interconnected, you see.

16 But I could conceive, for example, that I might have
17 a transmission company which might stretch all the way, say,
18 from Chicago up along the shores of -- along the shores of
19 Lake Michigan, across the Michigan peninsula all the way to
20 Buffalo with feeds off it, which might be one transmission
21 company which would be operating interstate. And I might
22 conceive of a north-south transmission line.

23 CHAIRMAN RIGLER: Would you expect that CEI
24 would have at least two transmission options to interconnect
25 with Ohio Edison?

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THE WITNESS: Yes, probably.

CHAIRMAN RIGLER: And would that raise the cost
of transmission?

THE WITNESS: I don't know.

Nobody has ever really tried this kind of creative
engineering because there has been no reason for them to do
so.

end 1C

1D ebl

1 BY MR. REYNOLDS:

2 Q Dr. Wein, are you suggesting the feasibility of
3 competing transmission companies? Will you give a Yes or No
4 answer to that?

5 A Well, you have to tell me in what area.

6 Q Let's say in the CAPCO area.

7 A No, I don't think I am at this point saying that
8 you necessarily have to have competing transmission com-
9 panies although if "feasibility" means "possible," sure it's
10 possible.

11 What I am suggesting is that such transmission
12 networks that exist should be open to entities which are not
13 in the CAPCO Pool under fair charges.

14 CHAIRMAN RIGLER: That's the problem they've been
15 having with this line, is that that leads to the result that
16 you can have or that it's proper to have just the one trans-
17 mission network. But your answers to the previous line have
18 been that you favor competing transmission networks within
19 the CAPCO area.

20 THE WITNESS: Let me put it this way, Mr. Rigler:

21 The logic of the argument as I see it is this:

22 Is transmission necessarily a natural monopoly?

23 And my answer is No, it is not necessarily a natural mono-
24 poly.

25 CHAIRMAN RIGLER: Yes, you said that on Friday.

eb2

1 THE WITNESS: The second question: Would it be
2 more efficient-- I mean does the transmission network as
3 it now exists, is that more efficient than if MEMP or the
4 others and so on started to build their own? And the answer
5 is Yes, it is because of the size of the system, the fact
6 that the system is there, the problems of siting and things
7 of that nature, and the system itself has probably got a
8 considerable amount of extra capacity which is natural to
9 build in for the future. So it is not efficient if it
10 were possible for these entities to get the transmission.

11 The next question is would it be better, in terms
12 of the social accounting, to have competing transmission
13 networks? And what I was saying is that it could be that
14 that would be better but that would be a very difficult and
15 long, factual investigation as to whether one then is trying
16 to get on the drawing boards and create some different type
17 of transmission network for the United States to see whether
18 it would be better than what we have now.

19 The next point is supposing that what we have now
20 is about as good, given the cost of change, as you can get.
21 The next question is should it be owned by one company or
22 five companies, and that's still a different question.

23 In other words, I'm always trying to make a
24 distinction between the technical advantages of interconnec-
25 tion and designing an operational network as against the

eb3

1 fact that when you have that it doesn't have to be owned by
2 one company because in addition to the hardware aspect which
3 is all you can get in terms of design, you know, and with
4 mathematics and mathematical engineering, you still have, in
5 addition, all the other ingredients in operating a trans-
6 mission or generation or distribution company efficiently.
7 It has to be properly maintained. You have to engage in
8 day-to-day operations which may be good or bad depending
9 upon the nature of your management personnel and so on.

10 If you're engaged in generation you have to en-
11 gage in contracts for fuel; some people may be better than
12 others and so forth. So that you have many more ingredients
13 than simply the transmission hardware or simply the genera-
14 tion hardware.

15 And that's where the question of do different
16 firms help in that regard, and my answer is Yes, I think they
17 would.

18 BY MR. REYNOLDS:

19 Q What is the basis for your statement that there's
20 excess capacity in the transmission system in the CAPCO
21 area?

22 A Well, this is the third hearing I've attended
23 and my recollection is that every one of the engineers that
24 I've spoke to said that's generally the case, that at the
25 present time you have -- between particular points you may

eb4

1 have a 345 line; a 345 line is built in anticipation of a
2 great deal of generation coming on but the generation is not
3 yet there. So in that 345 line you have a heck of a lot of
4 capacity.

5 Q What engineers told you that there was excess
6 capacity in the CAPCO transmission system?

7 A I can't think of anybody with respect to CAPCO
8 but it seems to me that this is generally the case.

9 Q And the three cases were Alabama and Consumers ---
10 is that not right? -- and this?

11 A Yes.

12 Q How do you measure capacity in transmission?

13 A Well, I suppose-- All I can tell you about that
14 is what I read in the Power Survey. Not being an electrical
15 engineer, you generate capacity as the amount of load a
16 line can handle without excessive loss or without burning
17 up.

18 MR. SMITH: Mr. Reynolds, are you able to state
19 what the Applicants' position is on that point?

20 MR. REYNOLDS: On which point?

21 MR. SMITH: On whether there is excess trans-
22 mission capacity? I was just wondering if you are able to
23 state what your position is.

24 MR. REYNOLDS: I think the position goes to what
25 purpose you're talking about excess capacity, or in what

eb5

1 context you're talking about excess capacity. In terms of
2 making the determination whether there is excess capacity
3 depends on a number of different variables that have to be
4 looked at, the types of power transactions that a line is
5 used for and the different arrangements.

6 I don't have any-- Applicants will, in their
7 affirmative case, certainly speak to that point.

8 MR. SMITH: I just thought it might be helpful if
9 we knew as the case progresses.

10 CHAIRMAN RIGLER: Well, for example, we know that
11 CEI has the capacity to carry capacity power to the City of
12 Cleveland because they stipulated that.

13 MR. REYNOLDS: That's right.

14 CHAIRMAN RIGLER: But we don't have at this time
15 a general stipulation with respect to capacity of the CAPCO
16 systems to wheel power from outside the area to various
17 municipalities within the system.

18 MR. REYNOLDS: That's right.

19 MR. SMITH: Do you mean your position has not been
20 formulated or you just prefer not to reveal it until your
21 affirmative case?

22 MR. REYNOLDS: What I'm saying is it's not for me
23 to testify on the complex subject of capacity of transmission
24 that involves engineering questions, reliability questions
25 and all sorts of other questions. I have no problem giving

eb6

1 the Board the Applicants' position as to capacity of trans-
2 mission and excess capacity at the time the Applicants put
3 their case on, but I'm really not the one to testify on that.

4 MR. SMITH: It may be an unfair question. I may
5 be asking you too simplistic a question.

6 MR. REYNOLDS: The problem is that there are a
7 number of variables that go into responding to your question.

8 For example, the question as to excess capacity
9 could be answered in different ways, depending on whether
10 you're talking about at the present time or you're talking
11 about capacity that contemplates whatever the planning is
12 for the future and the loads that are anticipated for a five-
13 year period.

14 It's not the type of thing where you can make a
15 simplistic answer that says excess capacity can be determined
16 by looking at this particular point in time, for example.
17 It's a lumpy concept and it depends on a number of varia-
18 bles that obviously have to be taken into account.

19 Now what I was basically exploring with Dr. Wein--
20 He had made the statement that clearly there's excess
21 capacity in the transmission system of the CAPCO companies
22 and I was asking him what the basis for that was and how he
23 arrived at that conclusion.

24 THE WITNESS: That's an exceedingly intricate,
25 complicated type of consideration which doesn't lend itself

eb7

1 to a quick answer to what you've asked me. It's not because
2 I'm reluctant to give you a position. The Applicants ob-
3 viously have a position. But it's the type of thing that I
4 think has to be spelled out by the witnesses and it's going
5 to take a fairly intricate explanation in order that the
6 Board will understand the whole concept of capacity in
7 transmission lines and when you can determine that there is
8 excess capacity and whether you look at excess capacity and
9 make that determination as of today or as of five years from
10 now, or when you make it, and the different variables that
11 go into it such as your present load and your projected load
12 and your present planning of generation and your future
13 planning of generation.

14 That's why I'm reluctant at this stage to try to
15 give you a generalized answer because I really think it would
16 be inadequate and I think we have to get into an awful lot
17 of other factors and variables.

18 CHAIRMAN RIGLER: As the Board looks at the problem,
19 Dr. Wein is advocating that you allow the municipal systems
20 in the CAPCO area to be able to ship on or attach to the
21 transmission system today because he feels there's excess
22 capacity. Now the Applicants can come back and say Yes, there
23 may be excess capacity today and we're not utilizing
24 our lines to the full extent possible but we built those
25 lines to project our needs five years, ten years into the

eb8

1 future and they're going to fill up and then what do you want
2 us to do? Push you off of our system as these fill up?

3 And to come back to that the municipal says Well,
4 let us into the system as a part member so that we can help
5 you plan and we can help you develop these lines to meet all
6 of our future needs, and we keep going back and forth that
7 way.

8 MR. REYNOLDS: Right.

9 I think that's where the issue is joined. I agree
10 with you.

11 But what I'm saying is I think to give you the
12 Applicants' position is going to take a fuller explanation
13 than what I anticipate Mr. Smith had contemplated by his
14 question, and it is one that is a complicated response that
15 calls for some engineering analysis and some expertise in
16 the area, and we are intending to go into that in some detail
17 in our affirmative case so that the Board will be advised
18 of our position fully.

19 MR. HJELMFELT: Do I understand then that
20 Applicants propose to file some supplemental expert testimony?

21 MR. REYNOLDS: No, fact testimony. It's the facts
22 of the situation as it exists in the CAPCO area. We don't
23 propose to file any additional testimony but we do intend to
24 go into it.

25 MR. HJELMFELT: I'll make my objections at the

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appropriate time to that.

MR. REYNOLDS: Okay.

BY MR. REYNOLDS:

Q Would you consider it feasible to have competing generation only companies in the CAPCO area, Dr. Wein?

A Do you mean by "feasible" possible, or do you mean would they make money if they did it, or what does that mean?

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1 Q Well, do you think that --

2 CHAIRMAN RIGLER: Do you mean does he think
3 that Ohio Edison should compete with Toledo Edison for
4 the sale of its generation output for their respective
5 generation outputs?

6 MR. REYNOLDS: No, what I'm really asking is
7 whether in terms of his, Dr. Wain's concept of generation-
8 only companies and transmission-only companies whether
9 he thinks that you could have in the CAPCO area competing
10 generation-only companies which would effectively supply
11 the generation to the customers in the CAPCO area and
12 earn a profit on it.

13 BY MR. REYNOLDS:

14 Q Can you answer that?

15 A Assuming they had access to transmission at
16 a reasonable rate, is that the idea?

17 Obviously they have to deliver the power over
18 something.

19 Q Well, assuming you had also competing transmission-
20 only companies and they had access to the transmission of
21 the competing transmission companies at a price.

22 A Under those things I think it's feasible not
23 only for companies in the CAPCO area but for companies
24 outside the CAPCO area to be selling companies inside
25 the CAPCO areas, consumers inside the CAPCO area. I think

mpb2

1 that's quite possible and Lionel Weiss wrote a paper on
2 that.

3 Q And would you consider that kind of an arrange-
4 ment to be preferable to the situation that now exists
5 in the CAPCO area with respect to the Applicants'
6 coordinated arrangement?

7 A Are you asking me for my social judgment of it,
8 is that what you mean by preferable?

9 Q I'm asking for your economic judgment.

10 A Well, my economic judgment on it can't be
11 exercised because I don't have the data in the sense
12 that I'm not sure whether it would come out cheaper or
13 not cheaper. If it came out cheaper I'd say yes, it
14 certainly would be preferable and by cheaper I mean
15 result in lowered delivered prices, say, to load centers,
16 then I would say it is preferable. It certainly would
17 lead to probably greater competition and in this sense
18 it would be preferable in my judgment.

19 MR. SMITH: When you speak of competition in
20 transmission do you necessarily include a substantial
21 amount of redundancy in transmission?

22 THE WITNESS: No, I don't.

23 MR. SMITH: How could that be?

24 THE WITNESS: Well, you have to have redundancy
25 in anything, if you are going to have competition you have

mpb3

1 to have redundancy or you're not going to have competition
2 because there are unexpected contingencies which you
3 plan to meet.

4 Let me go back, because that's the only thing
5 which comes fairly close to this, to the railroads.

6 We had redundancy in the railroads somewhere
7 between the period of, let's say 1910 to 1930. Originally
8 there wasn't any redundancy, there wasn't enough railroad
9 capacity. Then many lines grew up, so if you were to
10 take the great systems that went between New York City
11 and Chicago you would find the New York Central, you'd
12 find the Pennsylvania Railroad, you'd find between Buffalo
13 and Chicago the Nickel Plate and so on. You had a lot
14 of railroads going there and they were competing and the
15 reason why they were competing was because there was
16 enough market. Now, they didn't go by the same routes.
17 The New York Central didn't go the same way as the
18 Pennsylvania or the B&O going to Chicago.

19 Now, when the markets shrink the redundancy
20 comes in and so eventually these railroads dropped their
21 lines. Instead of having, as the New York Central once
22 did, for example, six tracks between New York and Buffalo,
23 you get down to two, side by side.

24 CHAIRMAN RIGLER: But did the market shrink
25 in railroads? Didn't the overall amount of tonnage carried

mpb4

1 rise?

2 THE WITNESS: It depends on which period. Yes,
3 it was rising but the capacity was much bigger than the --
4 it could take a great deal more and so you had redundancy,
5 if you see what I mean. In other words, the capacity of
6 the rail network was much greater than the increase in
7 rail tonage and so you come to about a peak somewhere
8 around World War II and then you sort of hold constant,
9 but at the same time you're increasing primarily through
10 better communications, you're increasing the capacity of
11 the rail network itself. And then it goes down, so you've
12 got redundancy.

13 CHAIRMAN RIGLER: What goes down?

14 THE WITNESS: The total ton-miles go down and
15 you have redundancy for a variety of reasons.

16 Now, you do have competition, all the rails
17 are interconnected. Now, you could take a shipment in
18 New York and it would get -- end up, say, in San Diego
19 and it wouldn't go over one line, it would go over many
20 lines, or if you were a shipper and you were in New York
21 you could specify, if you wished, that the shipment go
22 on the New York Central from New York to Buffalo and
23 from there take the Nickel Plate over to Chicago for some
24 reason, whatever you want. You could specify that.

25 So that you have an interconnected rail network,

mpb5

1 but you have many different companies and they are
2 competing with each other for the custom of the shippers
3 who have the authority to say which way they want that
4 particular car to go.

5 Now, to be sure, eventually a time comes when
6 that system is too big. The rise of the trucks, for
7 example, and the highways, the decline of passenger
8 transportation. That right of way is too large and you've
9 got to cut back on it because it is expensive.

10 Now, in an electrical transmission system
11 there isn't any reason why that I can see -- there may
12 be good reasons, but I can't see it a priori. There
13 isn't any reason why I couldn't have, say, a 345 network
14 which starts somewhere in Boston, goes through the great
15 populated areas and ends up in Chicago. There is nothing
16 inherently crazy about that and I could have had, then,
17 a firm which says I am in 345 transmission or whatever
18 and I may have supplementary services, I can give you 138
19 if you want and so on. You may have other firms just as
20 you had within the great transcontinental railroads of
21 the United States, others which are purely regional but
22 nevertheless hooked in because they have subtracted their
23 primarily supplying the interstices between these great
24 systems.

25 CHAIRMAN RIGLER: Can you have two firms on

mpb6

1 this 345 kv from Boston to Chicago?

2 THE WITNESS: One could go from Boston to
3 Chicago, as it were the crow flies, and the other one
4 can go from Boston to Buffalo to Chicago and the other
5 one go from Boston to New York to Philadelphia to
6 Pittsburgh and then to up and swing that way to Chicago.
7 You could have that and actually when you look at the
8 rail -- the transmission maps put out by the FPC, I don't
9 happen to have one with me, you'll see that in effect
10 this is what you're getting. You're getting this dense
11 network of major arteries with these capillaries, as it
12 were, off them.

13 Now, this is something which dynamically
14 evolves over time in accordance with the growth of the
15 industry, the shifting of loads and things of that nature,
16 and there is nothing inherent in saying you've got to have
17 only one firm. All that that really means is you have
18 to have some interconnection and if you're smart you'll
19 start to do some planning about it.

20 Now, the question is if planners plan will
21 they also compete. That is really, I think, the fundamental
22 question which has been raised here. If you have members
23 of a pool will they want to compete with each other. If
24 you have coordinated planning will you necessarily
25 eliminate competition between the members of this coordinated

mpb7

1 planning team. The only thing I can say is I don't know,
2 but I think if you merge them all in one firm you surely
3 would probably eliminate more competition than you would
4 if they were independent firms. But that's not necessarily
5 the case, you know. Oldsmobile competes with Pontiac
6 and they're all owned by General Motors.

7 But this is my belief.

8 And I think it is better, than, to have many
9 firms rather than one even though the many firms do
10 a certain amount of planning with each other and that's
11 why strictly speaking you don't have natural monopolies,
12 you simply have optimal structures in the purely theoretical
13 engineering sense, not necessarily in the economic sense.

14 BY MR. REYNOLDS:

15 Q Dr. Wein, do you know what the financial
16 conditions of the railroad is today?

17 A It depends on which railroad you're talking
18 about. If you're talking about the Southern Pacific
19 and the Southern Railway, they are in pretty damn good
20 shape. If you are talking about the New York Central or
21 the Penn Central, they are in bad shape and they got in
22 bad shape because they got involved in a michegotten
23 merger on the theory that they were going to be very more
24 efficient.

25 Q Well, Dr. Wein, --

mpb8

1 A I haven't finished yet.

2 -- on the theory they were going to be very
3 more efficient. It turns out that they were wrong. It
4 turns out that one member of that merger, Mr. Proman,
5 was always against it and finally quit, but there was
6 a great interconnected network.

7 Q Let me ask you, Dr. Wein, do you know whether
8 it would be possible in the state of Pennsylvania to have
9 the kind of a situation you suggest where you have
10 competing generation-only companies and competing
11 transmission-only companies under the Pennsylvania law?

12 A Well, apparently the legislature of Pennsylvania
13 in their wisdom seems to prohibit that.

14 Q So it's your understanding that that kind of
15 an arrangement would not be possible, is that correct?

16 A I suppose under the law, I don't really know.
17 That's a legal question.

18 Q Do you know whether such an arrangement would
19 be possible in Ohio under the state regulatory framework
20 that exists in Ohio?

21 A What kind of an arrangement are you talking
22 about?

23 Q Let's say competing transmission-only companies
24 or competing generation-only.

25 A Well, I hate to give legal opinions, but I did

mpb9

1 read the Ohio statute and so far as I can see if by
2 some act of the board of directors of each of the four
3 companies approved by their stock holders, which could
4 show -- which could be shown before the PUCO to engage
5 in -- would result in benefits to the consumers and not
6 detriments, that these boards of directors decided to set
7 up four companies, one of which would own transmission,
8 which is now owned by CAPCO, and the other of which would
9 own generation and the third which would own, say, their
10 local distribution, three companies, I don't know that
11 that would be made illegal by Ohio law, but -- I mean,
12 I'm not an attorney and I don't know that that question
13 ever has come up.

14 Q Let me ask you this:

15 Would you envision two generation-only companies
16 competing by planning to meet the same load?

17 A Sure I could envision that. It happens all
18 the time in other industries.

19 Q Would you also envision two transmission-only
20 companies competing to carry the same load?

21 MR. BERGER: When you say envision do you mean
22 is it possible?

23 BY MR. REYNOLDS:

24 Q In the economic sense under Dr. Wein's concept
25 that he has described this morning.

mpb 10

1 A Oh, yes. The answer is sure. I'll give you
2 the example: I've got now two great transmission nets,
3 one going from New York to Chicago along the route of the
4 New York Central, and west along the shores of Lake
5 Erie and into Chicago, and the other one going the way
6 the Pennsylvania did, and there's a city along the way,
7 let's say Cleveland, which would be fairly close. And
8 there are some generating companies, one around New York
9 and one in Philadelphia and one maybe in Pittsburgh and
10 one in Buffalo and the city of Cleveland puts out bids,
11 What can I get this power for and all the generating
12 companies which would be on this path would bid for it,
13 those who wanted to, and there would be some on the New
14 York Central network as it were, and some on the Pennsylvania
15 network which stops off at Cleveland and then they would
16 be competing for the same market. They might win or lose.
17 There is nothing impossible about it, it just means
18 that if you live within one organizational framework you'll
19 find it impossible to conceive of any other ones. But
20 there are people who can't conceive of other ones and
21 not just uninformed economists like myself.

22 Q And you would conceive of two generation
23 companies building capacity to serve the same load in that
24 kind of a situation?

25 A They are building capacity and having in mind

mpb 11

1 potential markets just as I can conceive of two steel
2 companies, both thinking they would like to get General
3 Motor's business. Sometimes they get part of it and
4 sometimes they get all of it and sometimes they get none
5 of it and they are all building capacity with that in
6 mind. And even though it cost \$500 million to build the
7 one million integrated steel plant which would add one
8 170th of the capacity of the United States, roughly
9 comparable to building a 1000 megawatt plant, they'll go
10 ahead and do it and nobody says, Why this is a terrible
11 waste, you're duplicating facilities. You ought to get
12 together in one major steel combine and plan it. That
13 I think would certainly violate the antitrust laws.

14 But there has been this myth of natural
15 monopoly which says that somehow or other the duplication
16 is so terrible a thing that you just can't have it.

17 Now, in the case of generating companies, I
18 don't think it's that terrible.

19 Q And you could see two transmission lines being
20 built to serve -- to carry the generation from the same
21 generation plant?

22 A Well, my Lord, especially if some of the
23 Westinghouse dreams come true I can think of four of them
24 because there we're talking about putting nuclear plants
25 in great parks where you have 40 or 50 thousand megawatts

mpb 12

1 being generated all in one point. I don't see why
2 that couldn't be served by five different transmission
3 companies and that may be the technology of the future.

4 MR. REYNOLDS: Is this a good place to take a
5 break?

6 CHAIRMAN RIGLER: Yes, we'll take ten minutes
7 at this time.

8 (Recess.)

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1 CHAIRMAN RIGLER: On the record.

2 BY MR. REYNOLDS:

3 Q Dr. Wain, on page 47 of your direct testimony
4 you give as an example of a horizontally integrated electric
5 utility at the distribution level, a firm which owns electric
6 distribution facilities only in more than one geographic
7 market -- I'm sorry, one geographic area but does not produce
8 electricity or own transmission facilities.

9 Do you know of any such firms?

10 A No, I don't know of any.

11 I think that example was simply to illustrate
12 what it would be if there were such.

13 Q All right.

14 On page 50 you make reference to the technology
15 of transmission and state that "it is continually improving
16 and that higher voltages are certain to be used in the future."

17 What voltages do you have in mind?

18 A Well, 345, 500.

19 Q Those are presently-used voltages, right?

20 A Yes, but a great many more, though -- but a great
21 many more of those lines would come in. It is possible that
22 we might get 750, things of that nature.

23 Q And by that you mean a great many more of the 750
24 than are in use today?

25 Is that what you are saying?

mm2

1 A Yes.

2 Q And when you indicate the future, what time
3 period do you have in mind?

4 A Between now and the next twenty years.

5 Q Next how many years?

6 A The next twenty years.

7 Q I see.

8 A And there will be more of them coming in.

9 Q I'm sorry, I can't hear you.

10 Could you talk into the microphones or speak up a
11 little bit.

12 A Yes.

13 Between now and the next twenty years, and there
14 will be more of them and they will be coming in gradually.
15 And if we are still, twenty years hence as I am sure we will
16 be, based on central system generation of very large plants,
17 there will many more of them. And as I indicated, the
18 current thinking in the nuclear is to put them in nuclear
19 parks for lots of reasons, primarily safety and things of
20 that nature.

21 If we do have nuclear parks, you are going to have
22 probably very large -- very high voltage lines taking the
23 power out, radiating out in different directions to load
24 centers.

25 Q And what would be a very high voltage line in that

mm3 1 context in your view?

2 A 500, 750.

3 Q I see.

4 A It might even go to DC, I don't know.

5 Q Well now, on page 50, you make reference to the
6 significance of high-voltage DC lines being more economical
7 for long distance than extra-high-voltage AC lines.

8 Do you know if there are any DC lines in existence
9 in the State of Ohio or in Pennsylvania today?

10 MR. MELVIN BERGER: Where are you referring to
11 on page 50, Mr. Reynolds?

12 MR. REYNOLDS: If you look at the bottom, I guess
13 it starts three lines up from the bottom.

14 THE WITNESS: I don't know of any DC lines,
15 transmission lines in Ohio. No.

16 BY MR. REYNOLDS:

17 Q How many long-distance, high-voltage DC lines are
18 there in the United States?

19 A I think there is only one now.

20 Q And that is the one you referred to on page 51?

21 A Yes.

22 Q Have you made any studies to determine the relative
23 cost of high-voltage DC lines versus high-voltage AC lines
24 over given distances?

25 A No, I haven't made any study.

mm4

1 Q What is the basis for the statement you made at
2 the bottom of page 50?

3 A The existence of the Pacific Northwest Intertie.
4 I assume if an AC line were more efficient, that it would go
5 into a DC line.

6 Q And what did you base that assumption on?

7 A That the people who -- originally the federal
8 government, who wanted to build it were rational. Ultimately
9 the private who built it were equally rational.

10 Now as my memory comes back, I also remember a
11 talk given by a former Commissioner of the FPC, Howard
12 Morgan, who had just returned from the USSR and was talking
13 about -- he had just returned from the USSR and was talking
14 about the technologies that they were planning in the USSR,
15 and amongst them were these very high-voltage DC lines. He
16 alleged that the Russians thought that there were great
17 efficiencies in this.

18 I don't think it is a unique concept.

19 Q On page 51 of your direct testimony, you state that
20 if the amount of power distributed increases, but density
21 does not, no economies are necessarily obtained unless
22 conditions A and B exist. And then conditions A and B are
23 that the consumption per customer increases and that the
24 number of customers per mile of distribution network
25 increases.

mm5 1 Have you made any studies to determine that the
2 economies are not necessarily obtained?

3 A Well I think that is -- you don't really need to
4 make a study to come to that conclusion.

5 Q Why do you say that?

6 A Well, suppose I build a distribution line in a
7 town and it runs two miles through that town. And there is
8 one house every tenth of a mile so that I would have in one
9 mile, ten customers, and in the next mile ten, so that I would
10 have twenty customers on that line.

11 And if I simply extended that line out another two
12 miles and I got another twenty customers, I am not particularly
13 gaining any economies of scale comparable or nothing significant.
14 I might be losing comparable to keeping the two lines. And
15 instead of having twenty customers, have 500 customers because
16 the city grew. So the two lines now would be -- the lines would
17 be serving 25 times the amount. And so you would be
18 getting one line carrying a great deal more power on it.
19 But you would be getting density.

20 IN the first place you would be carrying twice
21 as much power, but the lines would be twice as long. So in
22 effect you would have twice as much cost there.

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So you could carry more power but you wouldn't have any more density.

Q Suppose you extend the line another two miles and had no operating and maintenance crew so you're serving double the number of customers for the same labor cost.

MR. MELVIN BERGER: What is the question, Mr. Reynolds?

BY MR. REYNOLDS:

Q Would that give you any economies over what you had before extending the line?

A Well, I suppose that the labor crews before were fully utilized. Then you would have to-- And if they weren't fully utilized then presumably you could utilize them a little more and to that extent you would save a little labor expense, yes.

Q Suppose that you needed no addition to your inventory of distribution materials, would that result in economies?

A I don't see how that would be possible if you double the length of the line.

Q Well, Dr. Wein, --

MR. MELVIN BERGER: Let Dr. Wein finish his answer, please.

THE WITNESS: I don't see how that would be possible if you double the length of the line. What you are

eb2

1 then doing is obviously making a wrong computation for
2 given reliability as to how much inventory you needed. You
3 either do that or your reliability would go down; your
4 chances of running out would increase greatly and therefore
5 the reliability would go down.

6 So it seems to me that's a proposition, if you
7 analyze it, that looks to be inconsistent.

BY MR. REYNOLDS:

8 Q Well, is it your view that every company's inven-
9 tory is exactly proportional to its load?

10 A No, I didn't say that its inventory is exactly
11 proportional to its load.

12 Q Well, to the load of its line?

13 A Well, it depends on the composition of the load
14 and things of that nature. Industrial customers would have
15 one sort; if it were residential it would have another.
16 But in general you would-- For the same kinds of customers,
17 the same kinds of line, then generally your inventory would
18 roughly be proportional to the frequency of runouts that
19 you expect and the frequency of maintenance that you expect
20 on a particular line.

21 MR. REYNOLDS: Can I get the last part of the
22 answer, please?

23 (Whereupon, the Reporter read from the record
24 as requested.)

25 BY MR. REYNOLDS:

eb3

1 Q Would it be your view that a utility with 20
2 miles of line would have double the inventory of a utility
3 with 10 miles of line in the residential area?

4 A Well, it would depend upon what the frequency
5 of maintenance was that you would require. It would depend
6 upon what frequency of forced outages, forced maintenance
7 that you did not anticipate that you're willing to accept.
8 So it may well be that if-- If, for example, I have 10 miles
9 of line and another one has -- and then I add another 10
10 miles to it, and if you say that the frequency of forced
11 outages won't change, that it could be-- If I have to-- If
12 I get a snowstorm and a limb falls across the line once a
13 year and if you say that if the line now is doubled that it
14 is still going to fall only once a year, then that part of
15 the maintenance won't--

16 CHAIRMAN RIGLER: Well, isn't the answer to the
17 question No?

18 THE WITNESS: Yes.

19 CHAIRMAN RIGLER: All right.

20 THE WITNESS: I wanted to put out all the assump-
21 tions that were required to make the answer.

22 BY MR. REYNOLDS:

23 Q Dr. Wein, to what issues in this case do you
24 understand the retail market to be relevant?

25 MR. MELVIN BERGER: I'm not sure I understand what

eb4

1 Mr. Reynolds means by "issues."

2 Could he be a little more definitive on that?

3 CHAIRMAN RIGLER: Do you mean the issues in
4 controversy?

5 MR. REYNOLDS: Dr. Wein's understanding as to the
6 issues in controversy in this case.

7 CHAIRMAN RIGLER: I think maybe you should give
8 them to him if that is the thrust of your question.

9 MR. REYNOLDS: I have no problem in giving them
10 to him. I would like first to see if I can determine from
11 the witness what his understanding is of the issues that his
12 discussion of the retail market relates to. After that if
13 he wishes to go through it with the matters in controversy
14 I have no problem.

15 But I'm trying to find out what it is that he views
16 as relevant issues for purposes of his retail market dis-
17 cussion.

18 CHAIRMAN RIGLER: I think that's proper cross-
19 examination and I think it is permissible to ask the witness
20 his view before you show him the document. However, I would
21 just note that I doubt that even the members of the Board
22 could go down a serial list of eleven issues right now and
23 remember which is which.

24 MR. REYNOLDS: I appreciate that. I'm not neces-
25 sarily asking for a verbatim account of a particular matter

eb5

1 in controversy. What I'm really saying is that in preparing
2 the testimony we have heard that he had discussions and saw
3 material relevant to this proceeding and the issues in this
4 proceeding, and I'm trying to ascertain which issues in his
5 mind his retail market discussion is relevant to. That's
6 basically where I was going.

7 THE WITNESS: Well, I suppose I have to repeat the
8 answer that I gave the other day, that ultimately in the
9 electric power business the name of the game is getting retail
10 sales. These are your loads and this is what you are pro-
11 ducing primarily.

12 You ultimately are trying to produce firm power at
13 retail for the most part at as low a cost as possible.
14 Now if you can't do that you really can't, for example, be
15 a self-generating municipal. You won't stay in business very
16 long unless what you come out with with respect to your rates
17 to your retail customers are as low as you can possibly get
18 them.

19 If you're a wholesale distributor without genera-
20 tion, if you are, say, a municipal and own your distribution
21 system, you are also trying to get as low as you can in
22 purchasing this firm power so that your retail rates will be
23 as low as possible, low enough so as to prevent the municipal
24 distribution system from being out-competed, as it were, by
25 a private and having to sell out.

eb6

1 Therefore, the question of retail markets is what
2 really guides the whole development of this industry, the
3 capturing of the loads of retail markets, the ability to
4 produce firm power so that it will be as economical as possi-
5 ble and you are doing that in order to be able to capture
6 retail loads.

7 So it seems to me that underlying all the other
8 issues in this case, the basic raison d'etre of the dispute
9 is to finally get down to as low cost as you can in retail
10 distribution.

11 Now the question as to whether monopoly exists
12 in the retail market has consequences or whether a dominant
13 position exists in the retail market has consequences. It
14 has consequences for the scale of generation that a particu-
15 lar entity can engage in. It has consequences for the alter-
16 natives that are available. So unless you put the retail
17 markets in this proceeding it seems to me that you are failing
18 to understand the reason for the fights, the reasons for
19 the disputes, rather.

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20 BY MR. REYNOLDS:

21 Q Did you reach your conclusions in that regard on
22 the basis of an examination of any statements of issues
23 in controversy in this proceeding?

24 A Well, now I'll have to go through and look at --

25 Q My question is whether you went through it at an

eb7

1 earlier time in connection with the preparation of your
2 testimony.

3 A Oh, yes, I went through it at an earlier time
4 and I thought that unless one really discusses the way I
5 discussed it, not in terms of whether John Smith was captured
6 by one company or another but generally the manner in which
7 I set forth the dominance in the retail market was indeed
8 relevant.

9 CHAIRMAN RIGLER: The question is you examined
10 this question with the issues in controversy as set by the
11 Board in mind?

12 THE WITNESS: Yes. And I thought that this dis-
13 cussion was relevant to all of them separately and collec-
14 tively.

15 BY MR. REYNOLDS:

16 Q And are you aware that Dr. Hughes defined no
17 relevant retail market?

18 A Yes.

19 Q Would you say he was in error?

20 A I don't know that his purpose is exactly the same
21 as mine.

22 Q Did you talk to Dr. Hughes before preparing your
23 testimony?

24 A No, I didn't.

25 Q As I understand it you delineated separate

eb8

1 relevant retail markets, one corresponding precisely to the
2 retail service territory of each CAPCO member. Is that
3 correct?

4 A Yes.

5 Q Am I also correct that in the Alabama Power pro-
6 ceeding you defined "relevant retail market" as being iden-
7 tical in scope with Alabama Power's service territory?

8 MR. MELVIN BERGER: Objection; irrelevant.

9 CHAIRMAN RIGLER: Let me hear it again, please.

10 (Whereupon, the Reporter read from the record
11 as requested.)

12 CHAIRMAN RIGLER: I'm going to overrule that
13 objection. I think in terms of market definition any dis-
14 tinctions between the two might be useful in analyzing how
15 he defines the market, so we'll permit that.

16 THE WITNESS: The answer is Yes.

17 BY MR. REYNOLDS:

18 Q In the Consumers Power case did you not also define
19 "relevant retail market" as having the same scope as
20 Consumers' territory?

21 MR. MELVIN BERGER: Same objection.

22 CHAIRMAN RIGLER: Overruled.

23 THE WITNESS: Yes.

24 BY MR. REYNOLDS:

25 Q Dr. Wein, can you list for us the circumstances,

eb9 1 if any, under which you would not find the relevant retail
2 market to coincide with the service territory of the major
3 utility under study?

4 MR. MELVIN BERGER: Can I have the question read
5 back?

6 (Whereupon, the Reporter read from the record
7 as requested.)

8 THE WITNESS: Yes, if there were two utilities
9 in the same service area, two IRU's, for example, in the same
10 service territory.

11 CHAIRMAN RIGLER: Suppose these are two with over-
12 lapping service territories?

13 THE WITNESS: Then it would depend on the extent
14 to which they overlap, and it would depend on whether there
15 were agreements to compete or not to compete, rather; things
16 of that nature.

17 CHAIRMAN RIGLER: Off the record.

18 (Discussion off the record.)

19 CHAIRMAN RIGLER: On the record.

20 BY MR. REYNOLDS:

21 Q If the area in which two investor-owned utilities
22 serve overlapped, how would you define their respective
23 service areas?

24 A Well, I suppose overlapping is a sort of a, you
25 know, a quantitative thing. I'm thinking, for example, you

eb10

1 might overlap as, say, Ohio Edison and Ohio Power by having
2 a few cities within economical access --

3 Q I'm sorry, I can't hear.

4 A It depends again on the extent of
5 overlapping but essentially my definition of the geographic
6 extent of the market has to do primarily with the question
7 of influence of prices in an area and whether there would
8 be mutual influence so that the setting of a price in one
9 particular piece of geography would influence the price in
10 another area, another geographic area. You have this mutual
11 influence so that the prices would tend to equality, so that
12 each of the competing or each of the firms could not set
13 its price in this particular region without the other firm
14 taking that into consideration in making its price, and vice
15 versa.

16 It's that which defines the geographic market
17 area rather than anything else. So when you say "overlapping"
18 you have a geographic concept in mind, I suppose, which
19 follows transmission lines or something of that sort. And
20 that is not enough for me to say whether they'd be in the
21 same market area or not.

22 It's a question as to whether the price influence
23 would be the same.

24 Q So if the retail prices for Ohio Edison, let us
25 say, and the retail prices for Cleveland Electric were

eb11

1 identical, would they be in the same retail market?

2 A No.

3 Q Why is that?

4 A It could be identical because of happenstance.

5 The question here is-- Or it could be identical for lots of
6 other reasons.

7 If it were identical because Ohio Edison set a
8 price and Cleveland felt that it had to meet that price
9 because of certain consequences it foresaw if it didn't meet
10 that price then I would say they would be in the same area.
11 But they could have been identical for quite different reasons
12 not because of CEI taking into account Ohio Edison's poten-
13 tial competition or yardstick competition or vice versa.

14 CHAIRMAN RIGLER: You said they would be in the
15 same area. Did you mean they would be in the same geographic
16 market?

17 THE WITNESS: The same geographic market if there
18 was the mutual influence. It's not simply the fact that
19 their prices were the same. I might get an electric utility
20 located in the State of California having the same identical
21 prices as someone in the State of New York. It doesn't mean
22 they're in the same market area.

23 BY MR. REYNOLDS:

24 Q Then you could not just look at the prices. You'd
25 have to make an investigation as to what the underlying

eb12

1 factors were that caused the prices to be set at whatever
2 level they were set. Is that what you're saying?

3 A You'd have to look to the underlying factors of
4 supply and demand. You would have to look to the underlying
5 legal factors which would either prevent or not; things of
6 that nature. You'd have to look at all those factors.

7 Q And did you make that kind of an investigation
8 in examining the CAPCO market areas?

9 A Well, I think my various cases is the kind of
10 investigation I made.

11 Q Did you make any investigation as to the reasons
12 why the average bill in 1974 for 500 kilowatt-hours per month
13 of residential service by Consumers Power was \$12.74 and was
14 \$12.85 by Toledo Edison, which are adjacent systems?

15 MR. MELVIN BERGER: Could I have that read back,
16 please?

17 (Whereupon, the Reporter read from the record
18 as requested.)

19 MR. MELVIN BERGER: Was that 1974, Mr. Reynolds?

20 MR. REYNOLDS: Right.

21 THE WITNESS: No, I didn't make that investigation.
22 I didn't consider it relevant.

23 BY MR. REYNOLDS:

24 Q Why would that not be relevant in determining what
25 the relevant retail market was, or what the relevant retail

eb13

1 markets were in this case?

2 A Well, first because it seems to me that Consumers
3 Power and Toledo had an agreement as to customers and secondly
4 because no matter what Consumers Power charged, Toledo
5 Edison was under no legal constraint or economic constraint
6 to change its prices, and vice versa. They do not set
7 their prices-- They are not influenced in their prices
8 by what each does.

9 CHAIRMAN RIGLER: Are there any customers who
10 could be served by either of the systems at the customers'
11 option?

12 THE WITNESS: Yes, there are customers which could
13 be served, particularly along the borders of Michigan and
14 Ohio where the two systems are there, and they don't-- They
15 don't serve each other's customers and they never have.

16 BY MR. REYNOLDS:

17 Q What is this agreement you were talking about
18 between Toledo Edison and Consumers?

19 A I'm now going on memory of practically three years
20 ago.

21 The companies operate very closely. There was a
22 question as to whether the Southeastern Michigan Co-op,
23 which was located in southeast Michigan but also across the
24 border in Ohio and wanted to --

25 MR. STEVEN BERGER: I can't hear Dr. Wein well at

ebl4

1 all.

2 CHAIRMAN RIGLER: Will you speak into your micro-
3 phone, Dr. Wein?

4 THE WITNESS: Suppose Southeast Michigan wanted
5 to get power transmitted by Toledo from Buckeye, of which
6 they were a member, as I recall. Toledo refused but in
7 between, there were lots of memoranda between Toledo and
8 Consumers and things of that nature, all to the effect--
9 Of course the decision was No, they would not transmit it,
10 and this was a customer of Consumers. It was not a customer
11 of Toledo's, Southeast Michigan, and yet Toledo refused even
12 to wheel it.

13 And the whole tone of the correspondence it seems
14 to me was that they would not go for customers in each
15 other's territory and that's about what I can recall.

16 CHAIRMAN RIGLER: Absent any agreement not to
17 compete, would they be in the same retail market?

18 THE WITNESS: Well, absent any agreement not to
19 compete, the Consumers probably would not be able to get
20 any customers in Toledo's market because of the legal
21 restrictions of the State of Ohio.

22 For example, if a customer in Ohio wanted to be
23 served by Consumers Power, he would have to disconnect for
24 90 days and that itself is enough of a bar to eliminate any
25 retail competition for Consumers in Ohio's territory.

mpbl
2B

1 Now, for Toledo Ohio to go into Michigan, that
2 legal thing did not prevail and I suppose that Toledo
3 then could go into there.

4 But if that were really significant then
5 Consumers, I suppose, if they really wanted to keep all
6 those customers would have applied for public utility
7 status in the state of Ohio, if that were that important
8 to them.

9 CHAIRMAN RIGLER: Let me ask a question which
10 anyone may answer.

11 Does the Ohio anti-pirating statute apply
12 only to municipal statutes or does it apply to industrial
13 customers that have never been engaged in generation?

14 THE WITNESS: It's my understanding that it
15 applies to any retail customer.

16 MR. REYNOLDS: That's right, any retail or
17 wholesale customer.

18 THE WITNESS: Or wholesale customer, yes.

19 MR. MELVIN BERGER: That does not quite
20 coincide with our understanding. We would agree that
21 it would apply to any retail customer, whether it's
22 residential, commercial or industrial. However, I do not
23 believe that we agree that the anti-pirating statute
24 itself applies to wholesale.

25 MR. HJELMFELT: I didn't hear precisely what

mpb2

1 everyone else said, but the anti-pirating statute would
2 not apply to a retail customer who is being competed for
3 by an investor-owned utility and municipal system, as I
4 understand it.

5 CHAIRMAN RIGLER: It would not?

6 MR. HJELMPFELT: It would not.

7 CHAIRMAN RIGLER: So that your understanding
8 is that a retail industrial customer would have the option
9 of shopping without having to go isolated for 90 days.

10 MR. HJELMPFELT: That's correct and that
11 certainly has been what happened in Cleveland.

12 MR. PERI: I might say that's my understanding
13 also.

14 MR. MELVIN BERGER: I would like to correct
15 my statement, also. The 90 day statute does not apply
16 to municipal systems at all. It only applies to
17 cooperatives and to investor-owned utilities, so it would
18 have no effect on competition with municipal systems. It
19 would have an effect, however, on competition between
20 investor utilities and-- other investor utilities or
21 cooperatives.

22 MR. REYNOLDS: Let me add another modification
23 to that which is that I think it would apply if you were
24 talking about a municipal as a wholesale customer and
25 service to that customer. Then I think the 90 day provision

mpb3

1 would apply.

2 MR. HJELMFELT: I think where we're left is
3 the parties are in dispute as to the effects of the
4 operation of the 90 day law. I don't think it's at
5 all clear that it applies to competition for a municipal
6 wholesale customer either.

7 MR. MELVIN BERGER: Can I attempt to summarize,
8 taking the risk of muddying up the water? I don't think
9 there's any dispute among the parties with regard to the
10 application of the 90 day law for retail.

11 Am I correct in saying that?

12 MR. REYNOLDS: By investor-owned utilities.

13 CHAIRMAN RIGLER: As I understand the Applicants'
14 position, the witness is correct in saying there could
15 not be competition between Consumers and Toledo Edison
16 for retail industrial customers because when you are
17 talking about competition for service between two investor-
18 owned utilities the 90 day provision would apply.

19 MR. REYNOLDS: Only as to existing, not as to
20 any new industrial customers that might move into an
21 area, but as to existing, yes.

22 MR. MELVIN BERGER: We would agree with that.

23 CHAIRMAN RIGLER: As to new industrial customers,
24 going back to your original answer about the geographic
25 market being determined by the price influence that competing

mpb4

1 utilities can exercise, why wouldn't there be retail
2 competition, then, between Consumers and Toledo Edison?

3 THE WITNESS: Well, there could be that sort
4 of potential competition in the sense that before our --
5 clearly if we're talking about a residential customer the
6 thing is so trivial they're not going to worry about
7 whether somebody's going to build his house on one side
8 of the border or not. On the other hand, if you're talking
9 about substantial loads the question that comes in is
10 this:

11 theoretically Consumers wants to get that
12 load and so does Toledo, but if Consumers charges a price
13 low enough to attract it away from Toledo it must see
14 what the consistency of that rate is with all its other
15 rates and the question then is would Consumers attempt
16 to tamper with its own rate structure, in other words,
17 open up the flood gates to all its other industrial
18 customers in the state of Michigan who could say, We're
19 getting the same kind of power, why are their rates
20 lower than ours? And the same argument would go for
21 Toledo.

22 So it's my judgment that they do not so attempt
23 to change their prices in order to get a particular
24 customer because the consequences of that are very much
25 more severe.

mpb5

1 In short, it is for the total loads that they
2 have a small thing in order to deteriorate a rate structure
3 which you're quite satisfied and happy with now.

4 CHAIRMAN RIGLER: Wouldn't the same considerations
5 apply to retail competition between the city of Cleveland
6 and CEI?

7 THE WITNESS: Well, the city of Cleveland --
8 the question is whether CEI would. Well, I suppose
9 between the city of Cleveland and CEI that would, but
10 I would put them in the same market area for that purpose,
11 that they do really have significant influence on each
12 other.

13 BY MR. REYNOLDS:

14 Q Wouldn't it be equally true that if Consumers
15 wanted to compete for a municipal customer that it would
16 also have to consider the impact on its entire rate
17 structure?

18 A Yes, it would, it would.

19 MR. MELVIN BERGER: For a municipal customer
20 anywhere.

21 THE WITNESS: He apparently means in Ohio.

22 BY MR. REYNOLDS:

23 Q Anywhere.

24 A Well, I think Consumers' wholesale rates are
25 certainly -- that's why I defined the Consumer's market as

mpb6

1 the entire service area of Consumers. They do take that
2 into consideration and they take into consideration the
3 rates of competing systems. They take into consideration
4 very carefully the rates of the board of Water and Light
5 in Lansing.

6 Q And if Toledo Edison wanted to compete for a
7 customer of Ohio Edison, wouldn't it also have to take
8 into consideration the effect on its rates to all its
9 other customers?

10 MR. MELVIN BERGER: If you say Ohio Edison is
11 this one being served by Ohio Edison?

12 THE WITNESS: He means the potential one.

13 BY MR. REYNOLDS:

14 Q Yes, let's say --

15 A Say what, a potential one? We already stated
16 that --

17 Q Well, let me ask you: an existing customer of
18 Ohio Edison?

19 A Well, a retail customer? Then the 90 day law
20 would prevent that.

21 Q Let's assume for a minute that there was a
22 waiver of the 90 day provision.

23 A Well, I did not define markets on all the
24 possibilities that could take place. I defined them as
25 the law exists. I also pointed out that if conditions

mpb7

1 change the markets wouldn't necessarily be the same,
2 particularly with respect to the possibility of potential
3 competition and the question as to whether the city of
4 Cleveland, for example, would get on, I say geographic
5 market areas vary with the times, the technology and
6 the conditions. They are not always the same.

7 CHAIRMAN RIGLER: Right, but you're saying
8 the influence of a competitor's price is a principle
9 factor in determining the geographic area.

10 THE WITNESS: Yes, I am saying that, but I'm
11 saying if that is eliminated by law, that influence is
12 no longer there.

13 BY MR. REYNOLDS:

14 Q Do you know if there is yardstick competition
15 between Toledo Edison and Consumers?

16 A Well, I have not examined the rates. I would
17 doubt it very much.

18 Q Is there yardstick competition between MELP
19 and CEI?

20 A For retail sales?

21 Q Yes.

22 A Yes, I think there is.

23 Q What about Toledo Edison and Ohio Edison?

24 A I don't really think so. I assume you mean
25 now for wholesale sales or retail sales or what?

mpb8

1 Q For any kind of sales.

2 A I don't really think so.

3 Q Is there competition between Toledo Edison
4 and Ohio Edison for industrial -- new industrial customers
5 that move into their area, move into Ohio?

6 A Well, no new industrial customer moves into
7 Ohio without having considered a great deal of other
8 things and the competition between Ohio Edison and Toledo
9 Edison is about the same as the competition in that
10 regard of any other utility in the United States which
11 a potential industrial customer can sell. In that sense
12 there is competition.

13 Q And what is that competition?

14 A I think that is very remote from the
15 antitrust considerations involved here. In other words,
16 if I were an aluminium company and had a possibility
17 of locating in Seattle or locating in Ohio or locating
18 in Maine or locating in others, the rate structures of
19 companies are not designed to take account of the
20 possibility that an aluminium company might come into
21 this state.

22 Q So it's your view that there is no real
23 competition between Toledo Edison and Ohio Edison for
24 example, for new industrials that might move into the
25 state of Ohio?

mpb9

1 A Well, if you mean does that significantly
2 affect the reasons for their making the rates the way
3 they are, the answer is no, I don't think there is.

4 CHAIRMAN RIGLER: Off the record.

5 (Discussion off the record.)

6 CHAIRMAN RIGLER: On the record.

7 BY MR. REYNOLDS:

8 Q Dr. Wein, we're still waiting for an answer
9 to the question as to whether it's your view there is
10 no competition for industrial customers between Toledo
11 Edison and Ohio Edison.

12 A In the sense in which I said would that competi-
13 tion influence their rate structures, the answer is
14 no. There are very few industries which when they are
15 considering a location in a particular area would make
16 it solely on the basis of a difference in the price of
17 electricity because for most industries the price of
18 electricity is a very small part, there are some of course
19 in which it is very high and there the competition -- as
20 for example, in making aluminium, and there the selection
21 choice ranges over a very, very wide geographic area.

22 Now there may be a company which has decided
23 to settle in Ohio and has an alternative between going
24 in Ohio Power's territory and going into Toledo Edison's
25 territory and all other conditions equal, it might as

mpb 10

1 well move to Ohio Power if the rates are lower.

2 Now, what is the response of Toledo Edison to
3 that? The answer that I'm saying is Toledo Edison can't
4 really respond very much to it and does not set its
5 structure of rates on the basis of considering that a
6 particular company may move in, and that's because the
7 new business is always a very small proportion of the
8 total existing loads that go on. If you assume that
9 even the total existing loads that might grow at a rate
10 of 5 percent that means in any year it's only one-20th
11 of that and it would not change its rate structure simply
12 because some particular industrial says, Well, if you
13 meet Ohio Power's industrial rates we'll come to settle
14 around Toledo because Toledo is just as good as settling
15 in some Ohio Power territory. I don't think that is the
16 way they compete and in that sense I don't think there
17 is the kind of competition relevant in this particular
18 proceeding.

19 Q And would you also feel that -- strike that.

20 Is it your view that there is any competition
21 for new residential customers based on rate differentials
22 between, let's say, Toledo Edison and Ohio Edison?

23 A You mean whether an individual purchases a
24 house or builders develop --

25 Q Any kind, a new residential customer who goes

mpb 11

1 into the area --

2 A You mean he has a choice as to whether he
3 goes to Ohio Power's territory or Toledo Edison's territory?
4 I don't think there is any significant competition there.

5 CHAIRMAN RIGLER: Suppose you are a developer
6 and you're going to put 100 houses in where you're two
7 miles from the existing line of Toledo Edison and two
8 miles from the existing line of Ohio Edison.

9 THE WITNESS: I think if I were -- it would
10 depend. Let me put it this way: assuming that all things
11 were equal, the price of the land, the attractiveness of
12 the land et cetera, et cetera, et cetera, and if I were
13 building, say, single residential houses that would not
14 particularly bother me. That's the customer's responsibility.

15 On the other hand, supposing they were building
16 a large block of apartment houses, where I would put
17 the rates into that, I might make that decision as to
18 go one way or the other, but what I'm arguing is neither
19 Ohio Power nor Toledo Edison would in particular change
20 their rate structure in order to get this one guy rather
21 than lose him.

22 In short, it is too insignificant in the
23 light of the total damages which could come to them from
24 trying to tailor rates to catch a particular customer.

25 Now, in the case of -- supposing hypothetically

mpb 12

1 that for some curious reason Dow wanted to build a plant
2 in Ohio to manufacture magnesium and other things. The
3 companies might tailor a special rate and so classify
4 it for Dow because Dow, let's say, is going to take a
5 great deal of power. They might tailor a special rate
6 with each other, in which case, then, they get outside
7 the existing rate structures for their industrials in
8 order to avoid kickbacks. But of course in the state of
9 Ohio I think that's very unlikely because the industrial
10 customers there are very sophisticated buyers of electricity
11 whereas a similar thing which took place in the state of
12 Alabama where you had special rates with one customer,
13 they're not quite that industrially sophisticated and
14 that might get by.

15 So it is that sort of thing.

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1 BY MR. REYNOLDS:

2 Q And would your answer with regard to your indus-
3 trial customers and your residential customers be the same
4 if I were to ask you the question but ask it in terms of
5 commercial customers, new commercial customers moving into
6 an area?

7 A Yes, unless by a "commercial customer" again we're
8 thinking about some enormous federal installation perhaps
9 which would take an enormous amount of power, in which case
10 I might again try to go to the device of special rates, but
11 it would be very difficult.

12 Q If we were talking about a special rate wouldn't
13 that need regulatory approval?

14 A You mean in the State of Ohio?

15 Q Right.

16 A I'm not sure that it would.

17 Suppose a customer went out in rural territory
18 and that's where he intended to settle and he was not within
19 the boundaries of a municipality; he's simply out there in
20 the country. I'm not sure that that would require in the
21 State of Ohio any regulatory approval.

22 CHAIRMAN RIGLER: You mean if you get outside of
23 these defined boundary areas you can discriminate in your
24 rates if you are an IOU?

25 THE WITNESS: You can discriminate in your rates

eb2

1 even within the defined territories.

2 CHAIRMAN RIGLER: You mean I can go to one indus-
3 trial customer and give him a better rate than his neighbor
4 across the street if they each take the same load?

5 THE WITNESS: If the industrial customer is not
6 within the confines of a city or a town or some governmental
7 structure which has authority to negotiate the rates and
8 accept them. They're the ones who, in the first instance,
9 accept them or don't accept them.

10 Now if this new customer is within a municipality
11 and a new rate is set for him and the municipality objects
12 to that rate because its other industrial customers are
13 objecting, then it would have to go to the Public Service
14 Commission.

15 CHAIRMAN RIGLER: Would the same hold true of
16 residential customers in rural areas? Toledo Edison can
17 just set any rate it wants, because these customers are not
18 within the confines of a municipality?

19 THE WITNESS: I think that is correct. I'm not
20 sure how that operates. I'm not sure.

21 BY MR. REYNOLDS:

22 Q Do you know whether any of the Applicants in fact
23 do set rates on any kind of discriminatory basis as you're
24 suggesting?

25 A Oh, I think their rates are inherently discriminatory,

eb3

1 yes.

2 CHAIRMAN RIGLER: I was not suggesting, by the
3 way, that they set discriminatory rates as between customers
4 of equal load classification. I was just probing.

5 MR. REYNOLDS: I appreciate that. I would like
6 to know the basis for Dr. Wein's last answer where he indi-
7 cated he felt the Applicants' rates were inherently dis-
8 criminatory.

9 BY MR. REYNOLDS:

10 Q I believe that's what you said, Dr. Wein,
11 isn't it?

12 A Yes.

13 Q What's the basis for that statement?

14 A All you have to do is look at the rate schedule.
15 If you know what it means in economics you can see they're
16 completely discriminatory. For example, their declining
17 block rates, all you have to do is know what discrimination
18 means in economics to know that a declining block rate is a
19 discriminatory rate.

20 This is nothing new to me. It's been said for a
21 very long time. It started out with Pigou, the economist
22 who held Marshall's chair in economics, Albert Marshall, a
23 great English economist.

24 Any text book in public utility economics will
25 tell you that, that they are discriminatory.

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1 Industrial rates are, too, I might add, though
2 they are more complicated. They are essentially that sort
3 of thing.

4 Q Dr. Wein, let me ask you, what is the purpose of
5 defining a relevant market?

6 A A relevant product market or a relevant geo-
7 graphic market?

8 Q Either or both.

9 A I suppose we have to do them both combined.

10 Q All right.

11 A The purpose is to see whether what might be
12 considered market power exists in that market. That might
13 be one purpose. It's a purpose which in antitrust inves-
14 tigations one would --

15 MR. STEVEN BERGER: I can hear you, Dr. Wein.

16 THE WITNESS: It's a purpose which in antitrust
17 investigations is necessary. You simply can't look at the
18 size of a company. You have to look at it in terms of a
19 relevant market because relevant markets are where competition
20 is supposed to take place, and competition in fact means
21 the ability of different entities in a market to affect the
22 prices and other important terms of sale, reliability in
23 this industry.

24 So unless you are able to define a relevant
25 market, you don't have a universe of discourse in which to

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1 assess the evidence in terms of market power.

2 MR. REYNOLDS: I'm going to have to have that read
3 back because I missed portions of it since I couldn't hear
4 Dr. Wein. He faded in and out.

5 Would you read the answer back, please?

6 (Whereupon, the Reporter read from the record
7 as requested.)

8 BY MR. REYNOLDS:

9 Q Let me ask you, do you define four or five separate
10 retail markets as being relevant in this proceeding?

11 A Did I define four or five?

12 Q Right.

13 A Well, let me count them up: CEI, Toledo, Ohio
14 Edison, Duquesne, Pennsylvania Power. Five I guess.

15 Q Well, will you take a look for me at the table
16 set forth on page 82 and explain to me why you combined the
17 markets of Ohio Edison and Pennsylvania Power in that table?

18 A Page 82?

19 Q That's right.

20 A Well, the purpose there is that I was trying to
21 contrast the total retail sales in these companies. I could
22 have pulled out Pennsylvania if I wanted. It wouldn't have
23 made much difference. I was simply contrasting retail sales
24 and industrial sales. I suppose the point I was trying to
25 make was about the importance of industrial sales for these

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1 companies.

2 Q And what about Table 2 that faces page 68?

3 A Well, as I recall, I simply compressed Ohio
4 Edison and Pennsylvania Power, not necessarily saying Ohio
5 Edison's territory is exactly the same as Pennsylvania
6 Power's territory, but if I put in another line there wouldn't
7 have been any difference. In other words, if I had pulled
8 out Pennsylvania Power separately, it wouldn't have made any
9 difference.

10 Q Well, is it your view there is or is not a separate
11 retail market for Pennsylvania Power and Ohio Edison?

12 A Well, to the extent that there is some difference,
13 which there is between the prices charged by Pennsylvania
14 Power and Ohio Edison because they operate under different
15 regulatory schemes and face different conditions, I guess
16 I would say that there is probably a separate -- probably
17 a separate retail market and wholesale market for Pennsylvania
18 Power.

19 Q On pages 110 and 111 you state that:

20 ". . . .if there were only one retail
21 seller of diamonds in. . . .Washington, D. C. he
22 would not be able to charge a monopoly price. . . .
23 for. . . .long because diamonds would flow in from
24 Philadelphia, New York, Chicago, et cetera. . . .
25 We would therefore expect, and correctly, that the

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1 geographic retail markets for diamonds would en-
2 compass the entire United States. . . ."

3 Isn't that correct?

4 A Yes.

5 Q If in response to a monopoly price set by a
6 Washington seller, a London firm opened a retail store in
7 Washington, then according to your definition London would
8 be in the same retail diamond market as Washington, would
9 it not?

10 A Yes, I think it probably is.

11 Q Dr. Wein, aren't you confusing the wholesale
12 diamond market with the retail market?

13 A No.

14 Q According to your definition aren't you defining
15 a retail geographic market as that area around a single
16 geographic point which encompasses all suppliers who are able
17 to compete within that geographic area?

18 A Who are able to compete?

19 Q That's right, whether they be in London or New
20 York?

21 A You mean in the diamond example?

22 Q Right.

23 A I'm encompassing all suppliers who have potential
24 influence in setting the prices and you could not get-- You
25 see, the retail prices of diamonds in London would not have

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1 probably too much effect on the retail prices of diamonds
2 in Washington, but as I understood your hypothetical, a
3 London firm opens up a store in Washington.

4 The selling and the purchasing of diamonds at
5 retail gets a little more difficult when you're crossing
6 international boundaries though even there it does take place.
7 A certain amount of mutual trust has to take place between
8 people who are buying diamonds in the United States
9 at retail and somebody says Well, have you gone to this great
10 jewelry store in London? And if he knows in fact that it is,
11 all he has to do is get a catalogue.

12 I have a catalogue sent to me every year from
13 Gump's in San Francisco. I rarely ever get to San Francisco
14 but I do know Gump's and I now and then buy things through
15 the mail from them.

16 Well, in the retail sales of diamonds, once the
17 knowledge is there it's conceivable that you do have com-
18 petition within -- and particularly where we're talking about
19 a subclass of the diamond market, expensive gams, and I
20 rather suspect that is a rather world-wide retail market;
21 not \$50 diamond rings but \$50,000 diamond rings and up I
22 believe is quite an international market at retail.

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1 I think if I had used, instead of diamonds, great
2 masterpieces of art, then one would realize that that was
3 quite an international market.

4 Q Is it your view that the prices -- that Gump's
5 prices respond to the retail prices in Washington?

6 A No, I don't think so.

7 I am simply saying -- I used that to give you
8 the idea of trust.

9 Now diamonds are relatively, particularly if you
10 are talking about the real expensive stuff, once the element
11 of trust is established, the proportion of transportation costs
12 compared to the value of the diamond is so little, that once
13 the information flow -- that is really the essential problem
14 in that -- once that trust in communication barrier is broken
15 down, there is no reason why the prices would not be the same,
16 or very close. They would respond to each other.

17 Q Well on that basis let me go back again and ask
18 you to explain to me why you would not put Consumers and
19 Toledo Edison in the same retail market where their prices
20 are virtually equivalent, or certainly tend to equality?

21 A I don't think they tend to equality, necessarily.

22 And if they did tend to equality, it was not
23 because of the competition between Consumers and Toledo. I
24 have already given that answer once.

25 Q But I thought you just told me that the fact

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1 Gump's prices might tend to equality to the prices here in
2 Washington, was not due to the competition between Gumps
3 and a retail outlet in Washington.

4 A I never said anything about Gumps' prices tending
5 to equality with anything in Washington.

6 CHAIRMAN RIGLER: Right. He said just the opposite.

7 THE WITNESS: I said I used that, Mr. Reynolds.
8 I am getting impatient because I am not very comfortable
9 and I don't like to be badgered with foolish questions.

10 But I said that in the illustrative question of
11 trust. I said the reason why I would shop at Gumps is, I
12 knew about them. I didn't say anything about Gumps being
13 in competition with anybody else in Washington.

14 BY MR. REYNOLDS:

15 Q Could you put Gumps in the same retail market?

16 A I didn't.

17 CHAIRMAN RIGLER: He didn't.

18 THE WITNESS: I would like to have a break. I
19 am getting very irritable.

20 CHAIRMAN RIGLER: We will break for lunch. We will
21 take one hour today.

22 (Whereupon, at 12:45 p.m., the hearing in the
23 above-entitled matter was recessed, to resume at 1:45 p.m.
24 this same day.)

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AFTERNOON SESSION

1:55 p.m.

CHAIRMAN RIGLER: Let us go ahead.

Whereupon,

DR. HAROLD WEIN

resumed the stand, and having been previously duly sworn,
was further examined and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. REYNOLDS:

Q Dr. Wein, a little earlier this morning, my
recollection is that you indicated the significance of the
relevant markets, the analysis of relevant markets is in order
to assist in the measurement of monopoly power, is that
right?

A Yes.

CHAIRMAN RIGLER: I thought he said market power.

THE WITNESS: I said market power, yes.

BY MR. REYNOLDS:

Q All right, market power.

Would you say that I was incorrect if I suggested
it was useful as a measure of monopoly power?

A Well monopoly strictly means one seller, and
there are degrees of market power which one seller would
have the maximum assuming it were a monopoly. Even if it were
not a complete monopoly it would have degrees of market power.

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1 Essentially you have to view it as that kind of
2 a concept.

3 Q Well all right.

4 So the only difference in terms of the relevant
5 market analysis between the market power and monopoly power
6 is one of degree, is that what you are saying?

7 A Yes.

8 Q How would you define monopoly power?

9 A It is the power to determine prices to exclude
10 customers to engage practices which in contrast to a
11 competitive market would not be possible.

12 Q I am sorry, I cannot hear what you are saying.

13 A Can you hear me now.

14 Q I have lost your answer.

15 Will you read that back for me.

16 (The reporter read the record as requested.)

17 THE WITNESS: Let me repeat it.

18 It is the power to fix prices to exclude competitors,
19 not customers, to engage in practices which would not be
20 possible under competitive market conditions. As for
21 example, the imposition of discriminatory rates or prices,
22 to engage in a whole variety of actions which would not be
23 possible under competitive conditions.

24 BY MR. REYNOLDS:

25 Q If a given electric utility did not have the power

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1 to exclude competitors, and if its prices were regulated
2 by a regulatory agency, could it have monopoly power?

3 A Well, if it could not exclude competitors then it
4 is very difficult to understand why it would be regulated.

5 But assuming that that is a historical happenstance and
6 that existed, then the question as to whether it had monopoly
7 power because of regulation is, yes it has monopoly power. It
8 may not be able to practice the monopoly power as completely
9 as it could without regulation. And so it goes to the degree
10 and the nature and effectiveness as to its practice.

11 As to the use of this power, that goes to the
12 effectiveness of regulation. Sometimes regulation is
13 effective more or less; sometimes it is quite ineffective.

14 So the answer is yes, it has power.

15 Q Is it your view that regulation in the electric
16 utility industry is in part designed to protect against
17 the electric utility from excluding competitors?

18 A Well, I don't understand that.

19 Are you asking me about a particular state law, or
20 are you asking me about the federal?

21 Q Either one.

22 A Well they vary.

23 Under the Pennsylvania law as I understand it, it
24 would be very difficult to get new utilities into Pennsylvania.
25 Under the Federal Power Commission, I don't know that the

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1 Federal Power Commission with respect to electric companies --
2 whether there is anything in the statute that says one thing
3 or another about whether they are designed to exclude
4 competitors.

5 Certainly the Federal Power Commission, for
6 example, in natural gas has certificated new pipelines. On
7 the other hand it has also allowed pipelines to be merged
8 and then found them to be -- that decision to be overturned by
9 the federal courts.

10 So I am not sure what the bearing of regulatory
11 intent is, given the wide variety of state commissions, and
12 apparently of the Federal Power Commission as well.

13 It seems to me that nobody comes to the Federal
14 Power Commission asking for a Certificate of Convenience and
15 Necessity in the electrical industry. They first -- insofar
16 as they are subject to that under the state regulation they
17 go to the state first.

18 Q What did you mean when you said that in your
19 view there was no need to regulate electric utilities if they
20 had no power to exclude competitors?

21 A Well if they had no power to exclude competitors,
22 namely anybody who wants to can come into the business of
23 selling electricity and that would -- a real possibility.
24 In other words, there were companies who would come in and
25 say, well, I can establish myself in Ohio as the new

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1 electric company, and the barriers to that were really
2 very low, were minimal. then I wouldn't think that regulation
3 was required at all because there wouldn't be any monopoly
4 power.

5 So where the barriers are low and anyone can enter,
6 there isn't any monopoly power and so you wouldn't need
7 regulation.

8 Q So you do see regulation as a function of
9 exercising control over the ability of entry into the electric
10 utility industry by new --

11 A What I did say, Mr. REynolds, I said some states
12 will limit and require entrants to get state permission to
13 do it. I am not sure that that is required of all states.

14 Q Is it true in Ohio?

15 A No, I am not sure that if Consumers Power wanted
16 to sell in Ohio that they had to get a Certificate of Convenience
17 and Necessity. I don't think they do. They could come in
18 there, but if they wanted to exercise powers of eminent
19 domain they have to declare it, I suppose -- be declared, I
20 suppose, a public utility to do so. But -- so in that sense
21 I don't think that the State of Ohio is necessarily regulating
22 to keep people out, or the Public Utility Commission in the
23 State of Ohio.

24 But now if you wanted to build a -- Suppose
25 Consumers wanted to build a transmission, they would have to

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1 go to the Siting Commission and the Siting Commission would
2 determine whether they would allow them to build transmission
3 or not. In that case it would depend upon that particular
4 state agency.

5 But the barriers other than legal in this industry
6 are very severe and as a consequence, whether they are aided,
7 impeded; or whether the regulatory agency is neutral about
8 it, the barriers are very, very substantial.

9 Q Is it your view that any of the Applicants
10 involved in this proceeding have the power to exclude
11 competitors?

12 A Oh, I think they do. Sure.

13 Q Which ones?

14 A All of them. Their mere existence, their size
15 and their control over transmission and generation and
16 distribution are enough to exclude any company actually wishing
17 to enter into that business, any private company.

18 Q And what about Duquesne Light Company?

19 Would you say it has the ability -- power to
20 exclude competitors from Pennsylvania?

21 A Pennsylvania? Duquesne in Pennsylvania?

22 Duquesne is only 800 square miles, primarily
23 Allegheny County. What would that have to do with Philadelphia?

24 It certainly has the power to exclude anybody who
25 wants to come into that 800 square miles, not only because

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1 of Pennsylvania law, but for these other practical reasons.

2 MR. REYNOLDS: May I have the previous question
3 and answer read.

4 (The reporter read the record as requested.)

5 BY MR. REYNOLDS:

6 Q What are the other practical reasons you had in
7 mind?

8 A Well, here you have a system of about 2500 megawatts
9 as of now. All your transmission of all the customers
10 pretty nearly -- in that area the customers of it, it would
11 seem to me that even if Pennsylvania law said, okay, anybody
12 can enter into it without going in and competing --

13 Q I'm sorry, Dr. Wein, I can't hear you.

14 A -- go in and compete for retail customers, it
15 would be a very difficult thing to amass the capital, go to
16 Wall Street and say, "I am going to compete for the market
17 of Duquesne Power Company. There is U.S. Steel that is taking
18 900 megawatts, and there is Jones & Laughlin that is taking
19 950, I think I might be able to get them away from Duquesne."

20 And I think anybody who has any sense at all,
21 would turn down any such request for funds. I know if I were
22 an investment banker on Wall Street I certainly wouldn't give
23 any private company any encouragement at all to try and get
24 customers and establish a viable vertically integrated
25 generation transmission system in Duquesne's territory, 300

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1 miles. It seems to me to be a virtually impossible sort of
2 thing.

3 Q Let me ask you this, Dr. Wein.

4 Is there anything that Duquesne is doing which,
5 if Duquesne ceased that activity, the ability of another
6 entity to enter into the market would be enhanced?

7 A Well, another entity -- supposing again that we
8 didn't have the problem of Pennsylvania laws.

9 Q Well let's suppose we have the problem of Pennsylvania
10 laws as they exist today. Answer my question.

11 A Well there are still --

12 MR. MELVIN BERGER: Please don't interrupt
13 Dr. Wein. I think he was giving the answer and stating the
14 assumptions that are permitted in that answer.

15 THE WITNESS: There still are some municipal systems
16 and, if for example they were allowed to engage in wheeling;
17 if for example the three companies that Duquesne had acquired
18 were able to get access to more efficient generation and they
19 had wheeling privileges, they might conceivably stay in the
20 business, they might even conceivably grow. These are
21 municipal companies and public companies and they have some
22 advantages which would override perhaps at least at the
23 level and scale they wanted to come in.

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2 CHAIRMAN RIGLER: The question was, though, what
3 practice of Duquesne --

4 THE WITNESS: Well, the practice is that, one,
5 they refused to give them access to nuclear power; two, they
6 refused to give them wheeling; three, they actually refused
7 to even sell them wholesale power so that they could not stay
8 in at that level. And these practices would seem to me to
9 be something which they are doing which prevents companies
10 from either staying in or if they are in, from growing some-
11 what larger.

12 BY MR. REYNOLDS:

13 Q Dr. Wein, can you tell me which entities Duquesne
14 Light refused to give access to nuclear power to?

15 A Well, I think the City of Pitcairn asked them for
16 nuclear power.

17 Q What do you base that on?

18 A Documents that I've read.

19 Q What entities in your view has Duquesne Light
20 refused to wheel power for?

21 A Well, I'm assuring that when the Borough of
22 Pitcairn asked to be admitted into the CAPCO Pool, they
23 intended to have all the advantages of the CAPCO Pool which
24 includes wheeling, and they were refused admittance to the
25 CAPCO Pool. So I simply interpret that as equivalent.

Q You suggested that if municipalities in the

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1 Duquesne area had not been refused wheeling or access to
2 nuclear power that those municipalities would have been able
3 to grow.

4 Do you know under Pennsylvania law the extent
5 to which municipalities in the State of Pennsylvania can
6 take on customers outside the corporate limits?

7 MR. MEVIN BERGER: Objection. I believe there
8 is a somewhat slight mischaracterization of Dr. Wein's
9 testimony and I also believe Mr. Reynolds is asking for some
10 legal conclusions on Dr. Wein's part.

11 CHAIRMAN RIGLER: Well, the second part of the
12 objection is overruled.

13 I do have a little problem with the first part of
14 the question. You started out asking him if there are any
15 practices which Duquesne, if they ceased doing, would en-
16 able other entities to compete better in the Duquesne area,
17 and then you sort of translated that into actual examples
18 and I don't know that in his original answer he suggested
19 that Duquesne either had or had not refused to wheel. He
20 was pointing to practices which if ceased would result in
21 increased competition.

22 MR. REYNOLDS: I believe my last question
23 went to his response which indicated that if certain practices
24 were not on-going, the ones that he assumed Duquesne was
25 engaging in, that the municipals in the area would be in a

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1 position to grow, and I was asking him the extent to which
2 it's his understanding that Pennsylvania law would permit
3 any municipalities in the State of Pennsylvania to expand
4 beyond its corporate limits.

5 CHAIRMAN RIGLER: I'll permit that.

6 MR. REYNOLDS: That was the basis for my question.

7 CHAIRMAN RIGLER: I'll permit that.

8 THE WITNESS: Well, my recollection of the
9 Pennsylvania statutes is that they could not expand beyond
10 their corporate limits if they were already -- if there al-
11 ready was service provided to the customers by some other
12 utility.

13 Now in the case of new customers where service
14 was not provided I'm not quite sure what Pennsylvania law
15 says. Also, I'm not sure that Pennsylvania law would prevent
16 a municipality from incorporating an outside area into its
17 municipal limits. I'm sure of these, but these are the
18 possibilities one would have to look into.

19 BY MR. REYNOLDS:

20 Q But you have not looked into those possibilities?

21 A I did, but my memory is kind of gone on all the
22 fine points. My counsel informed me that the Pennsylvania
23 laws were more restrictive even than Ohio, and I said Well,
24 let's read it.

25 And I read it and I came to the conclusion that

eb4 1 Yes, they were but I did not commit all the statutes to
2 memory.

3 Q And am I correct, based on your prior testimony,
4 that when you said you read it you were referring to the
5 Duquesne Light brief that was filed -- the prehearing brief
6 that was filed in this proceeding?

7 A No. I'm also referring to the actual Pennsylvania
8 statutes of which I had a xeroxed copy. I've gone over that.
9 I didn't read the Duquesne stuff until fairly recently.

10 Q Now turning to the Applicants in the State of Ohio,
11 what's the basis for your conclusion that those Applicants
12 have the ability to exclude competitors?

13 A I've already answered that.

14 Q We've been talking about Pennsylvania.

15 A No, you asked me about the CAPCO companies and I
16 said Yes, all of them.

17 Q And my question is what is the basis for that
18 conclusion?

19 A And I gave you the answer on that. I said their
20 very existence, the size that they have, the fact that they
21 have a virtual monopoly of all the generation, the trans-
22 mission, and a great deal of the distribution centers, plus
23 also some advantages in Ohio law.

24 I said all that before, and that's the same
25 answer I gave you now.

eb5

1 I might also add since you've given me the oppor-
2 tunity to think a little more that not only do they have
3 that individually in their own territories but by virtue of
4 the CAPCO Pool, they have it collectively, so it makes it
5 even more difficult for anybody to get into the CAPCO area
6 because you now have a fairly tight-knit group which has
7 greater power to exclude.

8 CHAIRMAN RIGLER: And that's a monopoly, according
9 to your definition?

10 THE WITNESS: Yes.

11 CHAIRMAN RIGLER: So within the CAPCO area they
12 would have a shared monopoly?

13 THE WITNESS: They would have a shared monopoly.

14 CHAIRMAN RIGLER: Because earlier you defined
15 monopoly as a single company --

16 THE WITNESS: Yes.

17 CHAIRMAN RIGLER: -- exercising monopoly power.

18 THE WITNESS: Yes. In this case again strictly
19 speaking there are other smaller entities in it so they are
20 not solely one company, but considering that they have 95
21 percent of, say, generation and equally large percentages
22 of retail and transmission facilities and what-not plus the
23 fact that they are tightly knit together through the Pool,
24 they collectively share in even greater power than in the
25 absence of that Pool they would have, even though each were

eb6

1 the same size as it is now.

2 BY MR. REYNOLDS:

3 Q Dr. Wein, is it your view that this shared mono-
4 poly you just described is one which the Applicants have
5 wrongfully acquired?

6 A You mean is it legal? Is that what you mean by
7 "wrongfully"?

8 Q All right, wrongfully acquired in terms of
9 whether the acquisition of that shared monopoly was incon-
10 sistent with the antitrust laws?

11 MR. MELVIN BERGER: Objection. I think this is
12 calling for a legal conclusion.

13 CHAIRMAN RIGLER: I would overrule the objection
14 as to that, and I think I'm going to permit the witness to
15 answer. My only hesitation is that you are asking a question
16 about how that monopoly power was acquired and inevitably
17 that might lead you into the situation which existed, the
18 details of the situation as it existed prior to 1965 if there
19 were a series of steps that led to the --

20 Assuming he answers in the affirmative, then in
21 order to flesh out the answer he might have to lead you
22 through a series of events which transpired pre-1965.
23 Dominance alone does not constitute monopoly. But in the
24 issues in controversy we have started with the stipulated
25 dominance and the questions in controversy are whether this

eb7

1 dominance gives them the ability to hinder or preclude
2 competition and then are they exercising that ability.

3 And it seems to me you may be leading him into
4 something that was cut off I think at the Applicants' re-
5 quest during the framing of the issues in controversy.

6 I'm willing to let him answer. I just call this
7 to your attention.

8 BY MR. REYNOLDS:

9 Q Let me ask you this preliminary question, Dr. Wein.
10 Is it your view that the sharing of monopoly that you just
11 made reference to came about with the formation of CAPCO?

12 A No, it didn't come about with the formation of
13 CAPCO necessarily. CAPCO was just a movement in a direction
14 which had been taken before that. CAPCO simply made for even
15 greater interconnection, greater coordination, greater
16 coordinated planning and operation which, to some extent,
17 had gone on before that.

18 But the answer is No, it is not only with the
19 existence of CAPCO.

20 Q All right.

21 So that you're telling me that there was a shared
22 monopoly before the existence of CAPCO?

23 MR. MELVIN BERGER: Objection. I think that's a
24 mischaracterization of Dr. Wein's testimony.

25 MR. REYNOLDS: If it is he can tell me.

eb8

1 CHAIRMAN RIGLER: If so, the witness can deal with
2 it in his answer.

3 THE WITNESS: Well, I think what you had before
4 the formation of CAPCO was a great deal of cooperation
5 between these companies and they each had in their service
6 territories and they took good care not to infringe on their
7 service territories, for example to the extent of swapping
8 customers which has been excluded from the evidence between
9 Ohio Edison and Toledo Edison.

10 And in order not to overlap they engaged in many
11 acquisitions since 1950 which I think might have drawn very
12 severe problems under Section 7, the amended Section 7 of
13 the Clayton Act. And if I were to go into the entire history
14 of the acquisition and elimination of companies it would
15 seem to me that just as this history might itself have been
16 judged as illegal --

17 CHAIRMAN RIGLER: But that's not the question.
18 It relates to shared monopolies, not the activities of any
19 individual company, in acquiring competitors within its
20 service area.

21 THE WITNESS: I think they were sharing it
22 tacitly by refraining from competing in each other's terri-
23 tory. That seems to me to be shared. It's not shared in--
24 That's underlying CAPCO anyway. But back in 1950 or 1940,
25 the means of interconnection, the great advantages of

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1 interconnection and pool operation were not as great as they
2 are now, and underlying CAPCO is also, it seems to me, the
3 same idea of not competing for customers of any sort in each
4 other's territory. I think they had that before CAPCO, but
5 they didn't have the operational and planning coordination.

6 Now right now it's extremely difficult without
7 that kind of coordination to get into, as an independent or
8 even as a municipal, to get into the electric power industry
9 in a particular region.

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1 So this question of sharing has to be interpreted
2 in that sense. When I agreed to what you said, Mr. Rigler,
3 that it is a collective monopoly, what I am agreeing to is
4 that with respect to the power exchange market it is a
5 collective monopoly and with respect to the wholesale and
6 retail markets, it is a monopoly of each company within
7 their respective territories which only exists because these
8 companies refused to compete against each other. But each
9 one of them has that.

10 MR. REYNOLDS: Just so the record is clear, I
11 will withdraw the earlier question that I left hanging that
12 the Chairman had indicated might get us back into matters we
13 had already excluded.

14 BY MR. REYNOLDS:

15 Q On page 113 of your testimony in your discussion of
16 retail geographic market boundaries of Toledo Edison's
17 service territory you state:

18 "this is a definite geographic area of about
19 2500 square miles centering around the City of Toledo
20 as previously described."

21 You then go on to show Toledo Edison's share of
22 retail sales in this area.

23 My question is, what makes that area a definite
24 geographic area other than the fact that Toledo Edison
25 serves it?

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1 A What makes anything a definite geographic area is
2 finding out the bounds of it by some particular way in which
3 you would define area.

4 I can say this is its latitude and longitude and
5 these are where its transmission lines and its distribution
6 lines and its generating plants are, and it covers 2500
7 square miles. That is a definite geographic area.

8 I didn't say that was necessarily a geographic
9 market. That is where that company happens to exist.

10 Q What is the significance of the use of the word
11 "definite?"

12 A Well I suppose the only significance of that word
13 was there seems to be no doubt in anybody's mind that if you
14 say what is it, that is it. And apparently it may be language
15 that I took out of Moody's. I don't know, but --

16 CHAIRMAN RIGLER: Couldn't it just as easily have
17 covered 2700 square miles, or 300 square miles, or 41
18 communities instead of 477

19 THE WITNESS: Yes, I am simply describing what
20 Toledo Edison is. And it is definite because they draw a
21 map about it. That is all. I am not attributing any signifi-
22 cance to that.

23 BY MR. REYNOLDS:

24 Q Would you also characterize the area within the
25 corporate limits of the City of Toledo as a definite area?

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1 A Of course.

2 Q By the way the city of Toledo is not in the center
3 of Toledo Edison's service area, is it? It is in the far
4 northeast corner?

5 A That is right.

6 Q Let's suppose Toledo Edison served only within
7 the City of Toledo at retail, and that constituted a relatively
8 small portion of the 2500-square-mile area you referred to as
9 the definite geographic area.

10 Then would it not be correct to conclude that
11 Toledo Edison has no monopoly power at the retail level?

12 MR. MELVIN BERGER: That question seems to be
13 hanging.

14 In what area?

15 BY MR. REYNOLDS:

16 Q In the 2500 square mile area.

17 A Do you mean if Toledo Edison served only in the
18 2500 --

19 Q If it served only within the City of Toledo
20 at retail.

21 A Yes.

22 Q And --

23 A And what?

24 Q And that was only a small portion of this 2500-
25 square-mile area you referred to, then the question is,

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1 would I not be correct in concluding that Toledo Edison
2 had no monopoly power at the retail level?

3 A Well, no. It would depend upon what else you found
4 in that 2500 square miles outside of the City of Toledo, or
5 whether there were agreements or not.

6 Suppose it were now all served by, let's see,
7 Ohio Power? Everything else there but Ohio Power. And there
8 was an agreement between Ohio Power and Toledo Edison which
9 said, "You stay in Toledo, you stay in the City of Toledo only
10 in those annexed areas of the city and all the rest of the
11 stuff is ours, and all that is yours."

12 Then it would seem to me that they would have
13 monopoly in that area, in the Toledo area.

14 Q In which area the City of Toledo area?

15 A The City of Toledo, yes.

16 Q But not in the larger 2500 miles?

17 A No, they wouldn't necessarily have monopoly in
18 the larger 2500-mile area.

19 The question now, however, is what would be the
20 geographic market which is what I am interested in. Would it
21 be fair to say that the City of Toledo itself is the geographic
22 market relevant in this hearing or is it not?

23 And then you go back to the same definition, are
24 the conditions such, factual, legal, conspiratorial which would
25 or would not permit price influence?

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1 If there were price influence, i.e. there weren't
2 conspiratorial, there weren't economic, there weren't
3 regulatory barriers, therefore every time the City of Toledo
4 wanted to set municipal rates, residential rates, commercial
5 rates or industrial rates and had to take account of what
6 Ohio Power was doing and vice versa, Ohio Power had to take
7 account of what Toledo Edison was doing, then the geographic
8 market area would be that area in which these prices were
9 mutually influenced.

10 Q Is Bowling Green in Toledo Edison's retail market?

11 A I think so.

12 Q Does Toledo Edison serve any retail customers
13 within the corporate limits of Bowling Green?

14 A I don't know.

15 Q Wouldn't that be important to know in defining
16 relevant retail markets?

17 A No, it wouldn't. I have already given you the
18 definition.

19 The City of Bowling Green had to take into account
20 the influence of Toledo Edison, whether Toledo Edison had
21 a few customers in it, or no customers in it.

22 Q Do you know that that is a fact?

23 A That what is a fact?

24 Q That Bowling Green does take into account Toledo
25 Edison in setting its -- in setting the Bowling Green rate?

mm6

1 A When you say, do I know that is a fact, how can
2 I ever find out whether that was a fact?

3 I mean I don't know what the municipal distribution
4 people in running the City of Bowling Green's system have at
5 their hands. I have made the judgment on the basis of my
6 experience that every municipal company has to take into
7 account the prices of the investor-owned utility in whose
8 area it exists and who can be considered as a potential
9 customer or purchaser of their municipal system.

10 Now I don't have to make any studies further than
11 that.

12 Q That is based on your experience where, Dr. Wein?

13 A It is based on my experience in Michigan, based on
14 talking to people in California municipal systems, based on
15 talking to people down at the Public Utility Commission in
16 Ohio, and also people in Alabama.

17 Q Do you know if the Toledo Edison rates and the
18 Bowling Green rates tend toward equality?

19 A You mean their residential rates?

20 Q Any of their rates.

21 A Well Bowling Green is -- well their retail rates.

22 CHAIRMAN RIGLER: What do you mean by tend toward
23 equality?

24 BY MR. REYNOLDS:

25 Q Dr. Wein, what do you understand that term to mean?

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1 You have used it in your testimony.

2 A Yes. I think that over a period of time you
3 are likely to find that Bowling Green's rates will be either --
4 will be fairly close to Toledo Edison's rates. And if there is
5 a change --

6 CHAIRMAN RIGLER: Are they approaching parity?

7 THE WITNESS: They may approach parity, but they,
8 may not. There may be some differential between them.

9 But if there is a change in the direction one way
10 going up in Toledo's, there is likely to be a change in
11 Bowling Green insofar as Bowling Green is reflecting very
12 much the same sorts of cost factors.

13 CHAIRMAN RIGLER: But doesn't tend toward equality
14 mean they are always coming closer together so that the
15 differential between the rates is always lessening?

16 THE WITNESS: Well all other things equal, that is
17 what it would mean, yes.

18 CHAIRMAN RIGLER: But is that what you mean, then?

19 THE WITNESS: Yes, this is what I would mean by
20 tending toward equality.

21 BY MR. REYNOLDS:

22 Q But you don't know in the Bowling Green situation
23 whether that is the case or not, is that correct?

24 A No. I really don't know that.

25 Q If Toledo Edison has no retail customers in Bowling

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1 Green, then Bowling Green would have 100 percent of the retail
2 market in the corporate limits of Bowling Green, isn't that
3 correct?

4 A By definition, yes.

5 Q And wouldn't that give Bowling Green monopoly power
6 within the city limits?

7 A No.

8 Q Why is that?

9 A Because they couldn't stray very far from the rates
10 of Toledo Edison.

11 Q How do you know that?

12 A I think I have answered that a long time -- or
13 several times in this proceeding. I will answer it again.

14 Municipal distribution systems are in existence
15 because those who have promoted them, and the citizens who
16 have voted on them believe that they will get at least as
17 good service at at least as good prices as they could get from
18 being served by an independent private utility. It will take
19 some patience for citizens to come up with if that
20 promise happens not to come about in one year or two years.

21 But the system would certainly not survive very
22 long as a municipal system if their rates were out of line with
23 the rates of the utility. There is no reason for it to exist.
24 So even though they had 100 percent of all the customers in
25 the City of Bowling Green, they couldn't stray very far from the

nm9 1 rates which Toledo Edison was charging for similar types of
2 customers and classes of customers.

3 Q Would you similarly feel that the Pitcairn
4 Municipal Electric Utility System has no monopoly power over
5 retail electric sales in Pitcairn?

6 A Yes.

7 CHAIRMAN RIGLER: You would concede, would you
8 not, that for any given one-year period they have a monopoly?
9 I mean as of right now --

10 THE WITNESS: No, I won't even concede that Mr. Rigler
11 for this reason:

12 The essence of monopoly power is not that I happen
13 to have a customer and you don't. That is not the essence
14 of it.

15 The essence of monopoly power is that if I happen
16 to have that customer, I can charge any price I want. I am
17 insulated from any other influence, so that I can charge him
18 whatever the maximum profits I can make, given the nature of
19 his demand and my supply. That is the essence of it.

20 In the electric utility business it is obviously
21 always, somebody is always connected to some system and so if
22 I had a town in which there were two utility companies
23 serving, north of this boundary it is system one, and south of
24 the boundary it is system two, now I could then say they have
25 monopoly in the north and they have monopoly in the south,

mml0 1 because the customers aren't going to change their lines.

2 And then by going to the extreme, you finally get
3 down--even if I had system A has Jones and next door system
4 B has Smith and next door system D has something else,
5 then he has got a monopoly with respect to Jones, Smith and
6 so on, which is absurd.

7 The idea of monopoly power is the shielding, the
8 ability to impose a monopoly price if you so desire as a mono-
9 polist where you don't have to take into consideration any
10 other influence.

11 So I can have the customers, but I may not even
12 within a year, you see -- even within a year I may change
13 the prices because Toledo Edison has changed the prices. Or
14 I might raise it less than I would have.

15 BY MR. REYNOLDS:

16 Q Well, on your logic then, would I be correct that
17 CEI does not have monopoly power in any municipality it serves
18 since the city can condemn CEI's property if the rates are too
19 high?

20 A No, I don't think that would follow.

21 Q Why not?

22 A Well with respect to the City of Cleveland, I guess
23 it is the whole factual situation. I don't know whether the
24 city can condemn the rest of the City of Cleveland or not.

25 But even if it could condemn the rest of the City of

1 Cleveland, the question is what would MEEP do with the rest
2 of the City of Cleveland? It doesn't have the capacity to
3 serve the City of Cleveland right now. It is in very bad
4 financial condition so its condemnation in saying, okay, we
5 condemn all of CEI's plants and distribution in the City of
6 Cleveland and somebody says, well that is fine, what are you
7 going to pay it with? You can't just condemn without acquiring
8 and now you have to suppose the City of Cleveland as a
9 realistic matter would go out to Wall Street and hire their
10 bond attorneys to get the money for them or negotiate the
11 funds for them.

12 And I think one would have to live in -- well, one
13 would have to make a very serious reservation about that
14 possibility right now.

15 MR. SMITH: Do you know if there is sufficient
16 CEI generation located in the City to support the CEI load
17 in the City?

18 THE WITNESS: No, I don't think there is, as a
19 matter of fact. I am trying to think of -- enough within the
20 City boundaries? I don't think there is enough to support that
21 even if they could acquire any and pay for it. They still
22 would require additional power and they still would require
23 all the problems of how you get it without wheeling and so
24 forth.

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BY MR. REYNOLDS:

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Q So the Lake Shore plant within the ---

3

A Yes, Lake Shore is.

4

Q Do you know what the capacity of that plant is?

5

A Well as I recall it was 600,000 megawatts --

6

600 megawatts.

7

Q Do you know what the load of CEI is in Cleveland?

8

A The load of CEI in Cleveland is roughly, as I recall, a third of their total load. That is subject to memory, but somewhere in that magnitude.

11

That is almost -- well, it is over a 3000-megawatt

12

system.

13

Q In your testimony, is not the threat of condemnation the essence of what you have termed potential competition?

14

15

A No. That is an ingredient.

16

MR. MELVIN BERGER: Can you point to --

17

MR. REYNOLDS: He has already answered the question.

18

THE WITNESS: I didn't finish my answer.

19

BY MR. REYNOLDS:

20

Q You may continue.

21

A Thank you.

22

That is an ingredient. It is an ingredient in it.

23

But by no means the only factor. In fact, if there were not all the other factors such as access to economical plants, access to wheeling, complete coordination and so on, that

24

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1 becomes a very hollow threat. It requires all those other
2 things plus the existence of a possibility of the municipals
3 getting together before that becomes a real threat.

4 Q What is potential competition then?

5 A If you are asking me what is potential competition,
6 I will --

7 Q What is potential competition in the electric
8 utility industry if we focus on the municipal systems?

9 A Well I think I have explained that. It consists
10 of the following ingredients:

11 One, the ability of municipalities to get together
12 through some organization such as, for example, AMP Ohio;
13 to get together for the purpose of selling and generating
14 and transmitting power to their municipal customers. And if
15 they had certain access to nuclear plants, if they had access
16 to them on a plane of equality as the other CAPCO members, if
17 they had wheeling, if they were part -- if they engaged in
18 operational and planning coordination, they would then to me
19 constitute a potential competitor, one with the capability
20 standing on the edge of the market. And they stand on the
21 edge of the market in the entire CAPCO area if they have
22 that.

23 And that is what I mean by calling that potential
24 competition.

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1 I think if that were given to them there
2 would be beneficial affects even if in fact they never
3 did go to the extent of some sort of expanded Buckeye
4 operation. It would force the other companies to set
5 a limit price, the limit price being that price low
6 enough so that this potential competitive entity would
7 not necessarily come into being, but it would already
8 have, then, the influence.

9 Q I believe you have indicated in your direct
10 testimony that this entity standing on the edge of a
11 market must have a significant probability of entry to
12 be a potential competitor, is that correct?

13 A Yes.

14 MR. MELVIN BERGER: Could I ask for the reference,
15 please?

16 MR. REY. OLDS: Page 143.

17 BY MR. REYNOLDS:

18 Q Would you define what you mean by significant
19 probability of entry?

20 A Yes.

21 Significant probability of entry, obviously
22 not characterized by a number, 5 percent, 10 percent,
23 50 percent, it's characterized by the existing companies
24 who ask themselves whether under these conditions do we
25 think that there is this chance for this company to come

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1 in. They set the numbers. For example, they might say
2 one percent is significant for them because the loss if
3 they came in even using a one percent chance is significant
4 enough, substantial enough for them to lower their prices,
5 try to prevent them from not coming in. They might say
6 it's five percent. In short, the margin of potential
7 loss, if they did come in, the lower the probability would
8 be before an existing entity would say it is a significant
9 possibility.

10 You see, if I'm going to lose ten cents I'm
11 not going to worry about it but if I'm going to lose
12 revenues that might approximate \$300 million or \$500 million
13 a year, even if it were a one percent chance, I might lower
14 my rates because one percent of \$500 million a year is a
15 significant amount of money.

16 So that's the nearest I can give to you. It's
17 not necessarily a particular number.

18 Q And when you indicate that there is this
19 significant probability of entry in the foreseeable future
20 what would constitute the foreseeable future in terms of
21 the electric utility industry?

22 A Whatever the entities in that industry think
23 they can foresee. This seems to me to be the case. It's
24 perfectly clear that if they didn't view this sort of
25 potential competition as significant, I don't understand

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1 why these proceedings are going around. It would seem
2 to me they would say, Sure, you can have this, you can
3 have that.

4 There must be something they fear that is going
5 to be competition which they would rather not face.

6 MR. REYNOLDS: I move to strike that response,
7 Mr. Chairman.

8 CHAIRMAN RIGLER: No, I think that was invited
9 by the question.

10 MR. REYNOLDS: It's highly speculative as to
11 what these proceedings -- as to what these proceedings
12 may or may not bear on --

13 CHAIRMAN RIGLER: But it related back to your
14 question as to why he considered it significant and he
15 was holding that out as one of the reasons why it would
16 be significant.

17 MR. REYNOLDS: My question was what he considered
18 to be the foreseeable future.

19 Well, if the Board has ruled, I'm not going to
20 argue with the Chairman. I think it is speculative and
21 unresponsive to the question, but if I have lost the ruling
22 I'm not going to argue.

23 MR. SMITH: Dr. Wein, does a potential competitor
24 outside the market evaluate the capacity that already
25 exists within a market in determining whether he should

mpb4

1 enter?

2 THE WITNESS: Yes, it does.

3 MR. SMITH: Would the addition of a substantial
4 amount of additional capacity affect the judgment of a
5 potential competitor?

6 THE WITNESS: Yes, it would.

7 CHAIRMAN RIGLER: Is this a good time for a
8 short break? Are you about to go on to a new line, Mr.
9 Reynolds?10 MR. REYNOLDS: No, but we can stop here. That's
11 fine.

12 CHAIRMAN RIGLER: Let's do it.

13 (Recess.)

14 CHAIRMAN RIGLER: Back on the record.

15 BY MR. REYNOLDS:

16 Q Dr. Wein, let me ask you would you agree or
17 disagree with the proposition that if competitive
18 alternatives available to customers located in different
19 areas are significantly different than the delineation of
20 several relevant geographic markets reflecting those
21 differences is economically appropriate?22 MR. BERGER: Can I have the question read back,
23 please?24 (Whereupon, the Reporter read from the record,
25 as requested.)

mpb5

1 THE WITNESS: I have to have that before me.
2 It's a very confusing question.

3 CHAIRMAN RIGLER: Yes, do you have that written
4 out somewhere -- in some way that you could give it to
5 him?

6 MR. REYNOLDS: I don't understand the confusion.
7 It sounded good to me all three times.

8 CHAIRMAN RIGLER: That's because you have it
9 written out in front of you, I think.

10 MR. REYNOLDS: Let me ask you this:

11 BY MR. REYNOLDS:

12 Q If the alternative -- if the competitive
13 alternatives are different in different areas, let's say
14 that the competitive alternatives to customers in Cleveland
15 are different than the competitive alternatives to
16 customers in Painesville, for example. Would, then,
17 the delineation of the relevant geographic markets to
18 reflect those differences be economically appropriate?

19 MR. MELVIN BERGER: Are you talking retail
20 customers?

21 MR. REYNOLDS: Yes.

22 THE WITNESS: You mean if a retail customer
23 in Cleveland can buy 500 kilowatt hours at five cents a
24 kilowatt hour --

25 MR. REYNOLDS: You have to talk into the mike,

mpb6

1 Dr. Wein, please.

2 THE WITNESS: If a customer, a retail customer
3 in Cleveland could buy 500 kilowatt hours at five cents
4 a kilowatt hour and a retail customer in Painesville with
5 the same characteristics could buy 500 mills at three
6 cents a kilowatt hour?

7 BY MR. REYNOLDS:

8 Q No, it doesn't have anything to do with the
9 price.

10 A You said retail customers buying electricity.
11 I don't know what else would be involved assuming that
12 the reliability was the same.

13 Q The competitive alternative would relate to
14 the suppliers of power. If the competitive alternatives
15 to the city of Cleveland to the retail customers in the
16 city of Cleveland differed from the competitive
17 alternatives to the retail customers in the city of
18 Painesville, for example.

19 A You mean the city of Painesville as a
20 generating system, had different competitive alternatives
21 than the city of Cleveland as a generating, is that what
22 you mean?

23 Q That's right.

24 A Now, what's the question?

25 Q The question is, then, whether the delineation

mpb7

1 of relevant geographic markets to reflect those differences
2 would be economically appropriate?

3 A You mean at retail, or at wholesale, or what,
4 sir?

5 Q At retail.

6 A No, not necessarily at all. I mean a competitive
7 alternative to the city of Painesville, given its size
8 generation and so on, might be different than the competitive
9 alternative to the city of Cleveland as a generator of
10 power. But then the question here is whether the influence
11 of the prices, whether there would be any influence on
12 the prices that the city of Cleveland charged and the city
13 of Painesville. There may not be because the city of
14 Cleveland has got no way to reach the city of Painesville
15 and the city of Painesville has no way to reach the city
16 of Cleveland. It still may have some influence because
17 the citizens of Painesville might say, How come our
18 rates are higher than the city of Cleveland, although
19 the citizens of the city of Cleveland might say, How
20 come our rates are higher than the city of Painesville.
21 So just because the city of Painesville might, for example,
22 have an opportunity to buy coal, if that's what they use,
23 somewhat cheaper than the city of Cleveland, that would
24 be a different competitive alternative, but that's no
25 justification for saying that the retail markets are

mpb3

1 different, that they shouldn't be put in the same retail
2 market.

3 Q Dr. Wein, let's try it this way:

4 If the retail customers in the city of Cleveland
5 have as competitive alternatives the purchase of power
6 from MELP, the Municipal Electric Light Plant, the city
7 of Cleveland, or from the Cleveland Electric Illuminating
8 Company as their competitive alternatives, and, on the
9 other hand in the city of Painesville the retail customers
10 of electric power in that municipality has as their
11 alternative only the purchase of power from the municipal
12 system of the city of Painesville, would you not then
13 agree that there are different competitive alternatives
14 for the few municipalities?

15 CHAIRMAN RIGLER: That question doesn't go
16 because there is no competitive alternative in the city
17 of Painesville, if that's their sole source.

18 MR. REYNOLDS: That's the whole point, Mr.
19 Chairman, thank you. Therefore there are differences
20 because in one there is a competitive alternative and in
21 the other there is not. The answer should be yes.

22 THE WITNESS: No, the answer is not yes.

23 Am I being asked the question?

24 CHAIRMAN RIGLER: You are being asked the
25 question.

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1 THE WITNESS: Okay, and so I would like to
2 answer.

3 The answer is not yes; the answer is no.

4 BY MR. REYNOLDS:

5 Q Okay, why is it the competitive alternatives
6 are not different?

7 A I have already explained to you the reasons
8 and why you would take a geographic market. It has to
9 do with the problem of price influence, whether one
10 takes into consideration the setting of a price or it
11 does not take into consideration the setting of a price.

12 The city of Painesville, the people of the
13 city of Painesville obviously can't buy anything other
14 than from the city of Painesville. The city of Painesville,
15 when it's setting its rates it certainly has in mind CEI
16 and what its rates outside the city of Painesville are
17 going to be. And no municipal system can survive very
18 long by setting rates that are very much higher than the
19 CEI, so it doesn't really matter that this particular
20 citizen or the citizens in the town can get to CEI tomorrow.
21 The people who run Painesville's distribution system
22 know that they can not survive by charging rates very far
23 at variance for very long different from that of CEI.

24 Q Do you know if CEI can serve within the city
25 limits of Painesville?

mpb 10

1 MR. MELVIN BENCER: I think Dr. Wein may have
2 misspoken the last answer. Perhaps we can have the
3 Reporter read back the answer.

4 (Whereupon, the Reporter read from the record
5 as requested.)

6 BY MR. REYNOLDS:

7 Q Dr. Wein, I asked if you knew if CBI could
8 serve within the city limits of Painesville.

9 A Within the city limits?

10 Q Yes.

11 A I don't know whether they can or not.

12 Q Do you know that -- were you aware that
13 Pitcairn's rates have consistently been higher than
14 Duquesne Light's rates at retail for many, many years?

15 A No, I didn't know that.

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1 Q Do you see any difference, Dr. Wein, in the actual
2 or the potential competitive alternatives available to a
3 community whose present power supplier has a franchise set
4 to expire in three years as opposed to a community in which
5 the power supplier holds a perpetual franchise?

6 A Read the question, please.

7 (Whereupon, the Reporter read from the record
8 as requested.)

9 THE WITNESS: Well, I suppose the hypothesis
10 assumes "perpetual franchises" mean never. That seems to
11 me very unlikely but in any case, supposing there were such
12 a thing as never, sure, as the potential time they mention
13 here moves closer, obviously the guy whose franchise is going
14 to end in three years is going to be constrained to do a
15 little more to make sure that he gets another franchise
16 than the supplier who has a perpetual because what that means
17 is if there is such a thing as perpetual, which means that
18 the city couldn't even build its own distribution and dupli-
19 cate within the city, which I don't think it means, but that's
20 an alternative. If his rates were that bad then the city
21 might decide to duplicate within the city and build.

22 So that's number one.

23 Number two, if his rates were so bad and if this
24 were widely practiced throughout the territory of this company
25 in the areas in which there were perpetual franchises so

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1 that in fact a nice brief could be made showing that where
2 the supplier has perpetual franchises his rates are 30
3 percent higher than where he has limited-term franchises
4 for the same kinds of classes of customers, conditions and
5 so forth, it would seem to me that that would lead probably
6 to such political unrest and legislation which might do away
7 with perpetual franchises.

8 So as a matter of fact and as a practical ques-
9 tion, I would suppose that even if somebody had a perpetual
10 franchise, say a private utility within the city, it would,
11 because of all these other forces which bear on potential
12 competition be constrained anyway to set its prices not very
13 much different from where he had a three-year franchise or
14 a five-year franchise or a perpetual franchise.

15 It would seem to me that the competitive influences
16 would be operating just as well and probably just as
17 effectively. The IOU's, you know, are not devoid of political
18 common sense.

19 BY MR. REYNOLDS:

20 Q Am I correct, based on your prior testimony, that
21 you have not made any analysis of the relative retail rates
22 charged by each of the CAPCO companies and by the municipal
23 and cooperative utilities within the CCT?

24 A In the sense of an analysis, no, I did not go down
25 and analyze the different contracts. I've looked at some

eb3

1 of the contracts. Even within the same service territory
2 of a company there may be little differences and the indus-
3 trial rates are so complex I can't understand them anyway.

4 Q Did you make any studies of the cost of trans-
5 porting electric energy from Cleveland to Pittsburgh?

6 A No, I could not make such a study. Insofar as I
7 know, nobody has. But I can tell you that it's probably
8 very little, based on my Alabama experience.

9 CHAIRMAN RIGLER: Look, he asked you a question
10 that could have been answered Yes or No. Let's answer it
11 Yes or No.

12 THE WITNESS: No, I did not make such a study.

13 BY MR. REYNOLDS:

14 Q If the cost of transmitting power from Cleveland
15 to Pittsburgh were significant or large in proportion to
16 the value, would you say that Pittsburgh and Cleveland are
17 in different geographic markets?

18 MR. MILVIN BERGER: For what product, Mr. Reynolds?

19 BY MR. REYNOLDS:

20 Q Electric power, retail sales of electric power.

21 A You mean if I were a company in Pittsburgh and I
22 wanted to sell something in Cleveland at retail, that I had
23 a load?

24 Q All right, and the transmission cost were signi-
25 ficant.

eb4

1 A Significant means significant enough for me so
2 that I'm not competitive in my retail sales? Is that within
3 your hypothesis?

4 Q If they were significant enough so you weren't
5 competitive in your retail sales would you say that would
6 put Pittsburgh and Cleveland in different geographic markets?

7 A Yes, if that were the case, if there were no
8 influence.

9 Q And if it were not significant enough so that
10 you could be competitive would they then be in the same
11 geographic market?

12 A I didn't finish my answer, so before you ask me
13 another question let me finish the answer to the first one.

14 The answer to-- The first question was if a
15 producer in Pittsburgh, because of transmission costs being
16 so high, could not possibly compete for a load in
17 Cleveland? Even if he had his own transmission or even if he
18 could wheel and get permission to wheel it, the transmission
19 losses would be so great compared to the delivery that he
20 would not be in the Cleveland market with power from
21 Pittsburgh.

22 That's the answer. He would not have any com-
23 petitive influence. Of course that flies in the face of the
24 facts.

25 CHAIPMAN RIGLER: Wouldn't you have to take into

eb5

1 account the relative cost of producing the power in Cleveland
2 or Pittsburgh?

3 THE WITNESS: I'm assuming that they are equal
4 companies with equal generation and so on, yes. Of course
5 that would be the case.

6 BY MR. REYNOLDS:

7 Q I think there's another question pending. I had
8 asked you whether in the event the cost of transmitting the
9 power was not so significant as to make the price uncompeti-
10 tive with -- make the price in Pittsburgh uncompetitive with
11 the price in Cleveland, in that circumstance would you say
12 that Pittsburgh and Cleveland were in the same geographic
13 market?

14 MR. MELVIN BERGER: Are you assuming that there
15 are no other factors to be considered, Mr. Reynolds, such
16 as laws?

17 MR. REYNOLDS: Assuming exactly what we assumed
18 when he answered if they were significant he would not put
19 them in the market. And I'm asking now, assuming if it were
20 not significant would he then put them in the same geo-
21 graphic market?

22 THE WITNESS: Well, let me --

23 MR. MELVIN BERGER: Without considering any other --

24 MR. REYNOLDS: On the same assumptions as the first
25 one.

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1 THE WITNESS: The assumptions I'm making in the
2 first one are pretty obvious. One, all other things are
3 equal; that is to say there is no difference in generation;
4 there is no regulatory bans; there is no difference in any-
5 ting except transmission. That's the question.

6 The second question is transmission is significant
7 enough so that the guy in Pittsburgh says No, if I go and
8 compete there my profits are too low. I'm not going to
9 compete. He's out.

10 Now if they were insignificant, one, no regula-
11 tory problems, two, everything else was the same, yes, if
12 there were no conspiracy not to do so, if they could get
13 into the market, if there were no regulatory barriers, then
14 the producer in Pittsburgh could, because under those
15 hypotheses they have competitive costs; presumably there's
16 a market which could go one way or the other, so it is not
17 tied up by one company rather than the other, and in that
18 case if they were minded to compete they would be in the same
19 market.

20 CHAIRMAN RIGLER: Off the record.

21 (Discussion off the record.)

22 CHAIRMAN RIGLER: On the record.

23 BY MR. REYNOLDS:

24 Q On the bottom of page 112 and over at the top of
25 page 113 of your direct testimony you refer to Mr. Jones as

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1 being a captive residential customer of whatever utility
2 system he happens to be hooked into which-- Your example
3 would be whatever utility system distributes into Toledo,
4 in this case Toledo Edison.

5 Dr. Wein, would the Mr. Jones who lives in
6 Bowling Green be any less a captive customer of Bowling
7 Green's municipal system?

8 A No.

9 Q Is any Mr. Jones who might be a customer of a
10 cooperative member of Buckeye any less a captive customer
11 of that co-op than Mr. Jones is of Toledo?

12 A Well, I suppose there it would depend on how
13 close Mr. Jones was to the lines of, say, Ohio Edison
14 compared to how close Mr. Jones was to the particular dis-
15 tribution entity there. And if Mr. Jones said Okay, I'll
16 go off power because I've got some alternative generators
17 anyway which I can use for 90 days; I'll do that, in that
18 sense he is not as much a captive.

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3A mnl 1 Q In your retail market discussion on page 121,
2 lines 1 to 3, you state:

3 "New transmission added by Ohio Edison in
4 1973, excluding a large expensive 138 kv line in
5 East Akron, cost \$52,325 per mile of line."

6 Then you proceed to apply this figure to your
7 example and state:

8 "An SGM attempting to reach a 10 million
9 kilowatt hour load ten miles distant would thus
10 engage in an outlay on the order of \$500,000."

11 Are you presenting this as a realistic example?

12 A No. Not having any information about any SGM I am
13 simply saying, well presumably if they want to do that they
14 wouldn't put in 138 kv lines; they'd probably put in less
15 than that. I don't know what they would put in.

16 So that is simply a method to give you a rough
17 order of magnitude.

18 Q Do you know what voltage transmission lines was
19 added by Ohio Edison for \$52,325 a mile?

20 A If you get me the Form 12 I could make a calculation
21 I don't commit to memory all the stuff in it. I can certainly
22 find it in the Form 12.

23 Q Would you expect it to be 69 kilovolts?

24 A They had a whole bunch of things in the Form 12.
25 It wasn't just -- it was so many miles, 1.2 of something.

mm2 1 And then 3.4 or something else and so on. It was that, it
2 was a whole bunch of different voltages.

3 Q What capacity do you think would be required to
4 serve a 10 million kilowatt hour industrial load?

5 A You mean of line?

6 Q Right.

7 A Well it would depend upon -- well, it is only ten
8 miles. It would not be very high, let me put it that way. It
9 would depend upon lots of other conditions that we have to
10 assume.

11 Q Let me ask you this:

12 Would 5000 hours on the average per kilowatt over
13 a year, at a capacity factor of 60 percent be reasonable for
14 an industrial customer?

15 MR. MELVIN BERGER: Objection.

16 I think Dr. Wein indicated it would depend on a
17 lot of different factors, and Mr. Reynolds is indicating just
18 one.

19 MR. REYNOLDS: I thought he indicated yes.

20 BY MR. REYNOLDS:

21 Q Do you have any problem with indicating that
22 that would be reasonable?

23 A For industrial customers it might be reasonable.
24 It depends on the industrial customer. Some of them might
25 not be reasonable. It would depend upon the nature of the

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1 industrial customer, but I want to see what follows next. It
2 could be reasonable, yes.

3 Q 10 million kilowatt hours is a pretty small
4 industrial customer, isn't it?

5 A Yes.

6 Q And at 5000 hours that 10 million kilowatt hours
7 would give you a peak load of about 2000 kilowatts, wouldn't
8 it?

9 A Yes.

10 Q Which would be a 2 megawatt demand?

11 A (Nodding affirmatively.)

12 It would be more expensive than that if it were
13 an industrial customer, because the power factor would come
14 into account. And an industrial customer which is using a
15 lot of mechanical equipment for example, it would be more
16 expensive than, say, an industrial customer that was using
17 electricity in an electric furnace where it was a question of
18 generating heat.

19 MR. REYNOLDS: Could I have that answer read back
20 please?

21 (Whereupon the reporter read from the record as
22 requested.)

23 BY MR. REYNOLDS:

24 Q What do you mean by power factor?

25 A Well, that is a fairly complicated thing. I am not

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1 sure I could explain it very well.

2 But in effect, when you have customers who are
3 using electricity for driving large motors, for example, you
4 get leads and lines in the alternating current which require
5 more equipment. To adjust for that and actually the customers
6 are taking more power than you actually charge for, and as a
7 consequence you have an adjustment depending upon the nature
8 of that particular power factor.

9 When I said a 2000 megawatt load would be more
10 expensive for an industrial customer, I had in mind the
11 alternative, say a 2000 megawatt load which was primarily
12 going to residences and things of that sort where you didn't
13 have large mechanical motors to turn. That is all I had in
14 mind.

15 Q 2 megawatt, not 2000?

16 A 2 megawatts.

17 Q Do you have any idea what the capacity of a 10-mile
18 69-kilovolt transmission line is?

19 A A 10-mile, 69?

20 Q Right.

21 A How many megawatts could it handle, do you mean?

22 Q Right.

23 A Well I guess it would depend on how that 69-line
24 was tied into the rest of the system and what risks you
25 wanted to take and things of that nature.

mm5

1 Q Will you accept roughly 50 megawatts?

2 A Well it depends on -- again it could be 50 megawatts,
3 it could be higher, it could be lower. It would depend upon
4 all the surrounding circumstances as to how it was tied into
5 transmission, what the nature of the surrounding network was,
6 what risks you wanted to take, things of that nature.

7 It could handle 50 megawatts. Under some
8 conditions it might be dangerous to put 50 megawatts on.

9 Q Well would it surprise you that building 50 mega-
10 watts of transmission capacity to serve a 2 megawatt load
11 would seem relatively expensive?

12 MR. MELVIN BERGER: I am going to object to
13 continued questioning on this. I think the reference to
14 Dr. Wein's testimony, as indicated in that testimony is that
15 this is only a very rough example of what he had in mind or
16 what he wanted to illustrate. And I think continued
17 questioning on the details of this is just a waste of time
18 and serves no meaningful purpose.

19 CHAIRMAN RIGLER: I am inclined to agree with that
20 objection.

21 Do you have some conclusory question as to where
22 you think you would be at the end of the line?

23 MR. REYNOLDS: Well I guess I am trying to show
24 just how rough it is. The testimony is presented as I
25 understand it, to make some point that it would be tremendously

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1 expensive for self-generating municipalities to attempt to
2 build a line of this distance and this capacity to serve a
3 customer. It is based on, admittedly, rough figures.

4 What we are trying to demonstrate is exactly what,
5 if we take those figures, we come out with.

6 CHAIRMAN RIGLER: Well frame it into a conclusion
7 if you want, but I don't think it is profitable to continue
8 to work on figures.

9 BY MR. REYNOLDS:

10 Q What, Dr. Wein, would be your view as to the
11 cost of that line if -- strike that question.

12 Have you made any analysis as to what the costs
13 of that line would look like relative to the revenue that
14 could be obtained from a 50-megawatt customer at the end of
15 the line?

16 A Well, you know, if there were a 50-megawatt
17 customer --

18 CHAIRMAN RIGLER: Yes or no. Have you made the
19 analysis?

20 THE WITNESS: No, that is not my example.

21 If it were 50 megawatts multiplied by 5000 hours
22 it is going to be a heck of a lot more than 10 million.
23 So why should I make an analysis.

24 BY MR. REYNOLDS:

25 Q Let me ask you, Dr. Wein, what is the source of

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1 the information on page 121 where you conclude it would
2 require 500,000 investment in transmission to serve a 10 million
3 kilowatt load 10 miles distance?

4 A The source is, as I have already stated in the
5 testimony, I took something about what it cost for a mix
6 of different transmission. As I say, this is very rough,
7 but so is the other assumptions. I was going to make 3 mills
8 against 12 mills, and things of that sort. It is equally
9 rough.

10 All I am trying to show is that in general when
11 you have such small loads like 10 million kilowatt hours,
12 and you have to go out 10 miles, it raises a financial
13 question as to whether it is worth doing it or not doing it.

14 Small SGMS are generally not that well heeled.

15 Q Let me ask you this:

16 Do you know if you can build a 12 kilovolt plant
17 to serve that load profitably?

18 MR. MELVIN BERGER: Objection.

19 I think this is going into details that are
20 unnecessary.

21 CHAIRMAN RIGLER: I am going to sustain the
22 objection in that it far exceeds the scope of the direct.
23 He has indicated that he gave you a rough example; he has
24 indicated how he arrived at that rough example and trying
25 to convert that into a specific set of facts just is pointless.

mm8

1 So go on to something else, please.

2 BY MR. REYNOLDS:

3 Q You draw the conclusion from your example that it
4 is illustrative of the financial difficulty of SCMs in
5 attempting to capture private loads other than those on
6 the fringes of the corporate limits.

7 Can you give us any example of SCMs in the
8 CAPCO service area that have attempted to reach customers
9 beyond the corporate limits, but have been frustrated by
10 financial difficulty?

11 MR. MELVIN BERGER: Can I have that question read
12 back?

13 THE WITNESS: Well I think actually, MELP is
14 probably the best example. They have been frustrated by
15 financial difficulties in lots of ways.

16 CHAIRMAN RIGLER: Has one of those ways been
17 the inability to extend their lines to capture new customers?

18 THE WITNESS: I think so. I think they have been
19 frustrated in that way.

20 BY MR. REYNOLDS:

21 Q And what is the basis for that answer?

22 A I can't pin it down on a specific document. But
23 that is my recollection. That is one of the things
24 that was frustrating them was that they couldn't get a lot
25 of the industrials which are in their corporate limits. They

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1 didn't have either the power to get them or the transmission
2 to serve them. And a great part of their difficulty is
3 financial.

4 Q Is that your understanding, because they couldn't
5 finance an extension of their transmission facilities?

6 A That, and other things.

7 Financial difficulties don't only go to transmission.
8 They go to many other things.

9 Q Let me ask you, Dr. Wein, what rate studies have
10 you made to determine that there is, as you indicate on
11 page 123, a classical price squeeze structure for the CAPCO
12 companies?

13 MR. MELVIN BERGER: I think I will object to
14 that question.

15 I think that the answer clearly indicates
16 Dr. Wein didn't say that he made any studies.

17 MR. REYNOLDS: If that is the answer, he can
18 respond that way.

19 MR. MELVIN BERGER: Well your question was, what
20 rate studies did you make --

21 MR. REYNOLDS: That is correct.

22 MR. MELVIN BERGER: -- rather than did you make
23 any.

24 THE WITNESS: Well, as my testimony points out,
25 I am relying on Mr. Kampmeier's examination.

mm10 1

2 Secondly, it is not necessary to make a study
3 to say that a classical price squeeze structure exists.
4 All you have to know is that a supplier is also your
5 competitor at a particular level. And if you get your rates
6 from him at wholesale and attempt to compete with him for
7 some part of the retail market, you have got a classical
8 price squeeze structure particularly if the competitor, in
9 this case, the entity buying power at wholesale, has no
10 other alternatives.

11 That doesn't require a study. That simply requires
12 knowing the facts that says that is a classical price squeeze
13 structure. Kampmeier says he thinks it is taking place
14 by his study of the rates.

15 Q And you are relying solely on Mr. Kampmeyer's --

16 A As to the actual conduct. Not as to the effect
17 that it is a classical price squeeze structure.

18 The important point of that is seeing they have
19 got the power on the basis of the market structure.

20 end 3A
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1 Q Is the existence of that structure inconsistent
2 with the antitrust laws in your view?

3 MR. MELVIN BERGER: Objection, I think that
4 calls for a legal conclusion.

5 CHAIRMAN RIGLER: Overruled.

6 THE WITNESS: I'm not sure that it's illegal
7 to have a price squeeze structure. I would say that if
8 you had a price squeeze structure you then have certain
9 power in a particular market area. If that power is
10 substantial, substantial enough to be viewed as violative
11 of the antitrust laws then even without the exercise of
12 the power given in that structure perhaps it might be
13 shown to be violative.

14 Now, if you have the structure you have the
15 power, by hypothesis you have no other alternatives and
16 if in fact you use it then I'm certainly absolutely
17 certain about that being violative and I'm not at all
18 sure that even if you didn't use it, but in the surrounding
19 situation this was one ingredient of a large problem of
20 monopoly. In other words, it wasn't only this particular
21 situation but in a particular market area you had 95
22 percent of the production and generation -- I mean the
23 transmission and distribution and in addition you also
24 had this kind of market structure, I think that would
25 simply be another fact involved.

mpb2

1 So to summarize, if you use it, yes, it
2 violates the antitrust laws. If you don't use it but
3 it exists, then you would have market power and then you
4 would have to go to the extent or the degree of market
5 power.

6 BY MR. REYNOLDS:

7 Q Dr. Wein, as I understand it, you have delineated
8 five separate relevant wholesale markets, one corresponding
9 precisely to the service territory of each CAPCO member,
10 is that correct?

11 A Yes.

12 Q And am I also correct that in the Alabama
13 Power proceeding you defined the relevant wholesale
14 market as being identical in scope with Alabama Power's
15 service territory?

16 MR. MELVIN BERGER: Objection, irrelevant.

17 CHAIRMAN RIGLER: I'm sorry, I didn't hear the
18 question.

19 (Whereupon, the Reporter read from the record
20 as requested.)

21 CHAIRMAN RIGLER: Irrelevant in which market?

22 MR. REYNOLDS: Wholesale market.

23 CHAIRMAN RIGLER: Overruled.

24 THE WITNESS: Yes.

25 BY MR. REYNOLDS:

mpb3

1 Q And in the Consumers Power case did you also
2 define the relevant wholesale market as having the same
3 scope as Consumers territory?

4 A Yes.

5 MR. MELVIN BERGER: Same objection.

6 CHAIRMAN RIGLER: Overruled.

7 BY MR. REYNOLDS:

8 Q Dr. Wein, could you tell us what circumstances,
9 if any, you would require in order to find the relevant
10 wholesale market not coincident with the service territory
11 of the major utility under study?

12 A Exactly the same circumstances that I delineated
13 for the same question with respect to the retail market.

14 Q You'll have to refresh my recollection on
15 that.

16 MR. MELVIN BERGER: Is that a question?

17 MR. REYNOLDS: Yes.

18 MR. MELVIN BERGER: I would object to the
19 question as having been asked and answered.

20 MR. REYNOLDS: The question has not been asked
21 and answered. The witness has said as much.

22 THE WITNESS: I gave you the answer. The answer
23 was exactly the same circumstances as I delineated to the
24 same question with respect to the retail market.

25 CHAIRMAN RIGLER: And then Mr. Reynolds asked

mpb4

1 to have his recollection refreshed and that will be helpful
2 to the Board, too.

3 THE WITNESS: Well, the basic idea is the
4 influence of wholesale prices set by one entity on the
5 wholesale prices set by another entity.

6 CHAIRMAN RIGLER: Okay.

7 BY MR. REYNOLDS:

8 Q Do you know if that takes place anywhere in the
9 United States in the electric utility industry?

10 A What takes place?

11 Q The influence of the wholesale prices of one
12 on the wholesale prices of another?

13 A Yes, there was a lot of testimony by A.E.C.
14 and by other municipals in Alabama that they certianly
15 took into account what Alabama Power Company was charging
16 at wholesale and there was also testimony that Alabama
17 Power Company was quite concerned about the wholesale
18 rates charged by A.E.C., for example.

19 Q In terms of -- I'm sorry, I didn't follow you
20 in terms of what the municipalities were going to charge
21 at wholesale.

22 A What A.E.C. was going to charge at wholesale.

23 MR. MELVIN BERGER: Maybe we could get Dr. Wein
24 to define what A.E.C. is.

25 THE WITNESS: Alabama Electric Cooperative, a

mpb5

1 generating company which sells power at wholesale to
2 cooperative distribution members.

3 BY MR. REYNOLDS:

4 Q So then Buckeye would be a wholesale market
5 in this proceeding, is that correct?

6 A Buckeye is a company. What do you mean Buckeye
7 is a wholesale market?

8 Q Well, is it in a wholesale market, a separate
9 wholesale market?

10 A As I tried to indicate in my testimony, it's
11 very hard to know where, in terms of the data that I had,
12 to know where to put the different rural electric
13 cooperative distributors in the CAPCO area. Clearly,
14 some of them are and some of them are not and to the extent
15 that the rural electric cooperative distributors exist
16 in CAPCO markets, they do. There are none in CEE, but
17 there are certainly some in Toledo Edison's area and
18 there are some in Ohio Edison's area.

19 Q Why wouldn't they constitute a separate
20 wholesale market in the same way as A.E.C.?

21 MR. HJELMFELT: Objection.

22 CHAIRMAN RICLER: I don't believe he testified
23 that A.E.C. constituted a separate wholesale market.

24 Did you?

25 THE WITNESS: No.

b6

1 BY MR. REYNOLDS:

2 Q All right, why wouldn't the cooperatives of
3 Buckeye be a separate wholesale market in the same way
4 as each of the CAPCO companies constitutes a separate
5 wholesale market?

6 A For the same reasons I'm trying to explain again.
7 A distributor who is a member of Buckeye Pool is getting
8 wholesale power from a Company called Buckeye, which is
9 producing that wholesale power outside the CAPCO area
10 and in Ohio Company's Cardinal Plant that power is being
11 wheeled to all these distributors over the lines of
12 independent or investor-owned utilities.

13 Now, some of these distributors exist in CAPCO,
14 individual CAPCO Company territory and they are in the
15 individual CAPCO Company territory and insofar as they
16 are selling at retail they are in that particular retail
17 territory of that particular CAPCO Company. Insofar
18 as they are buying wholesale power from Buckeye, which
19 is in Ohio Power's territory, they are -- they're not
20 selling. Each of the distributors are not selling, Buckeye
21 is selling and Buckeye is not in the CAPCO Company
22 territory and Buckeye has very little influence over
23 the prices at wholesale which either Ohio Edison is selling
24 to a municipality or Ohio Edison is selling to anybody
25 else at wholesale.

b7

1 Q Then why aren't they a separate market? They
2 are buying wholesale, aren't they? Each of the distributors
3 is buying wholesale and they are buying it in the same
4 market that, for example, let's say Ohio Edison is buying
5 power at wholesale.

6 A The distributors are in the CAPCO territory
7 if they happen to be in the CAPCO territory as retail
8 sellers of electricity. Now the question is what is
9 the wholesale market? They are buying at wholesale,
10 aren't they?

11 Q That's right.

12 A And they are buying at wholesale from Buckeye,
13 right?

14 Q Right.

15 A And if a CAPCO distributor happens to be in
16 a Buckeye territory -- I mean in Ohio Edison territory
17 then the question we ask ourselves is this:

18 Do the prices at which they buy power from Buckeye,
19 are they influenced by the prices at which Ohio Edison can
20 sell power and the answer is yes, I think Ohio Edison,
21 that the prices at which they buy is influenced by the
22 prices which Ohio Edison would sell wholesale power. Ohio
23 Edison is trying to detach some and in my tables I made
24 some estimates of what I thought the Buckeye share of
25 these markets are and I put them in the markets, if I recall

1 correctly.

mpb8

2 MR. MELVIN BERGER: I believe in the beginning
3 of Dr. Wein's answer he may have misspoke again when
4 he referred to CAPCO distributors. Perhaps we can have
5 that read?

6 CHAIRMAN RIGLER: What did you mean by the CAPCO
7 distributors?

8 THE WITNESS: Well, I'm not sure in the context
9 of my answer. We had better read it over.

10 (Whereupon, the Reporter read from the record
11 as requested.)

12 THE WITNESS: That should be "if a Buckeye
13 distributor happens to be"

14 CHAIRMAN RIGLER: We'll take a recess at this
15 time.

16 (Recess.)

3B

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3C ebl

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CHAIRMAN RIGLER: On the record.

2

BY MR. REYNOLDS:

3

Q Let me ask you, Dr. Wein, if Buckeye distributors

4

are not permitted to buy at wholesale from any other

5

suppliers by the terms of their membership contracts with

6

Buckeye, wouldn't that put them in a separate wholesale

7

market for which other wholesale suppliers cannot compete?

8

A No, it doesn't put them in a different geographical

9

market and it doesn't put them in a different product market.

10

The only question here is whether Ohio Edison can capture

11

a Buckeye customer, a particular co-op in its area. It may

12

not be possible for them to capture this company for a

13

particular number of years, or this rural electric distri-

14

butor.

15

Q I can't hear a word you're saying.

16

A I say it may not be possible to capture this one

17

because there is a long-term contract.

18

But the major consideration again is whether the

19

price which Buckeye is charging that distributor reflects

20

the competitive influence of Ohio Edison and if it does, then

21

it is in that particular market.

22

Q Do you know whether or not it does?

23

A Well, again it is my opinion that it does.

24

Q Is Ohio Edison in its pricing of wholesale power

25

influenced by the price that Ohio Power sells wholesale power?

eb2

1 A Well, I have argued that it is not.

2 Q And what's the basis for that?

3 A It's in my testimony, and perhaps I can go through
4 it.

5 You're talking about wholesale power; is that
6 right?

7 Q Right.

8 A I'll go through that.

9 Q Can you give me an answer as to why it is you
10 think that Ohio Power's wholesale prices do not influence
11 the pricing of wholesale power by Ohio Edison?

12 MR. MELVIN BERGER: I believe Dr. Wein is giving
13 Mr. Reynolds his answer.

14 THE WITNESS: All right.

15 On page 131, in answer to Question 57, where I'm try-
16 ing to apply the principles which determine the relevant
17 geographic market -- and I made various distinctions there
18 between the captive wholesale market and the independent
19 wholesale market.

20 And I pointed out that the captive wholesale
21 market is about 95 percent, and I said no captive wholesale
22 market for firm power of a CAPCO company is open to capture
23 by another CAPCO company, and I give the reasons there.

24 Then, skipping down, I'm saying:

25 *Hence, at least 95 percent of the total

eb3

1 wholesale market is not subject to competition of
2 CAPCO companies with each other. For the same
3 reasons, no captive wholesale market is subject to
4 penetration by any other private utility such as
5 Ohio Power, for example. The only competition
6 that remains for wholesale for resale firm power
7 is the non-captive component, i.e., about five
8 percent of the total. The question which remains
9 is whether even the most vigorous competition by
10 the whole set of possible competitors for these
11 markets under present practices and structure of
12 the electric industry could be of such importance
13 that it would influence the rates in the total
14 wholesale for resale market, forcing each CAPCO
15 company to lower its implied rates to its dis-
16 tribution facilities. Given the present size of
17 these markets, such an eventuality is remote.

18 "Suppose: (a) Ohio Power was deter-
19 mined to capture all of Ohio Edison's 20 wholesale
20 for resale customers by rate competition and (b)
21 was willing, in order to do so, to build trans-
22 mission and subtransmission to reach them where
23 necessary; (c) that the Ohio Power Siting Commis-
24 sion would give approval to these new transmission
25 lines. The possibility of all these conditions

eb4

1 obtaining is itself very low. But suppose they did
2 obtain, and Ohio Edison lowered its rates to all
3 its 20 wholesale customers to meet Ohio Power com-
4 petition.

5 "Even if Ohio Power gained no Ohio
6 Edison noncaptive wholesale customers, Ohio Power
7 would certainly be a company with adequate resources
8 on the edge of the noncaptive wholesale market.
9 But how could this influence Ohio Edison to change
10 implied wholesale rates in its vastly greater
11 wholesale market? It would only do this if the
12 subsequent retail rates at which these noncaptive
13 wholesale customers resold at retail would be so
14 low as to result in the towns, villages and cities
15 in which Ohio Edison holds franchises to protest
16 to PUCO the retail rates at which Ohio Edison sold
17 retail power in their areas.

18 "In short, the leverage of Ohio Power
19 on Ohio Edison to change its captive market whole-
20 sale rates depends on whether Ohio Power (the
21 largest utility in Ohio) has so great a cost
22 advantage over Ohio Edison that wholesale rates
23 which it offered and which Ohio Edison met would
24 permit such a large reduction by the municipalities
25 in their retail rates that yardstick competition

eb5 1 would compel Ohio Edison to lower its rates, or
2 be compelled by PUCO to do so upon protest by
3 Ohio Edison's franchisors."

4 Then I give you a table.

5 "It further indicates that there are
6 significant. . . ."

7 And so on.

8 "Another reason militating against Ohio
9 Power offering extremely low rates is that Ohio
10 Power could not engage in such rigorous competition
11 which would cause Ohio Edison to lower its retail
12 rates as well as its wholesale rates without having
13 the same dire consequences of yardstick competi-
14 tion rebounding on it. This consideration, in
15 addition to possible ideological views (public
16 versus private power) helps to explain the agree-
17 ments, understandings or policies not to serve
18 wholesale customers in each other's service areas
19 involving Ohio Edison and Ohio Power, Ohio Edison
20 and CEI, Ohio Power and Toledo Edison, and
21 Toledo Edison and Consumers Power.

22 "In short, under present conditions, no
23 competition from private companies outside a CAPCO
24 company service area for noncaptive wholesale cus-
25 tomers exists; or if it does, it is not of sufficient

eb6

1 intensity to influence a CAPCO company to revise
2 its captive wholesale rates and thus extend the
3 relevant geographic market beyond the limits of
4 the retail geographic market."

5 That's my answer to that question, and it involved
6 Ohio Power explicitly and Ohio Edison, and I don't think I
7 can improve on it.

8 BY MR. REYNOLDS:

9 Q Let me ask you, Dr. Wein, you make reference to
10 captive market wholesale rates. What is a captive market
11 wholesale rate?

12 A I said an implied wholesale rate.

13 Q I believe you say at the top of 134:

14 "In short, the leverage of Ohio Power
15 on Ohio Edison to change its captive market whole-
16 sale rates. . . ."

17 A Well, if you read the distinction before that,
18 the wholesale rates are implied rates as I distinguished
19 and explained. A company such as Ohio Edison must perform
20 the wholesale function anyway, just as any other company
21 must, and it has a cost for so doing. And it is that implied
22 rate.

23 If you go to the answers to the Attorney General's
24 report you will see that they give different levels of costs
25 at the bus bar and down in effect to the wholesale level

eb7

1 at which they defined it, and that is a cost. So they have
2 a cost which is taken into consideration in setting the
3 retail rates which they themselves control. That is in
4 effect the wholesale, the captive wholesale rate.

5 Q And is the cost the same as the rate?

6 A Is the cost the same as the rate? No, but the
7 rate is some function of the cost I suppose.

8 Q Are these implied wholesale rates filed?

9 A I've already told you that implied wholesale rates
10 are not filed, but whether they're filed or not makes no
11 difference to the argument.

12 Q Let's remove the captive wholesale sales from
13 the wholesale market for a minute. In those circumstances
14 can you tell me what percentage of the wholesale market of
15 Ohio Edison and Toledo Edison would constitute municipal
16 systems and what percentage would constitute cooperatives?

17 MR. MELVIN BERGER: Could I have that question
18 read back, please?

19 (Whereupon, the Reporter read from the record
20 as requested.)

21 BY MR. REYNOLDS:

22 Q Let me clarify. What percentage would constitute
23 sales by investor-owned utilities to municipals and what
24 percentage would constitute sales by Buckeye to cooperatives?

25 A Well, I tried to make a rough estimate of that.

eb8 1 If you look at Table 4 on page 76, I guess, I couldn't--
2 When I made this table, though I tried, I couldn't get the
3 total amount that each of the co-op distributors had in each
4 of the CAPCO areas.

5 Now the co-op distributors would only be in Ohio
6 Edison and in Toledo Edison. They would not be in CEI or
7 Duquesne or Ohio Power. But I couldn't put them down by the
8 total amounts so I combined them and I made a rough estimate
9 just on the basis of looking to see where the headquarters
10 of the co-op distribution company was, and putting the sales
11 in -- putting that co-op in that particular CAPCO company's
12 territory.

13 Now the co-op may have had its headquarters in
14 Ohio Edison but sort of wandered over maybe into Toledo
15 Edison. I had no way of knowing. But in any case I've made
16 a rough estimate that they had 790 million kwh and the muni's
17 who are very small-- I'm trying to look at these numbers.

18 Q That figure is municipalities selling to other
19 municipalities, isn't it?

20 A Yes. I'm trying to look at-- You mean the 790?

21 Q No, the 3.5.

22 A No, that's not the right figure.

23 I have to go back to the other and look.

24 They're roughly about equal on my guess. They're
25 both very small.

eb9

1 Q What's roughly equal?

2 A The CAPCO's and the muni's, if I understand your
3 question.

4 Q You mean the co-ops and the muni's?

5 A I mean the co-ops and the muni's.

6 Q So you're saying the sales to the CAPCO muni's
7 is approximately equal to the sales by Buckeye to its co-ops?

8 A Well, I'm not sure I'm saying that. I have to
9 puzzle out these numbers and see what they do mean.

10 What I was saying I thought was that Buckeye's
11 co-ops who happen to be in Ohio Edison or Toledo Edison's
12 territory, that amount of power which is sold is somewhere
13 in the same order of magnitude as the amount which is sold
14 by Ohio Edison and Toledo to all its muni's.

15 Now I sort of have to puzzle through these numbers
16 to see whether that's reasonably close.

17 Q I'm sorry, I didn't hear that.

18 A I say I have to puzzle through those numbers to
19 see if it's reasonably close.

20 Q But if the numbers bore it out what you're suggest-
21 ing is that Toledo Edison and Ohio Edison have about one-half
22 of the noncaptive wholesale sales market?

23 A Yes. Those figures would be about right if they're
24 noncaptive but they're so small, a difference either way
25 could make a big shift in the percentage.

eb10

1 Q So Buckeye would have a significant percentage
2 of the noncaptive wholesale market?

3 A I think that would be right. Certainly Buckeye
4 has a significant percentage.

5 Q So if we were just to look at the noncaptive
6 wholesale market, Ohio Power then might be able to influence
7 the prices, the wholesale prices in that market that were
8 charged by Ohio Edison or Toledo Edison. Is that not right?

9 MR. MELVIN BERGER: Objection. I don't believe
10 he testified the noncaptive is a market -- noncaptive whole-
11 sale is a market.

12 BY MR. REYNOLDS:

13 Q Well, let me ask you, Dr. Weir, would you suggest
14 that the noncaptive wholesale sales would not constitute a
15 separate market?

16 A Yes, indeed. The whole nature of my testimony
17 is that it doesn't. It surprises me very much that you do not
18 understand that.

19 Q Well, let's assume that that was a separate market.
20 Let's assume that this Board were to find that the noncaptive
21 wholesale sales constituted a separate market. Would not,
22 in those circumstances, the wholesale prices of Ohio Power
23 influence the price that Toledo Edison or Ohio Edison would
24 charge in that market, or would you not expect that to be
25 the case?

eb11 1 A Suppose that the Board found that the noncaptive
2 wholesale market is a separate market? Okay?

3 Q That's correct.

4 A What's the next part of the question?

5 Q The question is whether or not you would then
6 expect that the wholesale prices that Ohio Power charged
7 would have an influence on the wholesale prices of Ohio
8 Edison and Toledo Edison in that market?

9 A No, I don't see how that follows. I just read a
10 whole argument which said it would not follow.

11 Q Isn't that what you say on 130 and 131 as to the
12 noncaptive wholesale market?

13 A Let me see if that's what I say.

14 (Pause.)

15 Where did I say what?

16 Q I'm sorry, 131 and 132.

17 A You mean the stuff I just read?

18 Q Yes.

19 A And what is it that I said there?

20 Q Let me ask you what you meant by this statement,
21 Dr. Wein. Look at 133, down 12 lines from the bottom, the
22 sentence that reads:

23 "Even if Ohio Power gained no Ohio
24 Edison noncaptive wholesale customers, Ohio Power
25 would certainly be a company with adequate resources

eb12

1 on the edge of the noncaptive wholesale market."

2 What do you mean by that?

3 A Exactly what I --

4 Q Doesn't that indicate it would be an influence
5 on the noncaptive wholesale market, on the prices that Ohio
6 Power -- I mean Ohio Edison would charge?

7 A Well, yes. What it's saying is that if they did
8 all the things which I said they were going to do, a, b,
9 and c, and they really wanted to and they lowered their
10 rates in the noncaptive, then they would be you see.

11 But whether this Board found that they were
12 separate markets or not is irrelevant to the question of
13 whether they would really influence it.

14 CHAIRMAN RIGLER: Would they have to do a, b, and
15 c --

16 THE WITNESS: Yes.

17 CHAIRMAN RIGLER: -- in order to influence that
18 market?

19 THE WITNESS: Yes. It seems to me that all those---

20 CHAIRMAN RIGLER: But you testified on other
21 aspects that the mere presence of a potential competitor
22 with the ability to do a, b, or c would have an influence
23 within that market.

24

25

3C

3D nml

1 THE WITNESS: (A) says they wish to capture the
2 markets, and they would under certain conditions.

3 (B) says they are willing to build transmission
4 and subtransmission to do that.

5 (C) says the Ohio Power Siting Commission would
6 give them all this.

7 Now if the Ohio Power Siting Commission will not
8 give them this then it doesn't matter what they would like
9 to do, that is the first condition.

10 Secondly, they might stand there, but if the cost
11 of transmission and subtransmission to reach all these
12 were too expensive, they wouldn't do it.

13 So it gets down to saying in this particular
14 state, in this particular situation, a substantial competitor
15 standing on the edge of the market would have to meet these
16 three conditions.

17 CHAIRMAN RIGLER: And you are saying the only
18 reason why it is not regarded as a potential competitor is
19 because of the improbability of being able to meet those
20 conditions in the State of Ohio?

21 THE WITNESS: Yes, the improbability.

22 But now I go on, because you see, this
23 discussion is in the light of the whole wholesale market, not
24 solely that part of it which is known as the noncaptive.

25 Now if that were the case and we were to forget

mm2

1 about the captive wholesale market, if these three conditions
2 were met, it would seem to me that they would be an influence
3 on the prices of the wholesale. But then --

4 CHAIRMAN RIGLER: And wouldn't that in turn
5 influence the competition for the captive wholesale
6 customers?

7 THE WITNESS: Precisely.

8 Then I go back and say, well even if this happened
9 it would seem like it was a substantial competitor on the edge
10 of the market. But then when you take the rebound of that,
11 namely if Ohio Edison did it, they would then be stuck in their
12 own retail market and in their own wholesale markets.

13 And given all these considerations and given the
14 size of it, the likelihood of this ever coming to pass is
15 remote. That is essentially my argument, that it just
16 doesn't pay for Ohio Edison or Ohio Power to go and knock
17 off five of Ohio Edison's wholesale customers if, in doing
18 that, it leads them to have serious problems in a much
19 vaster structure, which they are concerned with.

20 And the same thing, of course, would hold for
21 Ohio Edison.

22 Now I have seen some documents which were given
23 to me which I just saw, just a week ago, or a couple of weeks
24 ago when they were sent to me, which seemed to me just to
25 indicate this sort of thing taking place between Ohio Power and

mm3 1 Ohio Edison.

2 Now I wish I had had the documents when I wrote
3 the testimony, but I did not have those documents.

4 BY MR. REYNOLDS:

5 Q Are you indicating that competition between Ohio
6 Power and Ohio Edison is not a practical thing?

7 Is that what you are stating?

8 A That is not what I am stating.

9 It may be a very practical thing if they would
10 do it.

11 Q Do you know if Ohio Power has transmission lines
12 across Ohio Edison's service territory?

13 A Yes, it does.

14 Q What about across Toledo Edison's territory?

15 A It has some there, too.

16 Q Do you know how Ohio Power's wholesale rates
17 compare with Ohio Edison's wholesale rates?

18 A Well I gave a little table, and of course these
19 are not really the comparisons of the rate structures because
20 I really don't know whether they are exactly the same
21 customers.

22 But Table 5 will show you what they are in terms
23 of the average revenue per kwh. It is a very rough indication
24 of rates which you would have to get by examining contract-
25 by-contract and things of that nature.

mm4

1 But all in all it seems that Ohio Power is
2 roughly about 10 percent in the last year -- in '73 which
3 was the last data I had, roughly about 10 percent higher than
4 Ohio Power.

5 CHAIRMAN RIGLER: Dr. Wein, I have a good deal
6 of difficulty understanding why Duquesne is a potential competi-
7 tor and influences the market in Pitcairn, where it has no
8 franchise to serve customers. But on the other hand Ohio
9 Power is not regarded in the same light in the area where
10 its lines criss-cross with those of Ohio Edison.

11 THE WITNESS: Well, let me put it to you this way.

12 Duquesne has --

13 CHAIRMAN RIGLER: That is the way I read your
14 testimony. Is that right?

15 THE WITNESS: Yes.

16 Duquesne must be able to influence in Pitcairn
17 because --

18 CHAIRMAN RIGLER: Because you said at some point
19 the voters will react, and despite the fact they have a
20 franchise that exists right now, that that franchise is going
21 to be sensitive to the rates being charged and the competitive
22 pressures being offered by Duquesne.

23 THE WITNESS: Yes.

24 CHAIRMAN RIGLER: Now you tell me that Ohio Edison
25 on the other hand does not respond to those same pressures,

mm5 1 when your Table 5 indicates that there is a rate differential
2 of almost 10 percent.

3 THE WITNESS: Yes. And I think the reasons for
4 that is that in the first place, Ohio Power and Ohio Edison
5 do not, simply because they refuse to engage in competition
6 with each other, do not capture each other's customers.
7 And therefore Ohio Edison doesn't have to respond to the
8 lower rates of Ohio Power. It is in effect Condition (A).

9 MR. SMITH: What was that you said?

10 THE WITNESS: That that was in effect Condition (A).

11 BY MR. REYNOLDS:

12 Q Why is it that Ohio Edison and Ohio Power would
13 not engage in competition with each other?

14 A I think you would have to ask them, but I think
15 they don't wish to, as it were, spoil the market. This is a
16 common reason.

17 Why should they, that is the point. They each
18 have their territories, they don't want to engage in
19 rate wars. The only consequence of that is that their rates
20 would go down for all of them, so why should they do it?

21 Monopolists are very happy to come to amicable
22 agreements with respect to markets and shares.

23 CHAIRMAN RIGLER: If Ohio Edison and Ohio Power
24 were being aggressive competitors would they influence the
25 wholesale rate schedules of each other?

mm6

1 THE WITNESS: Yes. I think if they were aggressive
2 competitors they would influence their wholesale rate schedules
3 and also influence their retail rate schedules which is a
4 heck of a lot more important.

5 BY MR. REYNOLDS:

6 Q Looking at Table 5 for a minute on 134, do you say
7 that the prices of Ohio Edison, Ohio Power and Toledo Edison
8 do or do not tend toward equality as you use that term on
9 page 0110 of your testimony?

10 A Well if you look at 1969, the differential is 4
11 percent; in 1970 it is no different at all; in 1971 Ohio
12 Power goes up by roughly 6; in 1972 Ohio Power is 4 percent
13 higher; in 1973 Ohio Edison is 10 percent higher than Ohio
14 Power, so you get a swing between those two companies.

15 If you look at Toledo Edison there doesn't seem
16 to be any tendency to equality at all, they are always
17 higher.

18 If you look at Dayton Power & Light you see quite
19 a difference.

20 If you look at Columbus and Southern, they are
21 lower than everybody, and yet they are operating right next
22 to Ohio Power.

23 If you look at Cincinnati Gas and Electric, they
24 are higher than everybody, and yet they are not far from --

25 Q What about Toledo Edison and Ohio Edison?

mm7

1 A Toledo Edison and Ohio Edison?

2 Q Yes.

3 A Well, Toledo Edison in 1969 is about
4 7 percent higher; in 1970 it is about 9 percent; in 1971 it
5 is 11 percent higher; and in 1972 it is about 10 percent
6 higher; and in 1973 it is about 9 percent higher or 8 percent.
7 NOW that does not seem to me to be much tendency.

8 I think this really shows -- you must bear in mind
9 the caveat that I have that these are just average revenues
10 per kwh of wholesale municipal total requirement customers
11 and you would have to look at the rate structure to see
12 really whether they were tending to equality.

13 But I think this shows they don't tend to
14 equality. There are differences between the two companies
15 which persist, particularly between Toledo and Ohio Edison;
16 between Toledo and Ohio Power and for the others there. There
17 just seems nothing of this nature. You couldn't get Columbus
18 and Southern to be charging those rates if the other fellows
19 were responding to Columbus and Southern.

20 You couldn't get Dayton and Cincinnati as high
21 as they are and yet they abut on the territories of some
22 of the companies there. Columbus and Southern.

23 Q Did you look at the rates of these companies?

24 A Which companies?

25 Q The wholesale rates.

mm9

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A Of which ones?

Q The ones that were set forth on 5.

A I looked at some of the Toledo and I looked at some of the Ohio Edison. I did not look at anybody else's. That is all I had, actually.

And there are, you know, within Toledo Edison you get a municipal wholesale rate which will look pretty uniform within Toledo's territory. But even within Toledo there are slight differences and they are somewhat different than Ohio.

Q You say there are differences in the wholesale rate within Toledo Edison's territory?

A Yes. If you look at the individual wholesale contracts you will find some slight differences from municipal to municipal.

Q Are you talking about differences between partial requirements and full requirements?

A That is one of the differences, yes.

Q Are there any other differences?

A Well I would have to go through the contracts and look at them.

Q Well you indicated there were other differences. Do you know of any?

A I said -- I just said with respect to the partial, there certainly are differences.

mm9

1 Now you are asking me with respect to those,
2 where they are full requirements and I said I would have to
3 go through and look. I don't memorize rate schedules in my
4 head.

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3E

1 Q In your view, Dr. Wein, in defining relevant
2 wholesale market does the fact that Buckeye is outside --
3 that the Buckeye generation is outside the CAPCO area
4 have any bearing on whether the co-ops who receive power
5 are included or excluded from the market?

6 A Really it doesn't matter where the generation is.
7 It could be in Timbuktu if you had transmission that was
8 capable of transporting power there.

9 Q And would that be true of any other generating
10 source that transmitted power into the CAPCO area, wholesale
11 power?

12 A Would what be true?

13 Q That they would be included in the market
14 notwithstanding the fact that the generation was outside
15 the market?

16 A What is being included in the wholesale market
17 are the wholesale distributors who happen to be in the
18 CAPCO territory's markets. That's what's being included.

19 Q And they could receive their power from
20 anywhere?

21 A Yes, insofar as its relevance on whether to
22 take a particular area for a wholesale market. Obviously,
23 practically they couldn't receive power from anywhere.

24 Q Why do you not include in your analysis, Dr.
25 Wein, a captive retail market?

4pb2

1 A A captive retail market? It would seem to me
2 that is not appropriate given the nature of the retail
3 sales.

4 Q What is it about the nature of the retail
5 sales that makes it inappropriate to characterize them
6 as captive?

7 A They are all captive. There are no non-captive
8 wholesale markets. They are all captive. They are either
9 captive by a municipal or they are captive by an investor
10 or something of that nature, but the captivity there is
11 not the essence of the distinction. It's the bottom end
12 of this integration.

13 Q Is there a captive wholesale market for the
14 bulk power supplied to the cooperatives in Ohio?

15 A Is there a captive --

16 Q Wholesale market?

17 A For the cooperatives?

18 Q Yes.

19 A Yes, the co-ops insofar as they have -- no, there
20 isn't. I mispoke. There is no captive in the same
21 sense. There are long term contracts between Buckeye and
22 the distributors, but it is not the same company as it
23 would be in the case of Ohio Edison or Toledo.

24 Q Is there a captive wholesale market for the
25 bulk power supplied to WEPL's customers?

mp3

1 A Yes, I think so insofar as MELP is a generating
2 company and performs a wholesale function and a retail
3 function.

4 Q And would that also be true of the wholesale
5 market in Pitcairn?

6 A I'm not so sure about Pitcairn, it's so small
7 that I'm not sure that I would say that Pitcairn is
8 anything but a small distribution system of a very small
9 amount when it had generation. Pitcairn is much too small
10 for this distinction to have much sense.

11 Q Do you consider the retail area served by the
12 Applicant to be subject to active on going wholesale
13 competition?

14 A Do I consider the retail areas --

15 Q Served by the Applicants to be subject to
16 active ongoing wholesale competition?

17 A I'm not sure that I get that question.

18 Do you mean if the CEI sells to, say, Lorain,
19 if it does sell to Lorain, are you asking me whether
20 Lorain is subject to all the retail cities in which CEI
21 is enfranchised is subject to wholesale competition?

22 Q I am asking whether there is competition for
23 the bulk power supply to Lorain?

24 A No, there isn't any competition for it if Lorain
25 happens to be a city in which say CEI is serving.

mpb4

1 Q Let me ask you this, Dr. Wein, I want to make
2 sure I understand what you're saying:

3 Is it not true that in your captive wholesale
4 markets you are counting the retail customers of the
5 Applicants twice for assessing market power?

6 A I'm not counting --

7 Q The ones at the retail level and the ones at
8 the wholesale level?

9 A I'm not counting the customers twice, what I'm
10 simply saying is here you'll have retail sales. These
11 retail sales had to have come through a wholesale function,
12 an economic wholesale function and CEI performs it and
13 I'm not counting the customers twice. CEI has got this
14 amount of wholesale sales which it then sells at retail
15 to a whole bunch of people, a whole bunch of customers.
16 So I don't know what there is in double counting.

17 Clearly, the amount of Kwh will obviously
18 come very close except for such losses as may take place
19 in going from one to the other, but it is a separate
20 organizational level which can be distinguished.

21 Q Why is it that you are of the view there has
22 to be a separate wholesale function in that situation?

23 A Well, I don't think you can take, say, power
24 off a generating plant which might go over a 345 line and
25 then go down to a 138 line and then go down to a 69 line and

mpb5

1 finally comes to some substation where you have some step
2 down transformers which then go into the distribution
3 system. At some point you've got to perform that function;
4 that is essentially the wholesale function.

5 Now, it could have been done by Cleveland
6 Electric Company, if they were minded not to have the
7 retail function they would have then sold the power at
8 the point where a particular city had its equipment to
9 take that power and funnel it into its distribution. It
10 has to be performed, the only question is whether it is
11 performed by one company or whether it is performed by
12 two entities. In the case where they are vertically
13 integrated it's performed by one.

14 Q Doesn't Pennsylvania Power serve its customers
15 directly from distribution at 41 -- its wholesale customers
16 directly at 4160 volts?

17 A 4160 volts?

18 Q Yes.

19 A What about it? Suppose it does?

20 Q Well, what is the wholesale function of that
21 situation?

22 A At some point it had to get that voltage, it
23 wasn't coming in at 4160, was it? It was coming in at
24 some very much higher voltage. What is considered trans-
25 mission, subtransmission and so on is going to depend.

mpb6

1 Q So both Pennsylvania Power and the wholesale
2 customer, they are both performing the wholesale function,
3 is that right?

4 A It depends on what the customer is, it depends
5 on who the customer is. If it is a large industrial
6 and Pennsylvania Power says, Okay, you take it at 4000 volts,
7 you'll get paid less. The customer itself then says, Okay.
8 I'll put in my own equipment.

9 Q Let's talk about a muni.

10 A Okay.

11 Q What about in that situation?

12 A If the munies, for example, as many of them
13 wanted to get the power delivered at 138, that meant that
14 they would get a lower price and then they would perform
15 part of that function, but the wholesale function is
16 where ever. It's not determined by voltage particularly.
17 That will vary, you'll have 138, you might have 69, you
18 may have 37, you may have 12, depending on the size of the
19 system, the size of the customer and so on, but when you
20 get a delivery from high voltages, let's say coming
21 off 345 down to 138 and an industrial customer or a muni
22 says, I want to buy it at that point, that's where that
23 wholesale function starts. They could have said, I want
24 to buy it at 69, they could have said, I want to buy it
25 at 38. It all depends upon how much and how big that

mpb7

1 distribution entity is and what money it wants to put
2 into this equipment to take the load coming in at high
3 voltages and transform it down to its own distribution
4 system.

5 There is no voltage which defines the wholesale
6 function, there is no uniform varying voltage. Historically
7 it has usually been when a company started out 138 was
8 very big, that was considered the backbone transmission
9 and then you build much larger and then it becomes
10 subtransmission. Alternatively, 69 may be viewed by some
11 systems as subtransmission.

12 Q Let me ask you, Dr. Wein, if an industrial
13 customer takes that 69 kv and a municipal customer at
14 4160, which one is the wholesale customer?

15 A Neither is a wholesale customer. I just tried
16 to explain to you that it doesn't depend upon the voltage.
17 The muni is a wholesale customer and the industrial is
18 a retail customer because that's how you classify them in
19 your tariff and he's performing a great many functions
20 on his own.

21 Q And those functions that the munies are performing
22 are wholesale functions, aren't they?

23 A Yes.

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1 Q But that would be a different function than what
2 the industrial performs. Is that correct in your view?

3 A Not necessarily. If the industrial were taking
4 it at, say, 69 Kv, he happens to be a very large customer,
5 as large, let's say, as a muni taking it at 69 Kv. He's
6 taking that power and then doing with it what he has to do
7 with it.

8 Maybe he steps it down to 2,000 volts. I don't
9 know. It depends on the nature of his equipment and what
10 purpose he's using it for, and so on. But he's got to use
11 some equipment to take it at that load and use it for his
12 equipment, whatever it happens to be.

13 He's performing those functions. He happens to
14 be an industrial customer. Therefore he's classified at
15 retail. He might be much larger than half the muni's the
16 company serves.

17 Q If you had a vertically integrated company that
18 sold only at retail with no wholesale customers would you
19 still define the sales of that company as being in the
20 wholesale market as captive wholesale sales?

21 A Yes, I think I still would make the distinction
22 of captive wholesale sales because it has to perform this
23 type of wholesale function.

24 Q And that would be a separate wholesale market in
25 that case?

eb2

1 A Separate from what?

2 Q From the retail market.

3 A Yes, I think it's separate from the retail market.

4 Q All right.

5 Would you agree, Dr. Wein, with the proposition
6 that relevant product markets are defined by substitutability;
7 that is, by two items to be placed within the same product
8 market, they must be good economic substitutes for one
9 another?

10 A Yes.

11 Q All right.

12 A I think I might accept that.

13 Go ahead.

14 Q Now you include reserve sharing, mutual emergency
15 support, maintenance support, economy energy, short-term
16 capacity sales, unit power sales, joint capacity planning,
17 and joint ownership within the relevant product market you
18 have labeled as the regional power exchange market. Isn't
19 that correct?

20 A Yes.

21 Q Did you not testify in the Alabama proceeding
22 that the product in the regional power exchange market is
23 firm electric power?

24 MR. MELVIN BERGER: Objection. Irrelevant.

25 THE WITNESS: What?

eb3

1 CHAIRMAN RIGLER: Repeat the question.

2 MR. REYNOLDS: I'll rephrase the question.

3 BY MR. REYNOLDS:

4 Q Is it your view that the product in the regional
5 power exchange market is firm electric power?

6 A No, I didn't say the product in the regional power
7 exchange market is firm electric power.

8 What I said was the regional exchange market
9 consists of the factors of production necessary to produce
10 firm electric power, the factors of production.

11 Q All right.

12 A That's what they're producing, all the inputs
13 which themselves do not constitute end markets.

14 Q Where did you first hear the term "regional power
15 exchange market"?

16 MR. MELVIN BERGER: Objection. Irrelevant.

17 CHAIRMAN RIGLER: Sustained.

18 BY MR. REYNOLDS:

19 Q You do not consider economy energy and joint
20 ownership of units to be substitutable, do you?

21 A No.

22 Q All right.

23 Let me ask you then on what basis you place them
24 in the same product market?

25 A Well, let me explain that.

eb4

1 I don't consider axles and engines in an auto-
2 mobile to be the same thing or substitutable for one another
3 but they are important inputs in making an automobile.

4 So you're concerned with the product which
5 is firm bulk power, firm bulk power which is what every
6 generating company is trying to produce at lowest cost, or
7 the particular ingredients, all the various options which
8 go to make firm bulk power a part of that particular market.

9 Now that doesn't mean, for example, that coal
10 is part of that market because coal is a separate market in
11 and of itself, though coal is obviously a factor of produc-
12 tion in a generating unit where you then make the level of
13 aggregation to include the generating unit and not neces-
14 sarily the coal.

15 The emergency energy, economy energy, and other
16 forms of wholesale or other forms of bulk power trans-
17 actions which are necessary and which are ingredients and
18 options are part of the same market. That doesn't mean each
19 one is substitutable for the other, any more than we define
20 a hardware store which consists of maybe 25,000 different
21 items and we're saying every item is substitutable in it.

22 But it's certainly reasonable in economics and
23 in antitrust considerations to define that whole business
24 of hardware stores as a line of commerce. Well, all these
25 options are necessary and therefore the market which enables

eb5

1 you to get them is a regional power exchange market.

2 I'm saying very much what Mr. Hughes says.

3 Q Would you include a partial purchase wholesale
4 transaction in the regional power exchange market?

5 A Well, I suppose one could if one wanted to do
6 that. I don't see that that is the form of it.

7 Now if you look at, for example,-- Well, let me
8 take it right here.

9 If you go through this study, for example, on
10 power pooling rates--

11 Q Which study are you referring to?

12 A The one I referred to in my testimony which has
13 been introduced in evidence. It's Power Pool Rates done
14 by three people from the CBI Company.

15 If you look at the kinds of things which are in
16 this document, the sorts of power transactions which take
17 place, you're not going to find partial firm requirements,
18 you're not going to find wholesale firm power. You'll find
19 short-term power, you'll find spinning reserve service,
20 you'll find emergency service, you'll find scheduled main-
21 tenance power, you'll find economy service, economy capacity,
22 and o on. But you won't find wholesale firm power and you
23 won't find whether it's partial or full. You will not find
24 that as a typical ingredient of transactions in the
25 regional power exchange market.

4b6

1 Now you might-- I mean some company might be
2 so hard up and for so long a period of time that it might go
3 to somebody else and say "Sell me wholesale firm power of a
4 certain amount," in which case it could be done. But if you
5 are a generating entity, if you want to generate your power,
6 you generally are not looking for that sort of thing. You're
7 looking for capacity and these other power transactions.

8 Q So you would disagree --

9 CHAIRMAN RICLER: Let the record show that the
10 witness is referring to Department of Justice Exhibit 588
11 in his last answer.

12 THE WITNESS: Yes.

13 BY MR. REYNOLDS:

14 Q Then you would disagree with Dr. Hughes on the
15 matter of partial purchase wholesale transactions being
16 included in the regional wholesale market?

17 A As I said, if it is ever included it's certainly
18 an extremely infrequent thing, and this study which has
19 studied-- Let me see how many pools are studied here. I
20 think there are 15 pools.

21 It's a study of 15 pools and you don't find
22 wholesale firm power.

23 Now what Hughes was doing was saying I'm concerned
24 with bulk. Well, bulk power-- Well, it's true that wholesale
25 firm power, partial or full, is bulk power but that's not a

eb7

1 good reason I think to put it in the power exchange market.

2 Q What is limited term power?

3 A Well, I could give you the definition if you want.

4 "The majority of the pool responding
5 to the survey provided some arrangements for the
6 delivery of limited term power. This class of
7 power transaction is defined in the questionnaire
8 as capacity and energy reserved for periods nor-
9 mally covering a month or more."

10 Q So you would consider limited term power trans-
11 actions to be within the power exchange market?

12 A Yes.

13 Q How long would a limited term purchase have to be
14 before it becomes a partial purchase of wholesale power?

15 A It's not the term which is the only thing; it is
16 the degree of firmness which counts. And I will now read
17 you what it says about that.

18 "The relative firmness for delivery
19 of limited term power is equal to that of the
20 supplier's firm customers for three pools, 8, 12
21 and 13."

22 Those are the names of the pools.

23 "In sharp contrast, this delivery would
24 be the first firm load shed for two of the pools."
25

eb8

1 Well, it is certainly not those, wholesale
2 firm power.

3 "One pool based firmness of supply upon
4 the ratio of total forced outages to capability
5 of the largest unit on the supplying system. . . ."
6 at cetera. The rest it doesn't say.

7 For three pools the degree of firmness is the same
8 as the supplier's firm customers. The question there is
9 whether we go on indefinitely, and the answer is No, it
10 would not go on indefinitely because then the pools, the
11 companies who are doing that can be quite annoyed because
12 they're selling limited term power at a lower rate than
13 they're selling wholesale firm power and they don't want,
14 as they put it, systems to lean upon them, i.e., "Sell me
15 wholesale firm power for five years but charge me limited
16 term power."

17 So there are both those things involved, the
18 extent of the contract, the fact that the rate is lower, and
19 the degree of firmness varies.

20 CHAIRMAN RIGLER: You're saying that the regional
21 power exchange market is made up of a combination of
22 elements that enable you to come out with the end product?

23 THE WITNESS: Yes.

24 CHAIRMAN RIGLER: All right. Now go back to your
25 hardware store example.

eb9

1 THE WITNESS: Yes.

2 CHAIRMAN RIGLER: You said that in a hardware
3 store where you stock a variety of items that these items
4 in toto might make up a retail hardware store market.

5 THE WITNESS: Line of commerce, yes.

6 CHAIRMAN RIGLER: Line of commerce. All right.

7 But is it likely that each of these hardware
8 stores would have the identical elements in that line?

9 THE WITNESS: No, they don't necessarily have to
10 have them.

11 CHAIRMAN RIGLER: And is that the analogy you're
12 drawing here?

13 THE WITNESS: Yes. They can have a variety of
14 different things depending upon the specific nature of the
15 firm involved.

16 CHAIRMAN RIGLER: But not every store would offer
17 the identical product line with the other?

18 THE WITNESS: That's right.

19 CHAIRMAN RIGLER: So you could not go to a
20 particular store and count its items and say "This defines
21 the market"?

22 THE WITNESS: Right. It's the whole bundle and
23 the bundle need not necessarily be the same.

24 CHAIRMAN RIGLER: We'll take a ten-minute break.

25 (Recess.)

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1 CHAIRMAN RIGLER: On the record.

2 BY MR. REYNOLDS:

3 Q As I understand your testimony, Dr. Wein, you
4 would include unit power purchase in the regional power exchange
5 market, but you would not include partial purchase wholesale
6 transactions.

7 Is that right?

8 MR. MELVIN BERGER: Can I ask what the reference
9 is on that statement, Mr. Reynolds?

10 MR. REYNOLDS: I believe he just testified to
11 that effect.

12 MR. MELVIN BERGER: Oh, I thought you were referring
13 to his written testimony.

14 THE WITNESS: I certainly would include unit power
15 in the regional power exchange market. I say I would not
16 necessarily exclude the other. I am just trying to say it
17 seems to me a very infrequent thing to appear in that market.

18 As I went through the FPC forms I could not find
19 any exchanges between the CAPCO utilities which were
20 entitled firm. That is my recollection.

21 BY MR. REYNOLDS:

22 Q Well, are the two characteristics different
23 so there is a reason to put one in the regional power exchange
24 market and not to include the other in the regional power
25 exchange market?

A Yes, I think there is difference.

For example, the price would be a very major difference.

Q I'm sorry, I can't hear what you are saying.

A Price would be a very major difference.

Q And what is there about the price that would indicate to you that the unit power purchase should be put in the regional power exchange market, whereas the partial wholesale purchase should not be?

A Well it seems to me that the unit power purchase is the purchase of capacity of a particular generating unit, and presumably this capacity goes at the generating cost plus some charge for wheeling of this. And that is it.

Whereas if I were buying wholesale firm power from an investor-owned utility, there would, I think, be a higher price in general for that kind of transaction. In short, the wholesale firm product is the end product you might come out with. It is not the kind of input that you put in. That is what you are trying to make is firm power that you can sell, ultimately at retail as firm power with a given degree of reliability.

With unit power you don't have any given degree of reliability. If the unit goes down you won't get it.

Q Well would you think unit power and the partial firm power are substitutable?

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You mean firm power, wholesale firm power?

Q Partial purchase power and unit power, are they substitutable?

A Partial purchase power doesn't mean anything.

Do you mean it is firm or not firm?

Q It is firm.

A Okay.

And it is sold under a wholesale schedule?

Q Right.

A I don't think they are substitutable for unit power.

Now if I am interested in coming out as a self-generating unit and making wholesale firm power, I would try to make it as economical as I could.

Q If the CAPCO companies jointly bought coal, would that be a transaction in your view that would be within the regional power exchange market?

A No.

Q Why is that?

A I thought I explained it in my previous answer.

CHAIRMAN REGLER: I did, too.

BY MR. REYNOLDS:

Q If they jointly bought uranium, would that be a transaction within the regional power exchange market?

A No.

mm4 1

2 Q Suppose that electric utilities exchange contracts
3 for uranium enrichment, would uranium enrichment be in the
4 relevant -- in the regional power exchange market?

5 A No.

6 Q Is it not the case, Dr. Wein, that the way you
7 defined your product markets, unit power and economy power
8 are more substitutable than unit power and wholesale power?

9 A Will you state that again.

10 Q Is it not correct that the way you have defined
11 your regional power exchange market, unit power and economy
12 power would be more substitutable than unit power and
13 wholesale power?

14 A No, no.

15 It doesn't follow from what I am saying that they
16 are more substitutable.

17 Q Well now, why is that if you put unit power and
18 economy power in the same market but you won't put wholesale
19 power in that market?

20 A Because I thought I explained that numerous
21 times.

22 If I am interested in getting the most economical
23 firm power that I can produce, I have a wide variety of options
24 depending upon my particular conditions and so on. AND I
25 would try to combine them in such a way that I get the
lowest possible cost for firm power that I can sell as

mm5

1 firm power ultimately down to the retail level. That is the
2 business I am in, in generating.

3 Now in doing that, the economy power happens to
4 be one of the options which I can make use of if I need it.
5 Of course, I always usually do need it, and unit power is
6 another way. But I wouldn't buy wholesale firm power in
7 order to be a seller of wholesale firm power. I want to be
8 a producer of wholesale firm power.

9 And so therefore, economically, I would have to
10 pay a higher price because it is firm and because it is
11 dependable and because it is there for the length of time
12 that I want.

13 If I were doing that I would not be making power,
14 I would not be generating. I would simply be a wholesale
15 customer buying wholesale firm power.

16 CHAIRMAN RIGLER: Suppose the wholesale firm
17 power were public preference power?

18 THE WITNESS: Then that would be an option. If
19 the wholesale firm power were public preference power and it
20 were lower than what I could produce as a generator, I would
21 not be in the generating business and say, okay, I am now
22 just going to buy that and forget about all the others.

23 And if I could be completely satisfied in my
24 requirements by public preference power which would be
25 given to me wholesale and firm, then I would not go into the

mm6 1 generating business if that were the option.

2. If you go back to that stage where an entity is
3 considering what should I do in order to get wholesale firm
4 power which I wish to sell to retailers and he had before
5 him the option of generating it or buying and generating it
6 with all the implications of that, or buying it from a
7 public preference system and every one of his generating
8 options was inferior to wholesale firm power from the public
9 preference company, if he were rational he would not go into
10 generation, he would simply be --

11 CHAIRMAN RIGLER: Unless he couldn't get enough.

12 THE WITNESS: Unless he couldn't get enough. I
13 am assuming, of course, he could get what he needs.

14 BY MR. REYNOLDS:

15 Q What if the wholesale rates from a private
16 investor-owned utility were lower than what the purchaser
17 could generate the power for?

18 A What about it?

19 Q Then would the wholesale power be in the regional
20 power exchange market?

21 A No, it wouldn't be in the regional power exchange
22 market. It just would mean whether the wholesale customer
23 has looked at this and said I can't really generate my power,
24 or what I need as cheaply as I can get it by buying it
25 wholesale firm, I then become a wholesale customer and I

1 am not in the regional power exchange market. I am not
2 interested in economy energy, not interested in unit power,
3 not interested in surplus power, not interested in any of
4 these particular types of power. I have made that decision.

5 Q How do you distinguish the lower cost
6 wholesale power purchased from an investor-owned utility
7 and the preference power purchase?

8 A I did not distinguish them at all.

9 Q So in neither case would that be in the regional
10 power exchange market?

11 A No.

12 Q I see.

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1 Q Is that because you would not consider that
2 an available option that would be open?

3 A Available option for what purpose?

5:00

4 Q For the firm power supply of -- well, the firm
5 power supply to Southern Retail.

6 A I thought I already explained that. I'll be
7 glad to go over my ground, if you wish.

8 Q Is it your testimony that would not be an
9 available option?

10 A No, that's not my testimony that it's not an
11 available option. It's not an option in the regional
12 power exchange market.

13 Q It's an option but not one that's in the
14 regional power exchange market?

15 A You know, I've got lots of options. One option
16 I have is not to go into the power business at all. Lots
17 of companies in the United States exercise that option.

18 Q But you did say that the end product for the
19 regional power exchange market was firm power for retail?

20 A And wholesale.

21 Q Did you mean to say that before too?

22 A Of course. You know, I have explained that
23 nobody is in the wholesale market unless he's got a retail
24 market which they are going down to other than, as I mentioned
25 before, some of the public power systems.

1 Q Dr. Wein, let me ask you this:

2 Do you know whether or not bulk power supply
3 studies aimed at evaluating alternative methods of obtaining
4 firm bulk power supply in the future normally consider
5 both firm wholesale alternatives and various means of
6 obtaining dependable but non-firm capacity?

7 A I suppose it depends on who is commissioning
8 such a study.

9 Q Do you know if the wholesale customers of
10 Ohio Edison commissioned such a study?

11 A Whether they should go into their own generation
12 or buy it wholesale?

13 Q As alternatives.

14 A I don't know.

15 MR. SMITH: Well, you testified that these are
16 workable options several times.

17 MR. REYNOLDS: But he has also indicated they
18 are not in the same market.

19 BY MR. REYNOLDS:

20 Q On page 99 of your prepared testimony you
21 state that a pool is a market because energy flows to it
22 from the members and it's paid for according to predeter-
23 mined agreement between the members.

24 Does there have to be an interchange agreement,
25 in your view, for there to be a regional power exchange

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1 market?

2 A I don't know as to the legal requirements.
3 All I'm saying is that pools do have prices that they
4 assign to each of these things. They usually know what
5 they are, they usually agree to it. They may not have a
6 formal agreement.

7 Q Well, if there were not an interchange agreement
8 would you define the market differently?

9 A No, I wouldn't define the market differently
10 if there were not an interchange agreement. All I'm saying
11 is that it's a market because energy flows to and from
12 the members and is paid for according to a predetermined
13 agreement between the members. Now, whether this agree-
14 ment is oral or is in the form of an interchange contract,
15 the details in the interchange contract and so on, the
16 people know what they're buying and what they are paying
17 for. They may pay for it in dollars, they may pay for it
18 in kind. In other words, you send me some power and I'll
19 send you back the same amount and type of power as
20 reimbursement.

21 Q Well, do you know whether any of the CIPCO
22 companies have an interchange agreement with Consumers
23 Power?

24 A I don't know whether they have an interchange
25 agreement between Consumers Power or not, but I know that

mpb4

1 some Consumers Power power went over CAPCO transmission.

2 Q Do you know if any of them have an interchange
3 agreement with Ohio Power?

4 A If you mean by an interchange agreement a contract
5 for which they have filed either with themselves or with
6 the Public Utility Commission of the state of Ohio
7 or with the FPC, no, I don't know whether they have that
8 kind of legal document. I think insofar as the FPC
9 rules are they have to file that sort of an agreement, or
10 at least a rate or whatever.

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1 Q Let's suppose that Toledo Edison interchanges more
2 power with the Michigan Pool than it does with any other members
3 of CAPCO or even all the other members of CAPCO combined.

4 IN that situation, would you consider the Michigan
5 Pool to be within the regional power exchange market?

6 A No.

7 Q Why not?

8 A You mean within the geographic definition as I
9 defined it where I am saying it is the entire extent of the
10 CAPCO thing?

11 Q Right.

12 A Well I think there what one goes to, as far as the
13 geography goes --

14 Q I can't hear you, Dr. Wein.

15 A I say as far as the geographical extent of the
16 market goes, you have to get the idea that what we have is
17 an access made possible by transmission which is interconnected
18 not only amongst the CAPCO pool, but of course there are
19 interconnections with all the other entities adjoining them
20 at the peripheries.

21 So I defined the geographical extent of the regional
22 power exchange market as the locus of all these interconnections
23 including the interconnection with adjoining systems or who
24 are not members of the CAPCO pool.

25 Now obviously that is very important, because it

mm2 1 might be the case that Toledo Edison in some particular
2 year, say, or some particular period of time, gets more
3 power because of the particular situation from, say, the
4 Michigan Pool, or from Consumers Power; they have themselves
5 some agreement between Toledo Edison and Consumers and they
6 are then, to that extent, adding of course to the value of
7 this interconnected CAPCO transmission for each other.

8 If CAPCO, for example, had no connections with
9 consumer and none with PJM and none with Ohio Power, its
10 value would be much less -- it would have much less value
11 than it does by having it.

12 Now for the purpose of this particular case, you
13 see, for the purposes of this particular case and this
14 particular analysis, all the entities within CAPCO, before
15 they can get out to Consumers Power or PJM or any other company
16 they have got to go over the transmission of some CAPCO company
17 they have got to get permission to do so, they have got to
18 get charges which would be on a plane of equality.

19 That is why for this thing the CAPCO Pool, as it
20 were -- which happens to be a formal arrangement -- is the
21 relevant regional power exchange. It does not mean from
22 that that MELP couldn't get power from PAsNY, that is outside
23 the CAPCO Pool. But the only way they can get it is go
24 over -- they argue -- over CEI's lines.

25 Now there is some center of gravity in terms of

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1 flow of power transactions.

2 Now I have a study sent to me by the Staff of
3 the NRC which did what I had suggested in Alabama for this
4 particular case, which I, myself, didn't have any time to do.

5 What it shows is that roughly 65 percent of
6 all the kwh flowing amongst the CAPCO members are entitled
7 to the CAPCO Pool and approximately 35 percent are coming
8 out.

9 While that is good enough on the LIFO-LIFO test
10 if you want to take that, then it is an indication of a
11 proper geographical market.

12 But the idea of trying to pin it down to one
13 region is an inappropriate concept here because the essence
14 of the thing is its interconnection with outside. So even
15 if in a particular year Toledo got more stuff from
16 Consumers than they got from CAPCO, it wouldn't put Consumers
17 in the CAPCO Pool because Consumers is not in the CAPCO
18 Pool, though they interchange energy to and from the CAPCO
19 Pool.

20 end 3H2
21 4A fls.

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- 4A wbl 1 Q What is the study you're referring to, Dr. Wein?
- 2 A The Staff made a study based on the FPC.
- 3 Q Do you have a copy of it?
- 4 A Yes, I have a copy of it.
- 5 Q Could you please provide me with a copy of it?
- 6 A Sure, I'll be glad to.
- 7 Q Let me ask you this:
- 8 What CAPCO lines would Toledo Edison have to
- 9 use in order to bring in power from Consumers that it pur-
- 10 chased?
- 11 A It wouldn't have to use the CAPCO lines other
- 12 than its own lines which it may own with other CAPCO
- 13 entities.
- 14 Q And what's the basis for saying that before
- 15 Toledo Edison use its lines to bring in, or to sell power
- 16 to Consumers, it would need permission of the other CAPCO
- 17 companies?
- 18 A Where did I say that?
- 19 Q I believe you indicated in your prior response
- 20 that before that could be done there would need to be
- 21 agreement of the other CAPCO members.
- 22 A I didn't say that.
- 23 Q So it is not your impression that that's the
- 24 case?
- 25 A I said if Toledo Power wanted to get some power

wb2 1 from the Michigan Pool they themselves would have to agree
2 as to what the terms of the price were.

3 Q Are you aware that in 1974 Toledo Edison also
4 purchased more power from Ohio Power than from any other
5 member of the CAPCO Pool?

6 A I don't have the FPC statistics from 1974, so
7 I don't know. But, as your favorite question is, would it
8 surprise me? No, it would not surprise me.

9 Q And would it surprise you to hear that Ohio
10 Edison in 1974 purchased more power from Ohio Power than
11 any other electric entity, including any of the other CAPCO
12 members?

13 A It would not surprise me at all. And I keep
14 on insisting that that sort of consideration is irrelevant
15 for this proceeding because the question is access. And if
16 you happen to be an entity other than a CAPCO company in
17 the CAPCO territory you can't get out to Ohio Power, you
18 can't get out to Consumers Power, you can't get out to PJM.
19 That is the particular problem that is involved here.

20 It would be interesting to know how much of that
21 power was OVEC power. I suppose a great deal of it was.

22 Q Dr. Wein, let me ask you this:

23 What are the criteria for measuring the geographical
24 extent of the regional power exchange market? -- your
25 criteria?

wb3 1 A Well it's a meaningless question if you under-
2 stand the concept. That's like asking me what are the
3 geographical criteria for measuring the geographical extent
4 of an interconnected network. The answer is, wherever it's
5 interconnected is the geographical extent.

6 Now you happen to have close degrees of inter-
7 connection with some regions and less close with other
8 regions.

9 MR. REYNOLDS: Let me have the question and
10 answer read back, please?

11 (Whereupon the Reporter read from the record
12 as requested.)

13 BY MR. REYNOLDS:

14 Q So your geographical boundary is totally
15 arbitrary?

16 A No, it isn't arbitrary. I defined it in this
17 case. As I said before, it is the locus of the gateways
18 of the CAPCO companies where they're interconnected. And
19 all their interconnections in that particular geography
20 is part of its geographic extent, plus the limit of that is
21 where they then are connected with another system that's
22 outside of this particular geographic exchange market. --
23 regional power market.

24 That doesn't mean that some power transactions
25 won't flow. The CAPCO pool as an interconnected entity has

wb4 1 got other things besides the interconnection which charac-
2 terizes it. From the point of view of an entity within
3 the CAPCO territory they cannot reach any other CAPCO
4 company without the permission of the CAPCO company's
5 territory that they are on.

6 Secondly, they cannot get to any outside power
7 supplier without going over CAPCO's transmission.

8 For these reasons, for this case, that's the
9 relevant geographic market.

10 Now,--

11 CHAIRMAN RIGLER: His question was, What are
12 the criteria? And I gather from your answer up to this
13 point, the criteria is access to transmission within the
14 CAPCO system.

15 THE WITNESS: That's right.

16 CHAIRMAN RIGLER: All right.

17 THE WITNESS: I wish I could state it that quickly
18 But I accept that.

19 BY MR. REYNOLDS:

20 Q And am I correct, then, in understanding that
21 you have defined the wholesale market, for purposes of this
22 proceeding, in terms of an investor owned utility and you
23 have defined the regional power exchange market in this
24 proceeding in terms of the municipalities and co-ops?

25 MR. MELVIN BERGER: Objection. I think Dr. Wein's

wb5 1 direct written testimony and his testimony today have
2 delineated the geographic boundaries for both the -- well,
3 for all of the retail, the wholesale and the regional power
4 exchange market.

5 CHAIRMAN RIGLER: Sustained.

6 BY MR. REYNOLDS:

7 Q Dr. Wein, are you defining the regional power
8 exchange market from the point of view of the municipalities
9 and co-ops within the CAPCO company area?

10 MR. MELVIN BERGER: Objection. I think Dr. Wein
11 has defined it both by giving the criteria he used to
12 define it and by defining the area that is involved, the
13 geographic area that's involved.

14 CHAIRMAN RIGLER: Sustained.

15 Where is it you want to go, Mr. Reynolds? We've
16 been over this. The objection is well taken. And I don't want
17 to cut you off if there's a legitimate area of confusion.
18 But I don't want to just go up and down the same hill.

19 Now, where do you want to go?

20 MR. REYNOLDS: I'm trying not to; I'm trying to
21 arrive at some understanding of how Dr. Wein got to where he
22 got to. I don't really anticipate that this is going to take
23 many more questions.

24 What I'm trying to ask him is from what perspec-
25 tive or what point of view he has approached his definition

1 or his defining of the respective markets. It seems to me
2 that that's not a question that has as yet either been asked
3 or answered. All I'm trying to see is whether he--

4 CHAIRMAN RIGLER: It has been asked and
5 answered now with respect to the regional power exchange
6 market. Because you just asked it.

7 MR. REYNOLDS: I asked what his criteria were
8 and he answered that in terms of interconnection or access
9 to interconnection. My question is whether it therefore
10 is his basis for defining regional power exchange market
11 by looking at the situation from the point of view of the
12 municipalities and the co-ops within the CAPCO area.

13 CHAIRMAN RIGLER: Well, I'm going to sustain
14 the objection, then. Because I think he elaborated at
15 length on how he developed that definition.

16 MR. REYNOLDS: I'm trying to see if there's a
17 relationship between the relevant wholesale market that he
18 selected and the relevant regional power exchange market that
19 he selected. And I was trying to ask questions which, it
20 seems to me, could be answered on a yes or no basis.

21 CHAIRMAN RIGLER: Why don't you ask him the
22 direct question, then of whether there is a relationship
23 between the two markets? --if that's where you want to go.

24 MR. REYNOLDS: All right.
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BY MR. REYNOLDS:

Q Let me ask you this, Dr. Wein:

Did you use the same criteria in arriving at your determination of the wholesale market as you did in arriving at your determination of the regional power exchange market?

MR. MELVIN BERGER: This is the product markets or the geographic?

MR. REYNOLDS: Geographic markets.

THE WITNESS: No, they're not the same. I think if--

BY MR. REYNOLDS:

Q Will you--

A Just a minute.

I think if you'll turn to my discussion on page 141, starting with Question 64, and going on, I've stated why, for example, I would not consider Ohio Power, and so on.

Now I can't improve upon what I said.

CHAIRMAN RIGLER: Now this relates to the criteria you used in selecting your wholesale markets?

THE WITNESS: No; to the geographic regional power market. I said no, they're not the same.

If you ask me why they're not the same, then you must go on and read it. It starts actually with Question No. 62.

wb8 1

2 "Is the geographic scope of the
3 'regional power exchange' market the same as
4 the geographic scope of the two product
5 markets you have so far discussed?"

6 I can't improve it. You asked me Is it the
7 same? and I said No. That's what I said in the testimony;
8 no.

9 BY MR. REYNOLDS:

10 Q What I'm trying to ascertain is: as an antitrust
11 economist, what were the different general criteria that you
12 used in determining or in ascertaining the relevant geographic
13 market for the wholesale product market and for the regional
14 power exchange product market?

15 You've indicated they were not the same
16 criteria. What were the different criteria?

17 MR. MELVIN BERGER: Objection. I think that
18 has been asked and answered. I think Dr. Wein has given
19 the criteria he has used for each.

20 MR. REYNOLDS: I'm asking for a comparison to
21 determine what the difference is in the criteria that he
22 used, as an antitrust economist, in approaching
23 this analysis.

24 CHAIRMAN RIGLER: Wait a minute.

25 Isn't the question you're asking identical to
the question, although posed in different words, on page 140,

wb9 1 Question 637

2 MR. REYNOLDS: I don't think that that addresses
3 the question of criteria at all.

4 What I'm trying to find out from Dr. Wain is,
5 as an antitrust economist, whether or not there are general
6 criteria that are used in order to ascertain the extent of
7 the geographic market of any product market. And he has
8 indicated to me that there are general criteria but that
9 they differ when you talk in terms of one product market
10 as opposed to another product market. And I don't believe
11 we have yet had an answer to the question of the difference
12 as he see it between the general criteria an antitrust
13 economist looks to in defining or delineating a geographic
14 market for whatever happens to be the product market. And,
15 in this case, it happens to be, on the one hand, the whole-
16 sale market and, on the other hand, the regional power
17 exchange market.

18 MR. MELVIN BERGER: If I may comment: I
19 believe Dr. Wain has gone into the criteria used for each of
20 these at length. And the answer will probably end up being
21 a restatement of the two criteria and just a comparison.
22 I don't see why we have to go through this again.

23 CHAIRMAN RIGLER: I think the objection is well
24 taken. Only because this is cross-examination of an expert
25 I'm going to give more latitude than perhaps the rules

wb10 1 warrant and I'm going to permit the answer to that one
2 question.

3 THE WITNESS: May I have the question now?

4 CHAIRMAN RIGLER: Let me paraphrase it,
5 Mr. Reynolds, and see if we have it down.

6 He's inquiring about the criteria you used,
7 the difference between the criteria you used in defining
8 the geographic market for two different product markets.

9 Is that right?

10 MR. REYNOLDS: Yes.

11 THE WITNESS: Well, let me first point out the
12 difference.

13 The regional power exchange market consists of
14 bundles of different items. The wholesale firm market is
15 one particular product.

16 Two: the essence of the regional power exchange
17 market is that a generating entity has access on terms of
18 equality to achieve whatever in its view is the best
19 combination of all these items in the regional power exchange
20 market. All these items will have different prices because
21 they're all different. But they all would be inputs,
22 ingredients of putting together a firm power package at
23 lowest cost.

24 Since the essence of it is access, you don't
25 use the test, as I did in wholesale power, of the prices

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1 tending to equality in a different geographic market
2 because these particular things, though they have prices,
3 will vary all the time. And it's not that they are products
4 which are in competition with any other product; they
5 happen to be, as it were, an available byproduct of a
6 particular firm which you have an opportunity to get if you're
7 on the network.

8 As a consequence, then we try to define the
9 geographic extent of that market. You must define it
10 really in terms of all the access points which you have in
11 order to get these things.

12 Now I don't think I can explain it any better
13 than that. And I think if I have failed to explain it, I
14 have just failed to explain it.

15 Let me just add this one thing:

16 There is no market where people go around and
17 shop for surplus power in the sense that people are in the
18 business of engaging in making surplus power for sale as
19 surplus power, as they would be, for example, as coal: cer-
20 tainly that, or wholesale firm power. And, as a consequence,
21 you don't particularly view that option in a strictly
22 defined geographic area as you would in the case of the
23 wholesale firm power.

24 Within the CAPCO territory most of the options,
25 for most of the time, can be obtained from the CAPCO com-

wb12 1 panies. And they have obligations in their contracts to so
2 provide what is necessary: outside that, they don't.

3 Ohio Power doesn't have to provide economy
4 energy if some exists on its system to give to a CAPCO
5 company: there's nothing which compels it to do so.

6 BY MR. REYNOLDS:

7 Q Let me ask you this:

8 What degree of coordination between Consumers
9 and Toledo Edison would have to exist before Consumers
10 would be in the regional power exchange market as you defined
11 it?

12 A The way I defined it, Consumers would have to be
13 a CAPCO company and sign that contract and oblige themselves
14 to do everything that is done in that contract. They'd
15 have to be a CAPCO company. That doesn't mean Consumers
16 can't engage in some transactions with them.

17 Q And if they did everything that the other CAPCO
18 companies could do with Toledo by virtue of a bilateral
19 contract with Toledo, that would not be sufficient to--

20 A No. They could not do everything that Toledo
21 does with respect to the others. In the first place, they're
22 not coordinating capacity; in the second place, Consumers
23 and Toledo couldn't operate on top of the CAPCO company their
24 own kind of economic dispatch, they would have to do it
25 within the CAPCO contracts or else get permission from the

wb13 1 other parties.

2 Q Are you suggesting there is economic dispatch
3 in the CAPCO area, joint economic dispatch in the CAPCO
4 area?

5 A Yes.

6 Q I see.

7 What's the basis for that?

8 A My understanding of it.

9 Q Where did you come to that understanding?

10 A I can't remember now.

11 CHAIRMAN RIGLER: I think this might furnish
12 a good break point for the day.

13 Mr. Frysiaak wants to bring you in at six-thirty
14 in the morning, but I think we'll go at nine-thirty, because
15 I think you can finish very easily tomorrow.

16 (Whereupon, at 6:40 p.m., the hearing in
17 the above-entitled matter was recessed, to recon-
18 vene at 9:30 a.m., the following day.)
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