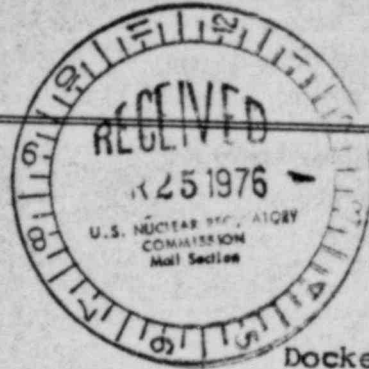
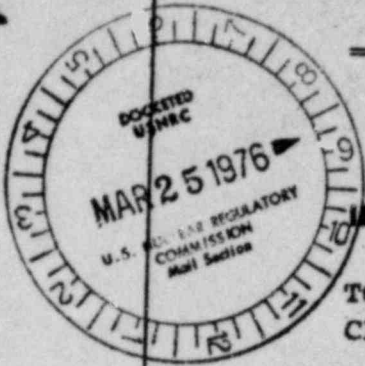


Regulatory Docket File

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

Dockets Nos.

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

50-346A  
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 - Wednesday, 24 March 1976

Pages 7211- 7348

THIS DOCUMENT CONTAINS  
POOR QUALITY PAGES

Telephone:  
(Code 202) 547-6222

ACE - FEDERAL REPORTERS, INC.

Official Reporters

415 Second Street, N.E.  
Washington, D. C. 20002

3010

NATIONWIDE COVERAGE

8002260776

N

bw

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

----- X

In the Matter of:	:	Docket Nos.
TOLEDO EDISON COMPANY and	:	50-346A
CLEVELAND ELECTRIC ILLUMINATING CO.	:	50-500A
	:	50-501A
(Davis-Besse Nuclear Power Station, Units 1, 2 and 3)	:	
	:	50-440A
and	:	50-441A
	:	
CLEVELAND ELECTRIC ILLUMINATING CO.	:	
<u>et al.</u>	:	
(Perry Nuclear Power Plant, Units 1 and 2)	:	

----- X

First Floor Hearing Room,  
7915 Eastern Avenue  
Silver Spring, Maryland  
Wednesday, 25 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 PRYSIAK, Member
- MR. IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

bw 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C O N T E N T S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
Dr. Harold Wein		7227 (cont'd)	7285 7314 7336	7326	7314

<u>Exhibits</u>	<u>For identification</u>	<u>In Evidence</u>
Applicants Exhibit 104		7265
Applicants Exhibit 105	7277	7277
DJ-587		7337
DJ-596		7337
DJ-598(3-177)	)	
	)	
DJ-599 (Outline of Program to take advantage of the MELP's Philosophy of Independent Operation)	)	
	)	
DJ-600(1-310)	)	
	)	
DJ-601 (1-69)	)	7348
	)	
DJ-602 (1-126)	)	
	)	
DJ-603 (1-253)	)	
	)	
DJ-604 (3-127)	)	
	)	
DJ-605 (3-130)	)	
	)	
DJ-606 (3-95)	)	

.E#1 mml

P R O C E E D I N G S

1  
2 CHAIRMAN RIGLER: Mr. Berger, we have pending  
3 this morning a motion to strike the material appearing on  
4 page 165 through 172 of Dr. Wein's testimony.

5 Does the Department have a response to that  
6 motion?

7 MR. MELVIN BERGER: Yes, I believe we do.

8 In this proceeding I believe the Applicants have  
9 consistently taken the position that even if they have a  
10 dominant market power in various markets, that exercise of that  
11 power is limited because of the comprehensive regulations  
12 to which they are subjected.

13 Since they have taken that position, it seems to us  
14 that if the effectiveness of that regulation is put in issue  
15 in this case, if we are to determine whether or not the  
16 Applicants' market power is in fact subjected to regulations  
17 so that they cannot exercise it in an anticompetitive market,  
18 we have to see if that regulation has been effective.

19 CHAIRMAN RIGLER: I am not sure of the sense in  
20 which you use that term.

21 Are you contending the agency is not doing it, or  
22 that there are problems in the scheme so that regulation is  
23 not a complete substitute for competition?

24 MR. MELVIN BERGER: I think we would be contending  
25 that both of those are true.



nm2

1 CHAIRMAN RIGLER: I see.

2 Mr. REynolds has argued that it is beyond the  
3 scope of these proceedings or the function of this Board to  
4 make an evaluation of whether other federal regulatory agencies  
5 are adhering to their statutory duties.

6 MR. MELVIN BERGER: We must look at whether or not  
7 the statutes imposed by those agencies are sufficient to  
8 completely regulate the monopoly power which the Applicants  
9 possess.

10 So that it would not be proper to say that it is of  
11 no concern to this -- the regulatory scheme cannot be looked  
12 into by this Commission to determine whether or not a situation  
13 inconsistent with the antitrust laws does exist.

14 CHAIRMAN RIGLER: But that is a different question  
15 than whether the agency is performing its statutory duty, is  
16 it not?

17 MR. MELVIN BERGER: Yes, it is.

18 CHAIRMAN RIGLER: So I take it you agree that it is  
19 not the function of the NRC to evaluate whether the FPC, for  
20 example, is fulfilling the duties imposed upon it by the  
21 legislative mandate?

22 MR. MELVIN BERGER: I believe that we would agree  
23 it is not the function of this Commission to look into  
24 whether or not the FPC is exercising its duties.

25 But it is the function of this Commission to

nm3

1 see whether that regulation is properly limiting the use of  
2 the exercise of the monopoly or market power by the  
3 Applicants.

4 CHAIRMAN RIGLER: In other words, assuming the  
5 FPC is performing in accordance to its statutory directions,  
6 nonetheless, a question would remain as to whether that  
7 regulation was effective to prevent the existence of a  
8 situation inconsistent, which would be within the scope of this  
9 agency's evaluation?

10 MR. MELVIN BERGER: Yes. Where the regulation and  
11 competition are compatible, the degree to which they are  
12 compatible.

13 MR. SMITH: It would seem to me that if the Federal  
14 Trade Commission, the Department of Justice, are all  
15 perfectly performing their responsibilities, there would  
16 be little need for Section 105.

17 And in the very testimony that we are considering  
18 right now, Dr. Wein quotes from the Federal Power Commission  
19 itself, observing the fact that it has been a period of  
20 inadequacy, or there has been an absence of consistently  
21 effective regulatory surveillance of wholesale power  
22 contracts.

23 Now, should we ignore that? Should we ignore  
24 a defect in enforcement of another regulatory agency if it  
25 exists, if it produces results which are within our

mm4

1 jurisdiction?

2 MR. MELVIN BERGER: I believe that the results are  
3 what we are focusing on.

4 If the results are within this Commission's juris-  
5 diction, it certainly should consider the results. In other  
6 words, if the results are effective under strained  
7 monopoly power, then it should be considered by this  
8 Commission.

9 CHAIRMAN RIGLER: We interrupted you. Did you have  
10 a continuation of your response?

11 MR. MELVIN BERGER: I believe that is all.

12 CHAIRMAN RIGLER: All right.

13 MR. REYNOLDS: I would like to make one or two points,  
14 if I could.

15 CHAIRMAN RIGLER: Okay.

16 MR. REYNOLDS: The first one is that he has  
17 characterized the Applicants' stipulation in this proceeding as  
18 stipulation as to dominance of market power which I think  
19 is inaccurate.

20 The only stipulation that has been entered into is  
21 one that goes to dominance in generation and transmission.

22 I think that the real question that we are talking  
23 about here goes to the distinction between whether regulation  
24 is effective versus whether the enforcement of that regulation is  
25 effective.

mm5

1           And our position is that the extent to which  
2 the Commission charged with the responsibility of enforcing  
3 that regulation has or has not acted effectively is not a matter  
4 which is within the scope of this Board's competence for  
5 purposes of determining the question that he has raised under  
6 Section 105(c).

7           I think that Section 105(c) has as its purpose and  
8 intent to reach those areas which are not reached under the  
9 jurisdiction of the other agencies, and there is in that  
10 context the question of whether the activities under the  
11 nuclear license would create or maintain a situation incon-  
12 sistent with the antitrust laws.

13           I don't think that Congress contemplated, or the  
14 language of 105(c) permits this agency to regard that issue  
15 as a license to engage in a policing function on the  
16 enforcement responsibilities of all the other agencies that may  
17 have their own regulatory or legislative mandates for  
18 different aspects of the electric utility industry.

19           I think that if you have a matter that is within the  
20 jurisdiction of other agencies, that is primarily within that  
21 agency's jurisdiction to deal with it and whether or not that  
22 is being dealt with effectively is not one of the subjects that  
23 this Commission is charged to look into under 105(c).

24           Whether the regulation itself exists, and  
25 what the nature of it is and the extent of it is, I think

mm6

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

certainly is an important factor for this Board to consider.  
But how it is being enforced by the particular agency, whether  
we are talking about the FPC or a state agency, is not a matter,  
it seems to me, that is relevant to the determination that  
is to be made under 105(c).

end 1



DEIDRE

1

MR. SMITH: What would be -- would you argue

bwl

2

that because the Department of Justice and the Federal

3

Trade Commission, having incidently parallel jurisdiction

4

under Section 7 of the Clayton Act, failed to exercise

5

it, that we do not now have the jurisdiction to consider

6

the results of that failure? I am talking about the

7

merger statute.

8

CHAIRMAN RIGLER: Assuming there had been

9

failure.

10

MR. SMITH: Assuming that the market structure

11

in the market now under study is a result, or would not have

12

happened had there been an enforcement of, by these two

13

agences of Section 7 of the Clayton Act, is that a form of

14

collateral estoppel or --

15

MR. REYNOLDS: Well, I think that, I think you

16

have posed a different question. But let me try to respond

17

to it.

18

If we had a situation in this case where it was

19

alleged that a merger, a particular merger, was inconsistent

20

with Clayton Section 7 and, if heretofore nobody had looked

21

at that merger to ascertain whether that merger was

22

inconsistent with Clayton 7, I would not argue that this

23

Board could not look at the underlying facts and

24

circumstances of that merger to make a determination as to

25

whether that merger was inconsistent with Clayton 7.

bw2

1 CHAIRMAN RIGLER: Would it turn on whether  
2 someone had looked at it? For example, I don't know the  
3 terms of the CID, but we are all aware through the  
4 discovery proceedings that the Department of Justice filed  
5 a civil investigative demand addressed to some of the  
6 Applicants herein.

7 Presumably, that means that the Justice had  
8 some basis for believing that a civil suit might be filed  
9 attacking anticompetitive operations by some of the  
10 CAPCO companies.

11 Would you argue that because of the possibility  
12 that another federal agency, the Department of Justice,  
13 could bring an antitrust suit addressed to these same  
14 practices that we are precluded in awarding, or restricting  
15 the award of a license, from considering the anticompetitive  
16 situation?

17 MR. REYNOLDS: Can you repeat the last part  
18 of that, because I was with you up until -- if you have  
19 the CID. Are you asking whether I would consider that  
20 to bar looking into any matters that this Board, looking  
21 into matters that the Department had looked into in  
22 connection with the CID investigation?

23 CHAIRMAN RIGLER: No.

24 I am asking if we are precluded from examining  
25 the existence of a situation inconsistent with the antitrust

bw3

1 laws, because Justice has opened an investigation and  
2 may bring a separate civil action attacking those very  
3 same practices.

4 MR. REYNOLDS: I don't think that -- again, I think  
5 that we are missing the point.

6 If you are saying to me Justice has started  
7 an investigation - to ascertain whether those nuclear  
8 facilities would creat or maintain a situation inconsistent  
9 with the antitrust laws under CID investigation and whether  
10 that circumstance would, in my view, preclude this Board  
11 from looking into that question, my answer would be no.

12 But I don't think that is the same thing as  
13 this Board looking into whether or not a regulatory scheme  
14 under the state regulation or federal regulation has  
15 or has not been effectively enforced over a period of time.

16 It seems to me they are two different  
17 questions. I think that one of the problems I am having  
18 with your CID example is that that kind of investigation  
19 can lead nowhere or anywhere or -- I mean by the very terms  
20 of the statute itself, it is an internal investigation,  
21 which may, for any number of reasons, the Department of  
22 Justice acting within the scope of their statutory mandate,  
23 not lead to any kind of prosecution.

24 CHAIRMAN RIGLER: Doesn't the FPC have broad  
25 investigatory powers? Can't it initiate investigation?

bw4

1 MR. REYNOLDS: Yes. You mean on matters within  
2 its jurisdiction, sure.

3 But I think we are talking about a situation  
4 of the effectiveness of a regulatory agency which has ongoing  
5 supervision of its regulatory scheme.

6 The Department of Justice is not a regulatory  
7 agency. It is an enforcement agency, which I think puts  
8 it in a different category altogether. And I think the  
9 CID example is quite removed from the type of thing we are  
10 talking about now, which is whether the regulatory scheme,  
11 as the legislature has devised it, is, or is not being  
12 efficiently enforced.

13 And I don't believe that 105(c) contemplates  
14 that this Board is going to act as a policing arm of all  
15 the agencies, federal and state, in the country to determine  
16 on its own whether those agencies are acting efficiently  
17 or inefficiently.

18 I think that it is certainly contemplated that  
19 it could look to determine the degree and extent of  
20 regulation that exists in the industry and assess and  
21 evaluate the impact of that regulation on competition or  
22 on the competitive market structure.

23 But to go further and to start making  
24 determinations on the basis of how efficient or inefficient  
25 the enforcement of those regulatory schemes are, is something,

bw5 1 I think, that is beyond the scope.

2 MR. SMITH: Isn't that thought somewhat  
3 different than -- there is another version of that thought.

4 Perhaps we don't even have to concern ourselves  
5 with the existence of the other agency.

6 All we have to do is look at the picture, as  
7 it exists, as we find it.

8 And if it meets our criterion and our jurisdiction,  
9 so be it.

10 But you are saying that we may not do that,  
11 because you are the one who advances a position that someone  
12 else has accomplished what we are charged by law with  
13 accomplishing.

14 Why do we have to worry about --

15 MR. REYNOLDS: I don't have any problem with  
16 this Board taking the situation, as it exists. But if it  
17 does that, it does that, it has to take the whole situation,  
18 as it exists. And that situation, as it exists, includes  
19 the regulatory scheme that the industry is operating  
20 within, both state and federal, and what effect that  
21 regulatory scheme has on competition or on the situation,  
22 as it exists.

23 MR. SMITH: There you go, right there.

24 MR. REYNOLDS: What effect the regulatory  
25 scheme has.



1 MR. SMITH: All right. So we must evaluate  
2 the effect, then.

b7c

3 MR. REYNOLDS: But not as to whether or not a  
4 particular state agency has enforced a particular  
5 regulation efficiently or inefficiently or the FPC has been  
6 negligent in its discharge of its responsibility.

7 What I am saying is that the situation, as  
8 it exists, is one that contemplates a regulatory scheme  
9 in this instance that is imposed on the electric  
10 utility at both the state and the federal level.

11 And I agree that this board should look at  
12 the situation as it exists in the context of those  
13 factors, which are as real in terms of trying to assess  
14 what the situation, as it exists, really is, as looking  
15 at any of the other factual matters that the other side  
16 feels appropriate to present to this Board. But my position  
17 is that it is not part of this Board's responsibility to  
18 look to the question of whether the PUCO, for example,  
19 has operated efficiently or inefficiently, with respect to  
20 certain rate matters or the FPC has done that.

21 I think it is appropriate to look to the  
22 existing regulatory scheme and to see what impact  
23 that has on the competitive situation.

24  
25

s3  
bwl

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRMAN RIGLER: I think we are ready to rule.

MR. LESSY: I would like to make a statement before the Board rules, in the context of Staff understanding the jurisdictional questions before the Board rules at any time.

I would like to state the Staff's position.

CHAIRMAN RIGLER: Well, the motion to strike goes to testimony which is not being offered by the Agency.

So, in a sense, you have no standing to address the motion itself.

However, if you wish to address the separate question that has been raised during the course of argument, we would hear a brief comment on that.

But we are ready to rule.

MR. REYNOLDS: Mr. Chairman, I had not quite finished.

CHAIRMAN RIGLER: Well, it was getting a little reptitious.

MR. REYNOLDS: The point that I want to make, which I had not addressed, is that we had an additional reason for moving to strike.

And that is that ---

CHAIRMAN RIGLER: I am aware of that. You

bw2

1 argued that yesterday. That was the lack of expertise.

2 MR. REYNOLDS: That is correct.

3 MR. MELVIN BERGER: I would like to make a  
4 brief comment, if I may.

5 Really, we are talking about two questions.  
6 One is whether or not the regulatory agencies are fulfilling  
7 their statutory duties, and we are not asking the  
8 Commission to determine that.

9 The other question is whether or not regulation,  
10 as practiced as a whole, does or does not effectively  
11 restrain the exercise of monopoly power, and it is  
12 that, that we believe the Commission has the duty to  
13 look into.

14 And we would point out that Section 105(c)  
15 would probably be a nullity, if regulation effectively  
16 took care of all the exercising of monopoly power in the  
17 electric utility industry. If it did that, then there  
18 wouldn't be an act inconsistent with the antitrust laws.

19 MR. LESSY: I am going to hold my comments. It  
20 is already 5 after 10:00, and the Board is ready to rule.

21 CHAIRMAN RIGLER: All right.

22 The Board agrees with the basic principle that it  
23 is not an NRC responsibility to oversee state or federal  
24 regulatory agency enforcement. However, the question being  
25 addresses is the inherent limits of regulation to prevent

bw3

1 the creation or maintenance of a situation inconsistent.

2 We note that the Applicants have argued during  
3 the course of these proceedings that the options that they  
4 offered to other systems in the area, coupled with  
5 effective regulation, prevent the existence of a situation  
6 inconsistent.

7 And I believe that the answers on pages 165  
8 through 172 do address those questions.

9 The Witness is a former chief economist of the  
10 Federal Power Commission. He has extensive experience  
11 in regulatory supervision, and I disagree with the point  
12 about his expertise.

13 To comment on that and, subject to those parameters,  
14 having given you an indication of how and why and for what  
15 purpose we accept the testimony, the motion is denied.

16 Whereupon,

17 DR. HAROLD WEIN

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

20 CROSS-EXAMINATION (Cont'd.)

21 BY MR. REYNOLDS:

22 Q Dr. Wein, even though two utilities might be in  
23 competition with one another in certain markets or areas,  
24 would you see the competitive implications of ownership  
25 or unit power access as being identical? Would you see

b7d

1 the competitive implications of either direct ownership  
2 or unit power access as being identical?

3 A Could you repeat the question again?

4 Q I asked whether, even though two utilities  
5 might be in competition with one another in certain areas,  
6 would you see the competitive implications of either  
7 director ownership or unit power access as being identical?

8 MR. MELVIN BERGER: I will object to that.

9 I think that area was covered yesterday.

10 I think this question was essentially asked and  
11 answered.

12 MR. REYNOLDS: Mr. Chairman, I am trying to go  
13 through as fast as I can.

14 We stopped yesterday on this subject. I said  
15 I had some other questions. What I am trying to do is  
16 pick up where we left off yesterday, and then continue  
17 through as quickly as I can.

18 CHAIRMAN RIGLER: All right. We will permit  
19 it on that basis. I think that particular question was  
20 asked and answered.

21 But, as the background for the following  
22 questions, I will permit it.

23 THE WITNESS: Well, if one of the utilities  
24 happened to be a municipal -- I have already indicated the  
25 kind of advantages it would get from buying an ownership



bw5

1 interest, as against obtaining a unit power contract,  
2 if they were two independently-owned utilities.

3 It would depend, I guess, on the terms and  
4 conditions relating to the purchase of an ownership interest,  
5 as against a unit power contract.

6 That would depend. One utility might find it  
7 at the time this option became available that for it to  
8 go to the capital markets at that particular time might  
9 be very expensive and, therefore, it might opt for a unit  
10 power arrangement, or it might find that the selling utility,  
11 because the market appraises it as having less risk and  
12 being safer and et cetera, et cetera, would give it an interest  
13 rate of eight percent, whereas if it went to buy a piece of it,  
14 it would have to take ten.

15 CHAIRMAN RICLER: There is no need to go back to the  
16 example you gave yesterday.

17 THE WITNESS: It would depend on the terms and  
18 conditions affecting each of the investor-owned utilities  
19 at the time.

20 BY MR. REYNOLDS:

21 Q All right.

22 Is it not true that if small systems were to  
23 obtain direct access to nuclear units by way of unit power  
24 purchases, they would, by definition, obtain power from  
25 the nuclear units at a cost identical to that available

bw6

1 to the larger systems?

2 MR. MELVIN BERGER: By the term definition, are  
3 you saying that that is what a unit power purchase is?

4 MR. REYNOLDS: That is right.

5 THE WITNESS: If by definition, they get it  
6 at the same cost, I must agree.

7 CHAIRMAN RIGLER: But that cost might vary, if  
8 they had ownership of their own?

9 THE WITNESS: Yes. It might.

10 BY MR. REYNOLDS:

11 Q But by way of unit purchase, it would be the  
12 same cost?

13 A From that particular unit.

14 CHAIRMAN RIGLER: It would be the same cost  
15 as the Applicants are getting?

16 THE WITNESS: Yes, at the Applicants' cost.

17 BY MR. REYNOLDS:

18 Q In your view, as an antitrust economist, if access  
19 is provided to small systems on terms which make available  
20 to such systems, costs identical to those obtained by the  
21 large systems, is there any sense in which the small system  
22 can be said to be competitively disadvantage thereby?

23 A Yes. It could get better terms.

24 Q Better terms than --

25 A Under a different option. The ownership

1 ownership option would give them better terms, if  
2 competitively disadvantaged.

3 CHAIRMAN RIGLER: You said "would give them."  
4 Did you mean "could give them"?

5 THE WITNESS: Could give them.

6 BY MR. REYNOLDS:

7 Q What is the competitive disadvantage that the  
8 small system, that occurs to the small system, if you  
9 give them the unit power purchase as a means of access,  
10 rather than joint ownership?

11 A If joint ownership is cheaper, as it could be,  
12 then, if you are in the position to dictate those choices,  
13 and you and I are in competition, and I say: "Well,  
14 I will give you a choice where your input costs are  
15 \$10, but I will exclude the choice where your input would  
16 cost you \$8, because \$10 is what I pay," that seems to  
17 me to be a competitive disadvantage of \$2.

18 CHAIRMAN RIGLER: Did you also indicate  
19 yesterday that as an owner, one might have rights  
20 to participate in management decisions which would affect  
21 the overall cost of the plant?

22 THE WITNESS: Yes. Indeed I did indicate that,  
23 as well.

24 BY MR. REYNOLDS:

25 Q What is the competitive advantage to the  
investor

JW8

1 investor-owned utility, if it supplies its access only on  
2 the basis of unit power purchase?

3 A What is the competitive advantage?

4 Q Right.

5 A The competitive advantage is as compared to  
6 the other alternative in which you have given, say, something  
7 at \$8, at \$10, whereas --

8 CHAIRMAN RIGLER: You asked about an IOU  
9 buying, rather than a municipality?

BY MR. REYNOLDS:

10 Q No. As we have gone through it  
11 so far, if the municipality buys a unit power, participates  
12 in a nuclear plant on the basis of a unit power purchase  
13 at identical cost as the investor-owned utility indicated  
14 that the municipality would be competitively disadvantaged,  
15 because it could get a better alternative, in your view,  
16 by joint ownership.

17 And I am asking you: what is the competitive  
18 advantage to the private investor in a situation where it  
19 will make available to the small municipal,  
20 participation only on a unit power purchase basis?

21 A That is just looking at the other side of it.

22 It is obvious that the competitive advantage  
23 of the big firm is that the small firm having an option  
24 to get it at \$8, doesn't get it.

25 If he got it at \$8, plus the other things, he

bw8

1 would be a more effective competitor.

2 If he gets it at \$10, he isn't.

3 So the advantage to the investor-owned  
4 utility is preventing someone else from getting an advantage  
5 over him.

6 Competition is always composed of lots of  
7 advantages and disadvantages which the entities in  
8 that competitive arena have.

9 And if my potential competitor could have gotten  
10 the price of \$8 and I forestall him and say it is  
11 only \$10, that means he is getting it the same as I do.

12 I have taken away a competitive advantage from him,  
13 and taken away a competitive disadvantage to myself, not  
14 competitive disadvantage, it is the difference between  
15 minus and plus and goes, obviously over to the other side.

16 Q Is it your view, Dr. Wein, that the small  
17 system is entitled to ~~the~~ ~~versus~~ ~~to~~ the nuclear plants at  
18 a cost less than the cost to the private investor-owned  
19 utility?

20 A It is my view that a municipality under  
21 Section 105(c) and the contention of this case, is  
22 entitled to access to a nuclear plant and would pay its  
23 costs for that particular plant.

24 Its costs. If it cost \$1 billion to build  
25 a nuclear plant and the municipality wanted ten percent



bw9

1 of it, it would pay \$100 million.

2 That is the cost. If it costs \$1 billion  
3 they pay \$100 million.

4 If they get their \$100 million at six percent,  
5 that is their good luck.

6 If you go to the capital markets and get it  
7 at 8 1/2 percent, that is what your cost is.

8 CHAIRMAN RIGLER: Does that conclude the cross-  
9 examination.

10 MR. REYNOLDS: No, it does not.

11 CHAIRMAN RIGLER: I am going to make a finding  
12 on the record now, because the transcript would not reflect  
13 the inordinately long pauses between the questions and  
14 I am going to control these proceedings to put a time limit  
15 on the cross-examination, that you cannot confer with  
16 each and ever counsel for a prolonged period of time between  
17 each and every question.

18 We are in an area, I might add, where you are  
19 talking about issues common to all the CAPCO companies  
20 and which was an issue from the very beginning of the  
21 proceedings, so that even having one counsel do the cross-  
22 examination for all five, this is cross-examination which  
23 should have been thought out months in advance.

24 And we have been here five days now. And it is  
25 time to move the proceedings along.

bw10

1 MR. REYNOLDS: Well, I will just take exception  
2 to the Chairman's remarks without arguing them.

3 BY MR. REYNOLDS:

4 Q If the municipal electric light plant could obtain  
5 access to CEI's old coal-fired units at book cost, would  
6 not the cost of such power be below the cost of power  
7 flowing from ownership entitlement in the nuclear units?

8 MR. MELVIN BERGER: What do you mean by  
9 old coal-fired units?

10 MR. REYNOLDS: Those units in existence  
11 five years or more.

12 THE WITNESS: No, the question?

13 MR. REYNOLDS: In an effort to continue to move  
14 this proceeding along as rapidly as we can, I will reread  
15 the question.

16 BY MR. REYNOLDS:

17 Q If the municipal electric light plant could  
18 obtain access to CEI's old coal-fired units at book cost  
19 would not the cost of such power be considerably below the  
20 cost of power flowing from ownership entitlement in the  
21 nuclear units?

22 A I am not sure of that. I assume you mean  
23 by book cost depreciated as of today, number one.

24 Q Right.

25 A I assume that is the question.

bwl1

1 Q That is right.

2 A And I assume you are talking about the total  
3 cost over a period of 30 years or whatever the life of the  
4 plant is, at its presently discounted amount.

5 And, three, I assume you are not really just  
6 talking about the capital costs, but ultimately per  
7 unit of power?

8 Q Correct.

9 A You are talking ultimately about the cost  
10 per kyh. And under all those assumptions I don't know whether  
11 it would be cheaper or not, because if it were, if  
12 that were the case, if that were the case, then it  
13 doesn't make any sense at all for the utilities to be  
14 putting in nuclear plants, because over the life of the  
15 coal-fire plant, if it were, for example, in the last five  
16 years, 800 megawatts or something of that nature, and if  
17 its coal costs are lower, then you ought not to go into  
18 nuclear over the 30-year period.

19 You ought to stick with coal. But you are all  
20 going into nuclear, so I suppose the company has made  
21 the calculation that nuclear is more advantageous.

22 Q Okay. Assume the answer were yes, Dr. Wein,  
23 would that make the CEI's old coal-fired units an  
24 unique resource.

25 A If you mean by that, would it make it the lowest,

#4 mm1 1 Q As an antitrust economist, what do you mean by  
2 a "unique resource?"

3 MR. MELVIN BERGER: Objection.

4 Asked and answered. I believe Dr. Wein just  
5 explained that.

6 CHAIRMAN RIGLER: Refresh my recollection as  
7 to when?

8 MR. MELVIN BERGER: And I believe he just explained  
9 what a unique resource was this morning, and I am informed  
10 that he also explained what a unique resource was, sometime  
11 yesterday.

12 CHAIRMAN RIGLER: Except I thought he just said that  
13 he did not coin the term or use the term.

14 THE WITNESS: Yes, I did. But there is a meaning  
15 which you can give to it if you want to. I mean, it is not a  
16 term of the art, but you can say in a -- as an antitrust  
17 economist, that was the preface of the question -- if we have  
18 a set of end products, let's say we have an end product, and  
19 we have a set of inputs, Y-1,2,3,4 and so on. And we compare  
20 each of these Y inputs to make the product X.

21 And we can take a particular one of them, let's  
22 say Y-3, and if the substitutes for Y-3, let's say Z-3 and  
23 A-3 and B-3 were priced at such a way that to obtain them  
24 rather than Y-3 plus all the other inputs two companies, one  
25 would be competitively disadvantaged, greatly disadvantaged if

bwl2

1 would it make it under my assumptions, the lowest cost  
2 unit you could get and, if the difference between that and,  
3 say, nuclear would render anybody in a nuclear or any  
4 other form of generation noncompetitive, compared to some-  
5 body who had this hypothetically lowest cost plant, if you mean  
6 by unique resource, the answer is yes. That is the  
7 definition of a unique resource.

8 As far as generation is concerned.

9 Q Okay. In your view, are all of the  
10 CEI's facilities unique, because the municipal electric light  
11 plant could gain an advantage, if it were allowed to buy  
12 into the ownership of such facilities at book cost?

13 A No. It is not my view that they are unique.  
14 I never used that term.

15 But there is nothing unique about it.  
16 If municipal utility has its own distribution system, it  
17 doesn't need to buy into CEI's distribution system.

ES3

18 Q  
19  
20  
21  
22  
23  
24  
25



mm21 instead of getting Y-3 it had to substitute Z-3, A-3 and so on  
2 because their costs are too high. Or, inherently, given the  
3 nature of these inputs, they would render one firm with  
4 a very much higher cost than the other.

5 And in that sense you can say Y-3 is unique in that  
6 particular situation.

7 BY MR. REYNOLDS:

8 Q How much of a competitive disadvantage would  
9 be necessary in order to make it a unique resource?

10 A That depends upon the market.

11 In some cases --

12 Q Let's take the CAPCO market.

13 A It depends upon how the CAPCO companies and  
14 how the commerce and how the municipals and everything else  
15 are involved.

16 I can't give you a particular number.

17 Q Have you made any analysis of the CAPCO situation to  
18 determine the extent of the competitive disadvantage that  
19 would be necessary in order to determine the extent of the  
20 competitive disadvantage that would be necessary in order to  
21 determine that the nuclear access was a unique resource,  
22 for example?

23 A Well, it seems to me that the general --

24 Q I think that can be answered yes or no, Dr. Wein.

25 A It depends on what you mean by a study. You have

mm3

1 one set of studies, and I have another thing.

2 The thing that distinguishes an expert from an  
3 amateur is that on some questions you don't have to have  
4 studies. You can deduce it from certain other things. And  
5 in that nature, sure, I have considered it.

6 Q You have considered it and deduced that nuclear  
7 was a unique resource from certain other things?

8 A Yes.

9 It is my view that if the Applicants do not get  
10 access --

11 CHAIRMAN RIGLER: The Applicants?

12 THE WITNESS: Not the Applicants, the municipals  
13 and others, do not get access under the conditions of the  
14 CAPCO market to nuclear generation they would be competitively  
15 disadvantaged so that as self generating entities they could  
16 not compete for markets and ultimately they may go out of the  
17 business of generation completely.

18 BY MR. REYNOLDS:

19 Q On page 155, line 23, you refer to the projected  
20 rapid increase in coal prices in the next decade as detrimen-  
21 tal to those small generating public systems who are unable  
22 to gain ownership into nuclear units.

23 A Given the rapid increase of coal prices --

24 Q Right.

25 Now, what studies have you conducted that provide you

mm4

1 with a basis for projecting coal versus nuclear fuel prices?

2 A I haven't projected coal versus nuclear prices over  
3 the next thirty years, or the next ten years.

4 Q Have you studied fuel prices in the State of Ohio?

5 A I have looked at the prices that the FPC reports,  
6 where they do give you prices for different utilities.

7 Q For the State of Ohio?

8 A They give them to you by systems and there are  
9 companies in the State of Ohio.

10 Q Do you know how much nuclear fuel prices have changed  
11 in the last two years as compared to fossil fuel?

12 A Do you mean coal or fuel oil or gas?

13 Q Coal. Nuclear fuel as compared to coal.

14 A Do you mean -- well, they have gone up.

15 I am not sure, I will have to -- I don't want to  
16 rely on my memory.

17 I don't know.

18 Q I see.

19 What -- have you made, have you done any analysis  
20 to determine what effect recent uncertainties over nuclear  
21 fuel's availability might have on coal versus nuclear cost  
22 comparisons?

23 A Well, the uncertainty of nuclear fuel is obviously a  
24 factor to take into account.

25 But there is also a great deal of uncertainty about

mm5

1 whether coal can be used and whether coal will be used  
2 unless you put antipollution devices in and there are many  
3 states which are moving toward the direction of antipollution  
4 devices, and the Environmental Protection Agency is moving  
5 towards antipollution devices.

6 And given those it is not at all clear that the  
7 capital costs of coal plants will not equal that of nuclear  
8 plants. So there are uncertainties in the entire picture.

9 CHAIRMAN RIGLER: Excuse me, I am sorry to inter-  
10 rupt. Can we take notice of the position Applicants took  
11 in the Safety and Environmental Licensing Proceedings with  
12 respect to any cost-benefit ratios they would achieve by  
13 going to nuclear versus other forms of generation?

14 MR. REYNOLDS: Sure. Absolutely.

15 In fact, we may be referring to some of that  
16 information in our affirmative case.

17 CHAIRMAN RIGLER: I am sorry to interrupt.

18 BY MR. REYNOLDS:

19 Q I had asked you not whether there were uncertainties,  
20 but whether you took those uncertainties into account.

21 A I did.

22 The way you take uncertainties into account is  
23 considering the possibilities on both sides. And since by  
24 definition they are uncertainties, nobody can make a precise  
25 calculation, so people use their judgment. And the judgment

1 I made would be as follows:

2 If the CAPCO companies are betting on nuclear  
3 power, what should I do? Should I go against that bet, or  
4 should I go with that bet?

5 And if you are smart, the way you would figure  
6 it out is as follows:

7 If they are wrong and I went with them on nuclear  
8 power, I would not be disadvantaged. If they are right and I  
9 went against them on coal power, I would be terribly disad-  
10 vantaged.

11 Since I am a small company I therefore cannot take the  
12 possibility of going the nuclear route, I mean the coal route,  
13 even if I thought it were cheaper, when they are going the other  
14 route, because if I am wrong I am out of business.

15 But if I go the same route they go, I am no worse  
16 off.

17 Q But what if they are wrong and you go the coal  
18 route?

19 A You just didn't listen to me.

20 CHAIRMAN RIGLER: He answered that just now.

21 BY MR. REYNOLDS:

22 Q With regard to the future of self generating  
23 municipalities in the State of Ohio, you state on page 155,  
24 lines 19 to 20, that if public systems could not  
25 gain ownership access to nuclear units, they would be



mm7

1 restricted to coal fired units of much smaller size.

2 Do small coal fired units represent the only  
3 alternative to ownership in nuclear units that the  
4 public systems have?

5 A They could get fuel oil fired units or natural  
6 gas fired units and I don't know what else they could get  
7 other than that. They might burn cornstalks, of which  
8 there are a lot in the State of Ohio.

9 In some municipalities in the State of  
10 Indiana, they are trying to generate power by burning  
11 garbage. All this is possible.

12 Q Would not unit power access to nuclear capacity  
13 be an alternative, a viable alternative?

14 A To what?

15 Q To ownership access.

16 A I have answered that three times.

17 MR. MELVIN BERGER: I object to that.

18 CHAIRMAN RIGLER: He is asking in this case if  
19 unit power wouldn't be an alternative to coal?

20 THE WITNESS: Yes, it would be an alternative to  
21 coal or other fossil fuels.

22 BY MR. REYNOLDS:

23 Q ON page 20, lines 1 to 3 of your direct testimony,  
24 you state that competition where economically possible, will  
25 be of great value in achieving the goals for which

mm8 1 regulatory agencies were established by Congress.

2 First, could you tell me --

3 A I am trying to get there.

4 Q Lines 1 to 3 on page 20. Do you see that?

5 A Yes.

6 Q Now, first could you tell me in what situations  
7 might competition not be economically possible?

8 A Well, I can think of a situation where a small  
9 municipality which is supplied by a private firm to obtain  
10 water which this private firm owns nearby, and there is no  
11 other water which can be obtained unless you go 100 miles  
12 away, which would make the cost of getting it prohibitive.  
13 And this private firm, having this water supply and already  
14 having put in all the water mains and hooked up the city to  
15 the water, another company comes in; the city gives it a  
16 franchise to get water.

17 Well -- and to hook up customers through its own  
18 connections.

19 This other company, that would be competition, but  
20 it wouldn't be very useful.

21 That is one situation.

22 Q That is an example you just gave me where competi-  
23 tion would not be economically possible.

24 A It wouldn't be economically desirable.

25 Q Is there a difference in your view between

mm9 1 economically possible and economically desirable?

2 A Sure.

3 I mean the second company might be run by a nut  
4 who has a great deal of money, and it would be wasted.

5 Q Is that what you had in mind when you were writing  
6 the testimony at page 20, lines 1 to 3, and you stated that  
7 competition where economically possible, will be of great  
8 value?

9 Did you have the kind of example you were giving  
10 me as one --

11 A That is one kind of example.

12 When I wrote that line I didn't wish to address  
13 the question in detail as to where in the United States or  
14 in the regulatory industry, is competition economically  
15 possible, or is it not?

16 I can give you another situation, for example,  
17 if it is not possible, it is obviously not desirable; but  
18 where it is possible it still may not be desirable. This  
19 is essentially the distinction I have in mind.

20 There is an airline which runs during the  
21 wintertime between Lansing and the upper northern part of the  
22 Lower Peninsula and to the Upper Peninsula in the State  
23 of Michigan.

24 Now, it is economically possible to have three  
25 airlines run and not restricted to a right of way. But,

mm10 1 one airline can scarcely ever make it.

2 It is possible, but not desirable to have many;  
3 if one could make it to have many in there, because then they  
4 would all fail.

5 This happened actually once or twice while I have  
6 been there in the past 16 years.

7 So, it is possible, but not desirable. Any  
8 number of things.

9 In general, it is what the utility economists  
10 used to call local monopolies.

11 Q Is there anyplace where competition is not  
12 economically possible in the electric utility industry?

13 A I think for certain municipalities, given sizes,  
14 it is probably not possible or desirable.

15 Q I asked you possible.

16 A I'm sorry.

17 Well, anything as I understand is possible if  
18 somebody is willing to lose money at trying to prove that it  
19 is possible, and finds out that it is impossible.

20 Q What about desirable?

21 A I think for the most part, probably with the  
22 distribution systems in the various municipalities, it is not  
23 desirable to have two.

24 But again I say that as a general proposition, and  
25 I wouldn't necessarily say it for every particular municipality

mm11  
Part #5

in the State of Ohio, or city or town.

Q Now, will you please advise me as to what goals you had in mind for which regulatory agencies were established by Congress in that same sentence?

A Generally, the goals of the regulatory agencies, as I understand them, are to protect the interests of consumers consistent with giving fair profits as defined by the various regulatory agencies to those entities in the regulated industry that exists.

These are essentially the goals of the Congress in each of the ones I am aware of. To protect the public interest.

Q Did you have in mind in writing this sentence, goals that would be generally applicable to all regulatory agencies?

Is that what you are saying?

A The protection of the public interest, I believe, is generally applicable to all regulatory agencies.

Q That is what you had in mind?

A That is what I had in mind.

Q At page 44, lines 17 to 20 --

A By regulatory agencies, I mean to exclude the Antitrust Division and the FTC.

Q You state there is a growing body of opinion among economists that regulation cannot accomplish what it



mm12

1 is intended to accomplish.

2 Is there a contrary body of opinion among  
3 economists?

4 A Yes.

5 There is a contrary body of opinion, but it is  
6 certainly not growing. It is diminishing.

7 Q Now, at pages 165 to 172, you set forth an  
8 extended discussion of the effectiveness of regulatory  
9 commissions as a substitute for competition.

10 Would I be correct in concluding that that entire  
11 discussion sets forth general observations on your part which  
12 in no way reflect an assessment by you of the effectiveness  
13 of the regulations in Ohio or Federal Power Commission  
14 regulations as applied to CAPCO members or the effectiveness  
15 of the Pennsylvania Public Utility Commission?

16 MR. MELVIN BERGER: Could I have that question  
17 read back?

18 (Whereupon, the reporter read the record as  
19 requested.)

20 THE WITNESS: Well, as I reread this section, if  
21 I assume that by effective regulation, which you have not  
22 defined for me, but I will use my definition of it --

23 MR. REYNOLDS: I can't hear you.

24 THE WITNESS: I will use my definition of  
25 effective regulations subject, of course to whether you agree

mm13

1 or disagree.

2 But effective regulations, as far as I read it,  
3 means interpreting the statutes and the legal decisions  
4 which so interpret them and enforcing them according to  
5 the statutes and the legal decisions which have interpreted  
6 them.

7 And that raises several questions.

8 CHAIRMAN RIGLER: His question is, "Is your  
9 discussion general or is it specific to the regulatory  
10 agency in the states?"

11 THE WITNESS: I am coming to that. I am coming  
12 to that. And I am making, I am saying assume they did the  
13 best they could. Assume they did the best they could  
14 in all states and at the federal level.

15 Even if they did the best they could, they could  
16 not provide the kinds of benefits which you get from  
17 competition.

18 Then alternatively, many states and certainly  
19 the Federal Power Commission has not done the best it could,  
20 and many states have peculiar regulatory schemes which go  
21 counter, and in fact limit, deprive the benefits of regulation.  
22 They, in fact, eliminate regulation.

23 Now, every regulatory agency, to my knowledge --  
24 and that includes Ohio -- accepts discriminatory rates,  
25 discriminatory in the sense in which an economist will use it

mr14 1 under the regime of competition you couldn't have discrimina-  
2 tory rates. But under the regime of regulation, you do.

3 The regulatory commissions that I have discussed,  
4 this question of regulatory rates, with the sole exception of  
5 the State of Ohio in the proceedings I have been involved  
6 in, didn't even have an economist who understood the  
7 distinction.

8 Now, in the last two years, the State of Ohio has  
9 gotten much, much better, much better equipped in that  
10 respect. But they are limited by their statute as well.

11 So my answer and my discussion here goes both  
12 to the general inherent nature of regulation even if they were  
13 to do what they are supposed to do by statute, and even if  
14 they could have the staffs and so on and so forth to enforce  
15 what they are supposed to do, even if they could do that they  
16 do not provide certain protections involved in as an  
17 an antitrust economist would look at it.

18 And secondly, in fact many of them don't do it  
19 for a variety of reasons, both because of incompetence of  
20 staff, because of incompetence of commissioners, because  
21 of restrictive state laws, because of lack of money and things  
22 of that sort.

23 I say this as an economist. I am not one of those  
24 who said: Get rid of the regulatory agencies in total.

25 MR. SMITH: Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: I don't ascribe to that.

BY MR. REYNOLDS:

Q What studies or analyses have you made, Dr. Wein, with respect to the effectiveness of the Ohio regulation?

A Effective with respect to what?

Q As you have just defined effectiveness of regulation, will you tell me what studies or analyses you have made in Ohio to determine whether or not the Ohio Public Utility Commission of Ohio is effectively enforcing the regulatory scheme?

A Well, all the electric utilities in Ohio have had and do have automatic rate adjustments depending upon the increase in what they pay for the price of fuel.

That has been in there and has been of rather important consequence in the last three or four years. It is only just now that the public utility commissions -- and it is far ahead in Ohio compared to other places.

CHAIRMAN RIGLER: Have I missed something?

Your question was what studies or analyses he made with respect to the effectiveness?

MR. REYNOLDS: Right.

CHAIRMAN RIGLER: That can be answered without an example.

THE WITNESS: I have looked into the question as to how effective they are and have been in the past four years

1 in monitoring the automatic fuel adjustments.

male

2 CHAIRMAN RIGLER: His question is, what did you  
3 do?

4 THE WITNESS: I discussed -- this is what I was  
5 going at. I discussed this question with people at the  
6 Public Utility Commission as to what they are in the process  
7 of doing.

8 BY MR. REYNOLDS:

9 Q Is that Mr. Boroughs who you referred to  
10 earlier?

11 A Mr. Boroughs and one or two others.

12 Q Who else?

13 A I don't remember his name.

14 What is the name of the economist down there,  
15 Melvin?

16 MR. MELVIN BERGER: I don't know.

17 THE WITNESS: Well, I talked to their chief  
18 economist and I talked to Mr. Boroughs and I must say that  
19 the scheme they now have in mind and which they will get --

20 CHAIRMAN RIGLER: Wait, you are not being asked to  
21 comment on the scheme they now have.

22 THE WITNESS: He is the only one I can remember.

23 BY MR. REYNOLDS:

24 Q He and one or two other people are the source of  
25 your information as to the ineffectiveness of the Commission?



ml 17

1 A They didn't characterize it as ineffective. I  
2 did.

3 Q On the basis of your conversations with them?

4 A Yes.

5 Q When did that conversation take place? Or those  
6 conversations?

7 Was it more than one?

8 A I spent one day, about nine hours -- we spent about  
9 nine hours there.

10 Q When did that take place?

11 A I will tell you. Just a minute. February 5.

12 Q What year?

13 A 1976.

14 Q That was after you had written and filed your  
15 testimony here?

16 A Yes.

17 This doesn't depend on particular studies of the  
18 sort you have in mind. I have been involved in these  
19 industries from 1951.

20 Q Did you have any similar discussions with anyone  
21 in Pennsylvania?

22 A No, I didn't go to Pennsylvania.

23 Q What about the FPC?

24 Did you have any discussions with anyone at the  
25 FPC regarding its regulatory enforcement of the CAPCO members?

mm18 1 A Over how long a time period, over the CAPCO  
2 members?

3 Q Yes.

4 A No.

5 Q What about the SEC?

6 A I go to the SEC.

7 Q You state that, at lines 175 lines 18 to 25, that  
8 as in any other organization, long tenure in the regulatory  
9 agency develops --

10 A Page 175?

11 Q I'm sorry, page 171, lines 18 to 25.

12 "As in any other organization, long tenure  
13 in a regulatory agency develops habits, practices,  
14 perspectives, which though once operational and  
15 rational become obsolete. The very purposes of the  
16 agency become confused; those who are to be  
17 regulated, rather than the public, become the  
18 clients; a symbiosis develops between the  
19 regulator and the regulatee -- both need each other  
20 if the system is to exist."

21 Do you see that?

22 A Yes.

23 Q Can you tell us whether this condition exists  
24 in the Nuclear Regulatory Commission?

25 A This is a very new commission.

mm19 1 Q How new is the Nuclear Regulatory Commission in  
2 your view?

3 A Insofar as this particular aspect of it in the  
4 licensing, it is just several years old, four or five.

5 Insofar as the safety goes, it may well exist on  
6 that, I don't know.

7 I think what I am saying is right with respect  
8 to their promotion of nuclear plants. The former Chairman of  
9 this Commission is a great advocate of that from the very  
10 beginning.

11 I am going to be chairing a seminar on energy on  
12 May 7 and I am inviting some speakers and the question as to  
13 the safety of nuclear plants is a very closed issue, and it  
14 has been brought to the public notice recently by the  
15 resignation of three engineers involved with the safety  
16 aspects.

17 It seems to me that the Nuclear Regulatory Agency  
18 or the Atomic Energy Commission as it was formerly called,  
19 has absorbed some of that promotional bias and -- of the groups  
20 that they were regulating -- they started to be viewed  
21 as clients, not necessarily. And this is an almost inevitable  
22 tendency. I am not criticizing them.

23 With respect to this part of the organization  
24 that is --

25 Q How long in your view would you say this particular

mm20

1 part of the agency has to exist before it also becomes  
2 subject to that condition?

3 A I can't give you a tenure of years. A great deal  
4 depends on the competence and dedication of the people within  
5 it.

6 CHAIRMAN RIGLER: Why don't we take our midmorning  
7 break now.

8 Did you have a final question here?

9 MR. REYNOLDS: With Dr. Wein I never know.

10 CHAIRMAN RIGLER: Well, go ahead then.

11 MR. REYNOLDS: There are a couple more -- I had  
12 a couple more questions. It could take five or fifteen  
13 minutes. It is on this same line, but if we break now I can  
14 come back to it.

15 CHAIRMAN RIGLER: Okay.

16 (Recess.)

17

18

19

20

21

22

23

24

25

dae

1 BY MR. REYNOLDS:

2 Q Dr. Wein, on Monday of this week you testified with  
3 respect to the regional power exchange market and in explaining  
4 how you arrived at the geographic area you made reference to some  
5 center of gravity in terms of the flow of power transactions  
6 and in that connection indicated that the NRC staff had made  
7 a study which you stated shows roughly 65 percent of all the  
8 kilowatt hours flowing amongst the CAPCO members are entitled  
9 to the CAPCO pool power and approximately 35 percent are coming  
10 I think it's from outside. It says "out" here, but I believe  
11 you meant from outside.

12 Let me show you what has been provided to me by  
13 the department as a copy of that study. For identification  
14 purposes I will mark this as Applicants Exhibit Number 104.

15 MR. MELVIN BERGER: Before you continue, I think  
16 you may have misspoken on your characterization of  
17 Dr. Wein's testimony, inadvertently.

18 MR. REYNOLDS: Why don't you correct me.

19 If it was inadvertent, I will accept your  
20 correction.

21 THE WITNESS: Is there a question pending?

22 MR. REYNOLDS: No. The depar

23 [Discussion off the record.]

24 THE WITNESS: What lines are we reading?  
25



mul

1 BY MR. REYNOLDS:

2 Q Dr. Wein, I was starting at the bottom of page 7032  
3 of the transcript of Monday, March 22, 1976, and  
4 continuing up to the top of 7033 down through line 8 on that  
5 latter page.

6 And starting at line 5 it seems that there may be  
7 some clarification as to what exactly the statement you  
8 made there was.

9 Could you tell us what you meant to say in lines  
10 5 through 8 on thatpage?

11 A What that meant to say was that roughly 65 percent  
12 of all the kwh flowing among the CAPCO members are either  
13 originated or destined within the CAPCO system, and  
14 approximately 35 percent come from or go to the outside.

15 Q All right.

16 A That is essentially what it is supposed to mean.

17 Q Okay.

end 7

18

19

20

21

22

23

24

25

S8

bwl

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

BY MR. REYNOLDS:

Q Will you look at the NRC Staff study which has been marked for identification as Applicants Exhibit 104 and specifically at the last page, or page 3, and confirm for me that that study shows that Applicants transferred 15,960,780 thousand kilowatt hours with other CAPCO members or CCGT entities in 1973.

And if the 14,752, 692 thousand kilowatt hours were exchanged between Applicants and entities outside or approximately 50-50. Is that correct?

A Yes. That is what it shows.

I simply let that covering letter, which says roughly 65-35, and I didn't bother to do this.

I don't particularly rely on it. It doesn't change any conclusions that I have with respect to CAPCO.

Q Did you check the consistency of the numbers shown in the NRC study against the figures reported in the WPC forms?

A No.

Q Am I also correct in concluding that you made no check to verify the consistency of the numbers by examining figures reported in the forms filed by the other party to the transaction?

bw2

1 A You are correct. I made no check on it.

2 Q All right. I would like to move into evidence,  
3 Applicant's Exhibit 104 at this time.

4 MR. LESSY: Mr. Chairman, the Applicants 104  
5 has been described as a Staff study. It is not. It is  
6 the work product of an individual economist, and it is not  
7 an official document of the Staff.

8 And our position here is that it would not be  
9 supported by the Staff, and it was not designed as a  
10 document of the Staff to be used in this proceeding.

11 However, if Applicants want to use it for whatever  
12 weight they want the Board to give it, to make sure it is  
13 not a Staff study. It is a document prepared by an  
14 individual member of the economics staff.

15 CHAIRMAN RIGLER: You are saying that you are  
16 not relying on the information set forth there?

17 MR. LESSY: That is correct.

18 MR. REYNOLDS: But the Witness has indicated  
19 that he relied on it.

20 THE WITNESS: No. I did not. I said precisely  
21 the other thing, even in my transcript.

22 BY MR. REYNOLDS:

23 Q On page 7033, I believe you say: "I have  
24 a study" --

25 Q Let me read it. . . .

bw3 1

Q Why don't you read lines 2, 3, 4.

2

A I will read all the things that are relevant.

3

On page 7033, starting with line nine, I mention it. "While that is good enough on the LIFO-LOFI test if you want to take that, then it is an indication of a proper geographical market.

4

5

6

7

8

9

10

11

12

13

14

"But the idea of trying to pin it down to one region is an inappropriate concept here, because the essence of the thing is its interconnection with outside. So even if in a particular year Toledo got more stuff from Consumers than they got from CAPCO, it wouldn't put Consumers in the CAPCO pool, because Consumers is not in the CAPCO pool, though they interchange energy to and from the CAPCO pool."

15

16

Also when you asked me as to whether a percentage of such a market is an appropriate concept, I said, no.

17

18

It is quite irrelevant. That is not the sort of thing in which you would take percentages.

19

20

21

Q You do indicate in your direct testimony that the LIFO-LOFI test is an appropriate one for determining geographic market?

22

23

24

25

A For wholesale and retail.

MR. REYNOLDS: I would just refer the Board to lines 2, 3, 4 on that page. I think the testimony speaks for itself.

bw4

1 CHAIRMAN RIGLER: Do you object to the  
2 introduction into evidence of that?

3 MR. MELVIN BERGER: No, we do not.

4 CHAIRMAN RIGLER: All right.

5 We will receive Applicants Number 104 into  
6 evidence at this time. However, in doing so, I want to  
7 find out the purpose that Applicants intended us to utilize  
8 this document for, please.

9 Are we to take it for the truth of the matters  
10 set forth therein or merely for the fact that Dr. Wein  
11 made reference to it?

12 MR. REYNOLDS: Well, I would be introducing  
13 it for all purposes. He indicated that he relied on it,  
14 and that he used those figures in some fashion in assessing  
15 regional markets, regional power exchange markets.

16 MR. MELVIN BERGER: I don't believe Dr. Wein  
17 indicated that he relied on it.

18 MR. REYNOLDS: He indicated he requested the  
19 staff to make him a study and this is the study that he  
20 said was provided.

21 THE WITNESS: That is not true. I never  
22 requested the Staff to make me a study. Absolutely false.  
23 I didn't even know they had the study, until Mr. Berger  
24 said they were doing it, and I said, if you can get the  
25 figures, let me see it. This was long after my testimony.



bw5

1 I think the Department should put in the  
2 letter which Mr. Lessy sent me.

3 MR. REYNOLDS: Well, I would introduce it for  
4 all purposes.

5 MR. MELVIN BERGER: We would have no objection,  
6 subject to the cover letter going in with this.

7 MR. LESSY: If it is going to be used for all  
8 purposes, I would like an offer of proof with respect to  
9 its submission into evidence, especially in light of the  
10 fact that Staff does not recognize it as an official  
11 staff document upon which it relies.

12 CHAIRMAN RIGLER: The problem I am having is that  
13 if we take it for all purposes, we would rely on the  
14 accuracy of the figures set forth in the document.

15 MR. REYNOLDS: Unless they could be shown to  
16 be inaccurate.

17 Based on the footnote references.

18 MR. MELVIN BERGER: Is it your intention to  
19 impeach your own exhibit?

20 MR. REYNOLDS: If you want to put it that way,  
21 I guess that would be one way of characterizing it.

22 If you are asking me if I think the study is  
23 inaccurate, my answer is yes. If you are asking me  
24 whether I intend to show its inaccuracy at sometime, my  
25 answer is that probably I will.

bv6

1 And it goes to the validity of Dr. Wein's  
2 testimony with regard to this particular study.

3 CHAIRMAN RIGLER: I can see receiving it to attack  
4 the validity of the conclusions that Dr. Wein draws. But  
5 in view of your admitted concern that the figures are not  
6 accurate, I don't think the Board can receive it as to the  
7 accuracy of the materials contained therein.

8 So, for the purpose of evaluating and weighing  
9 the validity of Dr. Wein's analysis or conclusions, we will  
10 accept it.

11 MR. REYNOLDS: All right.

12 CHAIRMAN RIGLER: All right.

13 (The document previously  
14 marked Applicants Exhibit  
15 104 for identification was  
16 received in evidence.)

17 BY MR. REYNOLDS:

18 Q Now, Dr. WEIN, let me ask you if wholesale  
19 power based on the average embedded costs of all the CAPCO,  
20 of all of CAPCO's facilities was lower in costs than, say,  
21 unit power purchased from nuclear plants or, let's say, lower  
22 in cost also than an ownership share of the nuclear plants,  
23 as an economist, would you still contend that direct access  
24 to the nuclear plants was necessary, in order to preserve  
25 the competition of small systems in the CAPCO area?

bw7

1           A       I am assuming that when you say lower in  
2 cost, the way I have defined that, i.e., over a long time  
3 period given the life of the plants. And then what  
4 you are assuming is that the wholesale firm power over this  
5 entire period is lower. - Is that it?

6           Q       That is right.

7           A       The answer is that I still would consider the  
8 option important, yes. Access, very important.

9           Q       You are saying you would consider it important  
10 in order to preserve the competitive position of the  
11 small systems?

12          A       Yes.

13          Q       Why is that?

14          A       Well, in the first place, a wholesale power  
15 rate can be changed. In the second place, having that  
16 option is going to make sure you are going to add at least  
17 some reinforcing, having adequate options, it will give  
18 them some assurance that if the wholesale power in the  
19 future, or if the regulation changes so that the assumption  
20 might be false, they have an alternative.

21                   Thirdly, the rate may not change, but it  
22 might be the case that the utility or a municipal can't get as  
23 much power as it wants, less than it might get under a  
24 unit or nuclear entitlement. That is a possibility.

25                   So, there are a lot of reasons why having the

Lw8

1 options itself are worth, and would help the competitive  
2 structure.

3 If, for example, a wholesale rate was  
4 given to you, and there were restrictions on the contract as  
5 to whom you could sell that to on the wholesale firm power  
6 delivered to you, you couldn't have those restrictions, if you  
7 simply bought your own energy through a unit entitlement  
8 or through an ownership arrangement.

9 So, there are lots of reasons why it would be  
10 very important to have these options to help competitive  
11 practices.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

mr9

1 Q Let me ask you this, Dr. Wein. If incremental cost  
2 is above average cost and if incremental cost is increasing,  
3 can average cost ever be decreasing?

4 MR. MELVIN BERGER: Objection as asked and  
5 answered.

6 THE WITNESS: The diagram I showed will indicate  
7 that very clearly, no. As a matter of poor arithmetic  
8 it is obvious that the incremental cost, if it is going up,  
9 the average cost must be going up, too.

10 BY MR. REYNOLDS:

11 Q And economists express this rule by noting that  
12 the incremental cost curve always intersects the average  
13 cost curve at the minimum point of the average cost curve, is  
14 that correct?

15 A Yes.

16 Q Now, the graph that you sketched as Department of  
17 Justice Exhibit 596 does not do that, does it?

18 A Well, the argument is the same. I can change that  
19 and it will be the same.

20 Q I see.

21 If the incremental cost curve intersects the  
22 average cost curve at the average cost curve's minimum, isn't  
23 it true that the average cost curve can approach the  
24 incremental cost curve asymptotically only if the slope of  
25 the incremental curve becomes flat or turns downward?



mm2] 1 A It can be increasing at a lower rate of increase.  
2 The incremental -- let me look at the diagram, please.

3 MR. REYNOLDS: Would you read the question back?

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

6 BY MR. REYNOLDS:

7 Q Can't you answer that yes or no?

8 A Just a minute. I am going through the  
9 arithmetic.

10 Q I am asking you a general principle of economics.

11 MR. MELVIN BERGER: Please let Dr. Wein answer  
12 the question. He apparently is doing some calculations to  
13 help formulate an answer.

14 THE WITNESS: I first want to change my answer to  
15 the previous question, not necessarily true that -- let  
16 me put it this way:

17 It is possible for the average cost curve to reach  
18 a minimum point even though the incremental cost curve is  
19 going up.

20 That is number one.

21 Now, what is the second question?

22 BY MR. REYNOLDS:

23 Q But that is only if the incremental cost  
24 curve is below the average cost curve?

25 A No. It could be at the same level of it.

mm3

In other words, the incremental costs can be going up. You can have a minimum where you have the incremental equal to the average, and the incremental can be going up and the minimum need not change.

Now --

Q The incremental is crossing at the minimum point of the average cost curve?

A There are two minimums here which are the same. What is the second question.

CHAIRMAN RIGLER: As we answer this, let's have one person speak at a time or we will have a very confused record on this.

What is the second thing?

MR. REYNOLDS: Do you want the question back again?

THE WITNESS: Yes.

BY MR. REYNOLDS:

Q If the incremental cost curve intersects the average cost curve at that curve's minimum, isn't it true that the average cost curve can approach the incremental cost curve asymptotically only if the slope of the incremental curve becomes flat or turns downward?

Flat being a slope of zero.

A That isn't right. It doesn't have to have a zero slope at all. All it has to have is that the rate of increase

num4

1 is less.

2 Q Less than what?

3 A The rate of increase of the incremental cost de-  
4 creasing.

5 Q Would then the slope of the incremental cost curve  
6 turn down?

7 A No, it wouldn't and it would not be flat.

8 I am trying to give you an example and you keep  
9 arguing with me about arithmetic. It need not be flat and it  
10 need not turn downward.

11 Q I hear what you are saying.

12 A Thank you.

13 Now, what is the question?

14 Q All right.

15 If the rate of increase of the incremental cost  
16 curve slows down, then wouldn't the rate of increase of the  
17 average cost curve also slow down?

18 A That is exactly what this diagram shows, and the  
19 gap will be lessening between them. And so there is where  
20 you get your asymptotic approach.

21 Q Does your graph indicate that the incremental cost  
22 curve is slowing or increasing in its rate?

23 A It seems to me that it is slowing in its rate.

24 All you have to do is draw the lines and you can see it.

25 If we took it at the T-zero out to where the

mm5

diagram ends, it is obvious that the slope is decreasing or there wouldn't be that asymptotic business. But the principles are perfectly clear.

I will start with my numbers and see if I can get a numerical example.

Q Let me have your example.

A I am getting involved in too many decimal points as I am doing this. So go ahead.

Q Could you finish it over lunch and give it to us?

A I will try.

Q Isn't the savings, if any, existent from purchasing an ownership interest at incremental cost represented by the difference between the cost of the unit at time T-zero and the average cost curve at any time subsequent to the time T-zero?

A You mean the average cost. Yes, go ahead.

Q The answer is yes?

A Not subsequent to the time T-zero.

The savings come essentially at T-one. This diagram should have the vertical T-one. The loss goes from T-zero to T-one. The savings go from T-one there on out. That is what it is intended to show.

So if you will cross-hatch, put a line up there from T-one to hit the IC curve, it is that area beyond T-one which measures the savings.

mm6

Q So the gain from purchasing an ownership interest is not represented by the area between the average cost curve and the incremental cost curve as you have labelled it on the Department of Justice Exhibit 596, but rather by the area between the average cost curve and the price line extended from point P-two parallel to the abyss?

A T-one as I have just stated it, yes.

Q So --

A The relative areas of those two segments.

Q And during the time between T-zero and T-one, the utility loses money?

A Yes, and that, I think, is labeled correctly in the diagram.

Q And from the time -- from the time T-one to some new time, let's call it T-two, the utility would be recouping its losses, is that correct?

A Yes, it would.

The utility buying the ownership shares as compared to what it would have done buying it at wholesale rates.

Q And only after that time T-two will there be any net savings to the utility?

A Between T-one and T-two we have to have some period of time. And the savings between T-one and T-two, if T-two is taken far away it may be exceeding the area of the other segment. It is not only after T-two. It depends upon where T-two is placed and the magnitudes involved between them.



S10 1 Q Until the point in time T-two where you recouped your  
bw1 2 losses you would not have a net gain?

3 A The area of the net gain would be measured  
4 between, would be the area between T-one and T-two.

5 Q That would be the area where you recouped  
6 your losses, isn't that correct?

7 A Well, you have to tell me --

8 Q I am sorry.

9 A You have to tell me where the T-two is.

10 Q There is a period of time subsequent to time  
11 T-one --

12 A Let me explain this diagram.

13 I think I can get your answer. Let's  
14 suppose we put an arbitrary T-two there to the right of  
15 T-one. The question then is: is that area equal or  
16 greater than that it has already made some benefit.

17 Q But if it is equal to it?

18 A Then it is recouped and from that point on, it  
19 will be making money.

20 Q That is what I wanted.

21 A Okay.

22 Q Right.

23 Now, in the example you have illustrated on  
24 von 596, isn't it true that the utility will be purchasing  
25 new capacity at incremental cost only once?

2

1           A       Well, in this particular case, yes. It may,  
2 however, be doing the same thing and then we simply  
3 extend the time period forward.

4                       So it really makes no difference.

5           Q       Well, unless it purchases all fo the Capacity  
6 it is ever going to need, it will be necessary for it to pur-  
7 chase more capacity sometime in the future. Isn't that  
8 correct?

9           A       That is right. And as I stated in my testimony,  
10 even if it then got the rest of it wholesale; firm power,  
11 so long as they had made some gain at the beginning, they  
12 still would be better of than having to take all of it at  
13 wholesale from T-zero one.

14          Q       The price period for each purchase of new  
15 capacity will always be in excess of the then existing  
16 average system cost; won't it?

17          A       Yes, it will. But you don't get any difficulty  
18 if I put in three of these.

19                       We just get a longer chart.

20          Q       Let me show you what I will mark as Applicants  
21 Exhibit 105, Dr. Wein, and ask you whether that is a more  
22 accurate depiction of what it is that you were reflecting  
23 in your exhibit, in Department Exhibit 596?

24          A       No. It is not the more accurate. I don't  
25 understand it. Particularly, the arrow labeled gain

43

1 That shows it is all at the average cost.

2 Q The arrow there shows gain as the area past  
3 T-two.

4 A Well, but the area past --

5 Q Between T-one.

6 A The area past T-two should -- okay. That whole  
7 area there, all right, go ahead. That is all right.

8 Q Okay.

9 A It is now equivalent to what we have simply  
10 done to my chart. It is a little neater, I might say.  
11 But it is equivalent to the chart I gave you, and it is  
12 not more accurate. All you have to add is add this little  
13 point there.

14 Q So you don't have any other quarrels with it?

15 A Not that I see.

16 MR. REYNOLDS: I would like to move Applicants  
17 Exhibit 105 into evidence.

18 THE WITNESS: I am assuming that the areas  
19 between T-One and T-two are equal to the area between  
20 T-zero and T-one.

21 MR. REYNOLDS: Right. It was meant to be.

22 CHAIRMAN RIGLER: Hearing no objection, we will  
23 receive Applicants 105 into evidence.

24

25

DW4

(The document referred to was marked Applicants Exhibit 105 for identification and was received in evidence.)

BY MR. REYNOLDS:

Q Dr. Wain, can you tell us whether the cost of adding generating capacity at the present time is higher than the average cost of existing capacity?

A Measured over how long a time period?

Q Well, at the present time in the CAPCO area.

A But again measured over how long a time period?

Book cost in a period of inflation is always higher than a particular time in which you enter it into cost. But the total, the total -- the real question is: would kilowatt hours over the expanded life be higher or lower? Is that the question that has economic significance, it seems to me.

Q Have you looked into that question?

A I assume, I assume, Mr. Reynolds, that the CAPCO entities considering that they have very high priced economic talent and have high priced engineering talent, obviously, have high priced legal talent and other talents relevant in this question having decided to go into an nuclear expansion, have decided that it is better not to put in anything else other than nuclear plants, rather than fossil plants.

1                   And involved in that is the assumption that  
2 if we kept our present plant and simply duplicated it just  
3 as it was for the future that is higher cost.

4                   That is what your average book cost today is,  
5 your present plant.

6                   If they just reproduce that present plant as  
7 of today and it would be cheaper, then they are absolutely  
8 doing a very stupid thing.

9                   I have answered that question and I come around  
10 and asked it of me twice.

11                  Q       Isn't it true that as long as the cost of added  
12 capacity remains above the average, average costs will  
13 always be cheaper than incremental costs.

14                  A       I have answered that question.

ES10

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



411 mm1

Q Well then, give me a yes or no answer.

MR. MELVIN BERGER: I will object to that as asked and answered.

CHAIRMAN RIGLER: Sustained.

But once again, Dr. Wein, I caution you that you may not raise objections to questions. It must come through counsel.

THE WITNESS: All right.

BY MR. REYNOLDS:

Q Assuming that power can be purchased at a time of rising incremental costs, would that be cheaper than the -- assuming power could be purchased at a time of rising incremental costs, would such purchases be cheaper than ownership of incremental capacity?

MR. MELVIN BERGER: I will object to that as having been asked and answered.

It seems like it is the same question.

MR. REYNOLDS: Mr. Chairman, this is cross-examination.

CHAIRMAN RIGLER: Overruled.

THE WITNESS: Please read the question. I wasn't paying attention.

(Whereupon, the reporter read from the record as requested.)

THE WITNESS: It depends on how long the time is.

mm2

I have already introduced a diagram to show that that is not necessarily the case.

MR. REYNOLDS: I don't have anything further.

CHAIRMAN RIGLER: All right.

Mr. Lessy, you have nothing further, I assume?

MR. REYNOLDS: I will object to any questions by Mr. Lessy. He has done no cross-examination of this witness. There has been no redirect by the Department of Justice and to allow Mr. Lessy to do any examination is inappropriate.

He had his opportunity to cross and he waived it.

CHAIRMAN RIGLER: Mr. Hjelmfelt, do you have any questions?

MR. HJELMFELT: Yes, I do.

CHAIRMAN RIGLER: All right.

We are going to take an hour for lunch. I want you two to confer with Mr. Berger to narrow down the scope of any redirect or recross considerably.

MR. LESSY: There are some new areas though from the time the initial testimony was filed, and that would be our primary concern. There are a few other areas we want to go into.

CHAIRMAN RIGLER: All right.

You confer with Mr. Berger and see if you can't arrange him to cover those in the areas he goes over.

MR. LESSY: Which ones?

mm3

1 CHAIRMAN RIGLER: Your areas of concern.

2 MR. LESSY: All right.

3 MR. MELVIN BERGER: I believe we have an additional  
4 burden, aside from the fact that we do want to confer with  
5 Dr. Wein, and that is he was asked to calculate some figures  
6 by Mr. Reynolds in an earlier question.

7 THE WITNESS: I don't really need to.

8 I would like to, upon study of this thing, to  
9 note one difference between their curve and my curve in that  
10 they are assuming that incremental costs are rising at an  
11 increasing rate.

12 MR. REYNOLDS: Wait a minute now. We don't have a  
13 question.

14 CHAIRMAN RIGLER: Nonetheless, he can clarify his  
15 answer to a previous question.

16 THE WITNESS: They are assuming that the incremental  
17 costs are rising at an increasing rate and therefore the  
18 gap between those two would widen.

19 I am assuming that the incremental costs are  
20 rising at a decreasing rate.

21 That is the difference between the two charts.

22 MR. LESSY: Am I to be permitted a limited amount  
23 of questions, say ten or fifteen minutes? Or will I be  
24 required to funnel all the questions in through him?

25 Since we had a separate economist in our testimony,

mm4

1 I would like to just take about ten minutes to question the  
2 witness.

3 MR. REYNOLDS: I object to it.

4 CHAIRMAN RIGLER: I am not going to cut you off  
5 from that at this time. However, I am not sure that I find  
6 it necessary either.

7 It seems to me that if Mr. Berger covers  
8 that in his redirect, the mere fact that the Staff had a  
9 separate economist wouldn't justify covering the same area  
10 twice.

11 So, if Mr. Berger is going to cover the areas of  
12 concern to you, that should suffice.

13 MR. LESSY: Should Mr. Berger go ahead of the Staff  
14 then?

15 CHAIRMAN RIGLER: Yes.

16 MR. REYNOLDS: I have another question in light of  
17 the commentary of Dr. Wein.

18 CHAIRMAN RIGLER: All right.

19 MR. REYNOLDS: And that is, are you aware,  
20 Dr. Wein, that the incremental cost curve on Applicants'  
21 Exhibit 105 was copied directly from the incremental cost  
22 curve that is shown on the Department of Justice Exhibit 596  
23 from time T-zero up?

24 THE WITNESS: I don't know what you mean by copying  
25 directly from.

mm5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. REYNOLDS: One was placed on top of the other.

THE WITNESS: That doesn't mean anything.

The curve I have is not showing an increasing rate. This one has --

MR. REYNOLDS: I would then, in light of that, like to have the numbers that you were putting together for me and get those for me at the lunch break.

MR. MELVIN BERGER: Mr. Chairman, I don't know how long that is going to take Dr. Wein to derive. And I think it would be unfair to limit us to the hour and have this calculation which may well take that long.

CHAIRMAN RIGLER: I don't understand that the principles require an arithmetic example.

MR. REYNOLDS: The principle has been challenged and he has indicated to us that he can establish the validity of or the invalidity of the principle by the figures. And I would like to see the figures in view of that.

CHAIRMAN RIGLER: The figures are different than the question you just raised.

In the case of Applicants' 105, the incremental cost gap is rising in comparison to the average cost. Whereas in 596, it is narrowing at the time period beyond T-one or T-two.

MR. REYNOLDS: But the principle relates to the rate of slope of the incremental cost curve.



mm6

1 THE WITNESS: And I am perfectly willing to state  
2 that when -- that the rate of increase in the incremental  
3 cost curve, when it is declining as I intend to show in  
4 this, and as I think realistic --

5 MR. REYNOLDS: If Dr. Wein is suggesting --

6 THE WITNESS: Just a minute. I haven't finished.  
7 Then you would get a narrowing of the gap.

8 On the other hand, when the rate of increase of  
9 the incremental cost curve, that is to say the rate of  
10 increase of that is continuing to go up so that you have a  
11 curve linear thing, the gap between it and the average cost  
12 will increase.

13 Now that is what they are showing, and I don't think  
14 numbers are necessary for that.

15 MR. REYNOLDS: What I am saying is that that is  
16 inaccurate and I would like to see the numbers that he  
17 thinks support that, support the proposition that if the  
18 incremental cost curve is rising at a slower rate or at a  
19 decreasing rate that it will, therefore, that in that situation  
20 the incremental cost curve and the average cost curve will  
21 approach each other asymptotically.

22 I am challenging that principle. If he is saying  
23 that that is the situation and if he says he can show me  
24 figures to prove that, I would like to see them.

25 CHAIRMAN RIGLER: Doesn't that depend on what is

mm7

1 happening to the average cost curve?

2 MR. REYNOLDS: But what is happening to the average  
3 cost curve depends on what is happening to the incremental  
4 cost curve.

5 And if the incremental cost curve is increasing  
6 at a slower rate, so will the average cost curve be  
7 increasing at a slower rate commensurately.

8 MR. SMITH: So long as you have any increase  
9 whatever in the incremental cost curve, they could  
10 never approach each other?

11 MR. REYNOLDS: That is correct. And in fact, they  
12 are going to go the other way. They are going to diverge.

13 THE WITNESS: That is not true.

14 MR. REYNOLDS: Unless it is constant, and then  
15 they will stay parallel. That is true, unless it is constant,  
16 at which point they will remain parallel.

17 CHAIRMAN RIGLER: All right.

18 I am going to give you one hour for lunch.  
19 At the end of that hour, if you need additional time, let us  
20 know and let the other parties know.

21 MR. MELVIN BERGER: Okay.

22 (Whereupon, at 12:15 p.m., the hearing in the  
23 above entitled matter was recessed, to resume at 1:15 p.m.  
24 this same day.)  
25

S12  
bw1

AFTERNOON SESSION

(1:15 p.m.)

Whereupon,

DR. HAROLD WEIN

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

REDIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q Dr. Wein, I would like to refer you to the  
chart that Applicants had presented to you this morning.  
I believe it was Applicants Exhibit 105.

And I ask you if you would accept that  
chart as being correct?

A Yes.

Q Would that change any of your testimony?

A No, not with respect to the advantages of buying  
a share of a nuclear plant at the municipal's cost.

Q I would like to ask you to look at page 6622  
of the transcript, particularly the question and answer  
which begins at line 13 of that page.

A Line waht?

Q Line 13.

A Yes.

Q In that answer I believe you refer to certain  
surrounding circumstances that you would have to look

bw2

1 at to determine if destructive competition existed.

2 What circumstances did you have in mind?

3 A Well, I had in mind whether other options,  
4 such as involved in coordinated power transactions with  
5 granted to the small municipal system or whether they were  
6 not granted to the small municipal system. If all the  
7 other options are granted to the small municipal system, other  
8 than this one, then it would go to the weight and  
9 importance of this particular one as compared to all the  
10 other advantages.

11 MR. REYNOLDS: I am sorry. Mr. Berger, I  
12 am looking at page 6662?

13 MR. MELVIN BERGER: 6622.

14 MR. REYNOLDS: I am sorry.

15 BY MR. MELVIN BERGER:

16 Q Does that complete your answer?

17 A Yes.

18 Q At page 6627 of the transcript and  
19 particularly lines 7 through 13, you testified to having  
20 discussions with counsel relating to law. Did you interpret  
21 the question which appears at lines 11 and 12 of that  
22 transcript page to mean state law as opposed to federal  
23 law?

24 A No. I meant both state law and federal law.

25 Q You meant that you had discussions with counsel

bw3

1 about both state and federal law?

2 A Both state and federal.

3 Q I would like to refer you now to page 6641  
4 and the sentence which begins on line 15 of the transcript.

5 A 6641?

6 Q 6641, the sentence which begins at line 15  
7 which reads: "Since there are only two classes, I  
8 obviously spent more than 50 percent on electricity  
9 and less on gas."

10 A It should be the other way around.

11 I spent more than 50 percent on gas and less than  
12 50 percent on electricity.

13 Q Dr. Wein, with respect to the preparation of  
14 your direct testimony for this proceeding, did you indicate  
15 at one point to the Department that you would be unwilling  
16 to testify as a witness in this proceeding, unless the  
17 filing date for your direct testimony extended beyond  
18 the end of September of 1975?

19 A Yes. I indicated -- indicated is a little  
20 weak. I said I would not testify before September 15,  
21 if it were not postponed beyond September 15.

22 Q Dr. Wein, during your cross-examination,  
23 Mr. Reynolds referred to Applicants Exhibit 44. And I believe  
24 you stated that you are familiar with it. Have you  
25 reached any conclusions as to the desirability of the



bw4

1 conditions contained in Applicants 44?

2 A Well, I really have nothing to add on that,  
3 that has not already been said by either Mr. Kampmeier  
4 Mr. Hughes or Mr. Voser.

5 I don't think it is desirable compared to the  
6 other alternatives.

7 Q Are you adopting the testimony of the  
8 Witnesses you have just named?

9 A Yes, with respect to 44, with respect to their  
10 disadvantage as compared to, for example, ownership.  
11 Compared to ownership in the way in which, the full  
12 coordination, operating coordination which they have  
13 set fort.

14 Q I believe you stated in your prior testimony  
15 that, although you were aware of a draft participation  
16 agreement between CEI and MELP, at the time you prepared  
17 your direct testimony, you did not take that into account  
18 in preparing your direct testimony.

19 I would like to ask you why not?

20 A Well, it was a document which the Department  
21 of Justice had sent to me. And as I read it, it seemed  
22 to me to be nothing official. It was an attempt by  
23 CEI to try out some alternatives. They themselves recognized  
24 that there would be at least a devil's / . . .  
25 advocating that position t'at there would be a serious

1 objection, probably counterarguments made. But in any  
2 case, it had no official standing and I decided not to  
3 use it.

4 Q Dr. Wein, there has been extensive  
5 examination the the area of price squeeze.

6 Does the fact that the FPC set a rate of  
7 return for a company and has power to review and change the  
8 wholesale rates of that company and the fact that the  
9 state regulatory commission has a similar power with regard  
10 to retail rates, do those two facts eliminate the possibility  
11 of a price squeeze?

12 A No.

13 Q Why not?

14 A Well, a state agency is regulating rates of  
15 return on retail sales where a particular utility  
16 operates within that state. It may or may not have a  
17 similar standard of what a fair rate of return is.

18 It may or may not have similar cost standards.  
19 It may or may not have a similar allocations' standards.

20 In any case, it simply serves to state a rate  
21 of return on the retail part of the business. And it may approve  
22 rate designs filed with it.

23 It may approve specific rates or it may not,  
24 depending upon whether the matter comes to it or wheter it on  
25 its own motion decides to look into the matter. The Federal

bw6 1 Power Commission reviews wholesale rates. And they, of  
2 course, may have different standards than the state agency,  
3 as well as different cost formula, as well as different  
4 codes of accounts.

5 In any event, the Federal Power Commission has  
6 argued before the Federal Courts and has now an appeal  
7 underway that it has not had, does not have the necessity  
8 in determining whether wholesale rates are just and reasonable,  
9 and determined that in connection with that wholesale rate  
10 and the subsequent ensuing retail competition, whether or  
11 not that wholesale rate which it established on its own  
12 criteria would necessarily lead to any anticompetitive  
13 effects.

14 It is argued that it is not within its  
15 jurisdiction to so determine.

16 And, as you know, in the Conway case the  
17 Federal Power Commission has made that argument and  
18 it is now on appeal.

19 The Court of Appeals for the District said  
20 that is what they ought to consider. They should consider,  
21 they have a statutory duty to consider that.

22 And they are appealing it.

23 Now, even if it should come about that, if this  
24 case goes to the Supreme Court of the United States, as I  
25 understand that it will, and the Supreme Court were to say:

bw7

1 "Yes, you do have this statutory duty to examine into  
2 the anticompetitive effects, now, that is going to depend  
3 and, of course, the FPC will do that, then that goes  
4 to the question as to how thorough their examination is,  
5 how effective their examination is or whether they actually  
6 go to the details of rate designs, they actually go to  
7 the individual costs of particular classes of rate pairs  
8 or in the case of a municipal, as against an industrial  
9 or, as against something else, it depends on that sort  
10 of investigation.

11 Now, I don't know how this case will turn,  
12 and I don't know whether or not the investigation would be  
13 of such detail and be of such a searching inquiry as to  
14 approximate, say, the standards which would be required  
15 in the Sherman Act case.

16 So, my feeling is that as of now and as  
17 of the past, they could not prevent price squeezes.

18 Whether they can in the future is anybody's  
19 guess, supposing that it is ruled that they must do so.  
20  
21  
22  
23  
24  
25

1 Q During your cross-examination there were numerous  
2 questions dealing with wholesale and wholesale functions.

3 Dr. Wein, is there a wholesale function in the  
4 electric utility industry?

5 A Yes.

6 Q Is this wholesale function present even in sales  
7 to large industrial customers?

8 A You mean do the large industrials do it for  
9 themselves?

10 Q Does someone perform the wholesale function?

11 A Yes, someone performs it.

12 And a large industrial may in fact do it itself.

13 Q There was also some testimony with regard to  
14 cut-throat competition and selling at marginal costs.

15 I would like to direct your attention to transcript  
16 page 6673 and particularly to lines 9 through 12 --

17 A Yes.

18 Q -- where you referred to a large body of opinion.

19 What body of opinion did you have in mind when  
20 you made that statement?

21 A Well, this became a subject in recent years,  
22 starting perhaps in 1965, though this issue had been around  
23 back in the '30s and '40s in economic literature. But one  
24 generation of economists could guess what the past  
25 generation has done.



mm2

1 But, in 1965, two economists, Harvey Averch and  
2 Leland Johnson, published an article in the American Economic  
3 Review -- 1962, I should say, rather than '65. December of  
4 '62. And what they were asking, the question they were  
5 asking is something about a monopoly which is subject to regu-  
6 lation and they set forth two propositions, and I will read  
7 the two and then cut my comments short.

8 Now the first one is that the firm -- in this case  
9 the regulated monopolistic firm in a public utility industry --  
10 the firm will substitute capital for other factors of produc-  
11 tion and operate at an output where cost is not minimized.

12 That is the first proposition, saying then that  
13 you will get higher costs than you would otherwise have gotten.

14 And the second proposition is: The firm has an  
15 incentive to expand into other regulated markets even if it  
16 operates at a long-run loss in these markets. Therefore, it  
17 may drive out other firms or discourage their entry into these  
18 other markets even though the competing firms may be lower  
19 cost to producers.

20 MR. REYNOLDS: Could you tell us what you are  
21 reading from?

22 THE WITNESS: I am reading from the article by  
23 Harvey Averch and Johnson entitled, "Behavior of the Firm  
24 Under Regulatory Constraint," published in the American  
25 Economic Review, December, 1962, pages 1052 to 1069.

nm3

1 Now, in my testimony in Docket 1625 -- and I  
2 made note of this proposition through the particular variant  
3 of it and there has been a whole lot of articles by leading  
4 economists since then, up until the recent issue that I  
5 have of the Bell Journal, which is the leading journal in  
6 this area of public utility economics in which you have a  
7 whole series of these articles. And all of them have in one  
8 way or another confirmed this thesis, including two  
9 particular empirical studies as well as theoretical studies,  
10 such as paying a monopolist to charge prices at peak even  
11 lower than average cost prices. Variations of that sort.

12 This is essentially what I had reference to.

13 MR. REYNOLDS: Wait just a minute.

14 BY MR. MELVIN BERGER:

15 Q I believe Mr. Reynolds asked you during your cross-  
16 examination about differentials, differential advantages  
17 which municipals might have.

18 Are there any differential advantages which investor-  
19 owned utilities would have that municipal systems do not have?

20 A Yes. They have advantages.

21 MR. REYNOLDS: I really cannot hear the witness.

22 THE WITNESS: They have advantages.

23 BY MR. MELVIN BERGER:

24 Q What are some of these advantages?

25 A They can take advantage of the deferred income taxes.

mm4

1 accelerated depreciation. Those are two very important ones.

2 They also, of course, take advantage of their  
3 ability to coordinate with each other, which is extremely  
4 important.

5 Q Dr. Wein, in exercising their utility functions,  
6 are the investor-owned utilities given any advantages by the  
7 state?

8 A They are given the advantage of the right of eminent  
9 domain, for example.

10 Q In some of your prior testimony you mentioned that  
11 one thing an economist looks at when assessing a market is  
12 whether or not there are significant barriers to entry of  
13 new firms into that market?

14 Dr. Wein, in your opinion, are there significant  
15 barriers to entry in the electric utility business?

16 A Yes.

17 Q Are there -- in your opinion, are there significant  
18 barriers to entry in the electric utility business in Ohio  
19 and Pennsylvania?

20 A Yes.

21 Q Setting aside barriers that may be created because  
22 of conduct of other electric utility companies, what barriers  
23 to entry would exist for, let's say, a municipality which  
24 wishes to generate its own power --

25 A Well --

mn5 1 Q -- and has no interconnections with anyone else?

2 A Well --

3 MR. REYNOLDS: Can I have that question back again?

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

6 MR. REYNOLDS: Okay.

7 THE WITNESS: Well, if it had no interconnections  
8 with others, it would have very excessive costs even if it  
9 could put in 1000, a 1000 megawatt plant. It would have to  
10 keep high reserves, depending on the size of the units in the  
11 plant.

12 If it had no interconnections, that would be a  
13 most extreme barrier.

14 BY MR. MELVIN BERGER:

15 Q Would the same thing be true if it had no coordinated  
16 operation although it did have interconnections?

17 A Yes.

18 If it had no coordinated operations the cost of  
19 its generation would be greater.

20 Q Dr. Wein, would these barriers be lowered if  
21 coordinated operation were available?

22 A In that respect they would be lowered, yes.

23 Q In that situation would a refusal to engage in  
24 coordinated operation be an exercise of monopoly power?

25 A I would so judge.

mm6

1 Q I would like to refer you to page 6724 of the  
2 transcript, and in particular --

3 A I don't have 67--

4 (Document handed to the witness.)

5 BY MR. MELVIN BERGER:

6 Q I would like to withdraw my last reference and go  
7 back to the last question I asked you on barriers to entry and  
8 ask you if the same answers would be true if instead of  
9 a municipality which was going to enter the generation business,  
10 we had a municipality which was isolated and which was already  
11 generating its own power, but which wished to expand its  
12 capacity so that it could become a wholesale seller of power.

13 A To others?

14 Q To o'

15 A Now, what is the question?

16 Are there barriers to that?

17 What barriers do they face?

18 Q Yes.

19 Would the barriers they face, putting aside the  
20 conduct of other electric utilities, would they be the same  
21 as were faced by the municipal in the prior questions, which  
22 was, first, going into the business of generating its own  
23 power?

24 MR. REYNOLDS: I am not sure what portion of the  
25 testimony you are referring to where you are talking now



m7

1 about barriers of entry?

2 Are you talking about entry into the same markets  
3 or different markets?

4 MR. MELVIN BERGER: Let me withdraw the question and  
5 start this way.

6 BY MR. MELVIN BERGER:

7 Q Dr. Wein, putting aside barriers to entry that  
8 may be attributed to the conduct of other electric utility  
9 companies, if we had a small isolated system which was  
10 generating its own power, but wished to become larger, to  
11 increase its capacity so that it could become a wholesaler  
12 of power, what would the barriers, what are the barriers of  
13 entry into that wholesale market?

14 A Well, there are all the barriers of the first  
15 problem, the hypothetical that you gave me.

16 And in addition, there are now the problems of how  
17 it could reach a potential wholesale customer if it did not  
18 have transmission capabilities to get there.

19 It would be another barrier.

20  
21  
22  
23  
24  
25  
end #13

S14  
bwl

1 BY MR. MELVIN BERGER:

2 Q Would your answer be the same if you had  
3 instad of an isolated system, a system which had  
4 interconnections, but which did not have coordinated  
5 opeation wheeling, reserve sharing, other elements  
6 necessary to make efficient firm power, yes, of course, the  
7 answer would be yes. Those would be having significant  
8 barriers. Lack of those thing would be very significant  
9 barriers.

10 Q Dr. Wein, would these barriers be lowered by  
11 coordinated operation, coordinated operation, if it  
12 were available?

13 A Yes, both generation and transmission  
14 barriers would certainly be lowered.

15 Q Would a refusal to engage in coordinated  
16 operation in this situation be an exercise of monopoly power?

17 A You mean by a company which had them, had the  
18 ability to coordinate, had a transmission, could wheel and  
19 if the municipal were willing to pay, for example, a fair  
20 charge for wheeling, things of that nature, is that embraced  
21 in your question?

22 - Yes.

23 A Yes. Then, if that were true, then such a  
24 refusal would be an exercise of monopoly power?

25 Q Now, if I may refer you to page

bw2

1 6724 of the transcript and in particular the answer to the  
2 question which embraces line 16, where you use the term --

3 A Wait a minute. I just noticed on page 6724  
4 that there are some typographical errors. Have they been  
5 corrected?

6 Q I believe --

7 A Things called capital "N state," mean "end."  
8 When you have the term "N," we mean end.

9 Q Yes, thank you.

10 At line 16 you use the term "envelope" in your  
11 answer. What do you mean by that?

12 A Well, I was referring to a kind of standard,  
13 a standard, a standard economic term.

14 It is a mathematical, but it is used in economics.

15 It is the point of, it is along-run average  
16 cost curve which is the point of tangencies of a whole  
17 series of cost curves or firms at different scale where  
18 the assumption is that all these firms are optimally  
19 organized.

20 So, if you take this long-run cost curve and draw  
21 it to the minimum points tangent to that you trace out what is  
22 called an envelope loop.

23 I have drawn a diagram, if this would be of any  
24 help.

25 You could have it, if it would be helpful.

bw3

1 But that is essentially what the  
2 envelope is.

3 Perhaps it might be useful for you to have  
4 this diagram.

5 Q Dr. Wein, Mr. Reynolds --

6 MR. REYNOLDS: Are we going to see this  
7 diagram?

8 (Counsel furnished with diagram.)

9 MR. REYNOLDS: As I understood Dr. Wein's  
10 testimony, it was that he has depicted it schematically.  
11 Are you going to make it a part of the record?

12 MR. CHARNO: We will move it into evidence.

13 MR. REYNOLDS: I don't think that you need to do  
14 that, just mark it for identification.

15 BY MR. MELVIN BERGER:

16 Q Dr. Wein, Mr. Reynolds presented you with a  
17 hypothetical the other day in which two firms, two  
18 dominant firms controlled approximately 60 percent of the  
19 output.

20 He then asked you if it would be economically  
21 unfeasible for several of the smaller firms in the industry  
22 to merge, in order to compete more efficiently with the two  
23 dominant firms.

24 I would like to ask you if from an antitrust  
25 economist viewpoint, there would be other alternatives  
to merger, which could be used to allow the smaller

bw4

1 companies to more effectively compete with the two  
2 dominant firms?

3 A Well, if this were the electrical energy,  
4 yes.

5 Coordination, for example, joint sharing of  
6 the transmission facility and generation facilities would  
7 be such alternatives to merger.

8 In some other industries, it might not be.  
9 A small firm, if it got ownership, say, of a particular  
10 unit or piece of it or engaged with some others in that,  
11 if it got elements of -- or if it got operating coordination,  
12 it may not have to compete, may not have to merge --  
13 not compete, may not have to merge with each other to so obtain.

14 Municipals in the electric industry operate  
15 without merger in order to gain these advantages and  
16 still retain separate corporate identities.

17 And that would be possible for the smaller firms,  
18 if the dominant firms would so grant it.

19 Q Suppose in this hypothetical where two dominant  
20 firms have 60 percent of the market, one of the  
21 dominant firms acquired this smaller, acquired smaller firms  
22 which did lead to greater overall efficiency, from the  
23 point of view of an antitrust economist would that acquisition  
24 be preferable to some of the alternatives you have just mentioned,  
25 alternatives as far as allowing these smaller firms to compete more



bws

1 effectively with the larger firms?

2 A From the point of view of the question:  
3 Would it lead to more competition or less competition, clearly,  
4 the alternative which I have suggested, which does  
5 not require merger or acquisition might gain the same  
6 advantages, and you still would have the possibility of  
7 competition left.

8 You may have more competition in the industry.

9 On the other hand, if the larger firm acquires the  
10 smaller firms, you have eliminated, thereby, this potential  
11 competition which the smaller firms might be part of  
12 a group of smaller firms which would be engaged in competition.

13 Q I believe that Mr. Reynolds asked you about this  
14 need for SEC approval of acquisition by an electric utility  
15 company, and in particular, acquisitions by the Ohio  
16 Edison Company.

17 Dr. Wein, if the Ohio Edison Company were a  
18 holding company, would it need SEC approval to acquire another  
19 electric utility system?

20 A Yes. If it were a holding company, it would need  
21 that approval. But the question he asked me was  
22 not quite that.

23 What he asked me was if they paid for it out of  
24 their own cash and didn't have to go to the security  
25 markets, and in answering that question with respect to Ohio

bw6

1 Edison, I myself did not realize that Ohio Edison was a  
2 holding company under the Act. And in that case it would have  
3 to go, not matter whether it went to the securities  
4 markets or not.

5 Q You testified on cross-examination about  
6 municipal systems setting rates based on their original  
7 cost.

8 Are there any investor-owned utilities which set  
9 rates on the basis of original cost?

10 A Well, for example, with respect to wholesale  
11 rates, the rates are supposed to, or the rate base is  
12 supposed to be determined --

13 MR. REYNOLDS: Dr. Wein. I hate to keep  
14 interrupting you, but I can't hear.

15 THE WITNESS: In the case of wholesale rates  
16 which would be subject to the Federal Power Commission  
17 the rate-base is supposed to be determined on the basis of  
18 original costs.

19 Now, to the extent that the Federal Power  
20 Commission judges a rate just and reasonable, what the  
21 Federal Power Commission is doing is taking into account  
22 in setting the rate base the original costs of that  
23 particular utility.

24 In other states when it comes to retail rates  
25 it varies.

bw7

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Ohio, as you know, is a fair value state.  
So they don't look at original costs for setting the retail  
rates.

#15 nml1

BY MR. MELVIN BERGER:

2 Q Are there some states in which original cost is  
3 used as the basis for setting retail rates?

4 A Yes. There are some states which do that as a  
5 basis for -- that doesn't mean the costs are equal to the  
6 rates. It doesn't mean that the rates are equal to the  
7 cost times a fair rate of return.

8 There are zones of reasonableness, there are just  
9 rates, undue discrimination, a whole bunch of language which  
10 is involved.

11 Q Mr. Reynolds had used a hypothetical in which  
12 he postulated that a group of 300 megawatt base load  
13 generating units tied together and operated as an integrated  
14 part of a single electric system provide all the power required  
15 by the market at a substantially lower cost than would be  
16 achieved by any other available alternative.

17 Dr. Wein, in your opinion is this a realistic  
18 hypothetical?

19 A No, it is not realistic.

20 Q Why not?

21 A Well, that would be an extremely peculiar market.  
22 It would have to be a market without peaks and many other  
23 things.

24 So I don't know of any market or any utility company  
25 which does not have a range of units for base load, for

mm2 1 immediate peaking power and so forth. They couldn't have  
2 that, just two 800 megawatt units and hope to be efficient.

3 Also, of course they would have to have -- I mean  
4 if they had no coordination apart from all the other reasons  
5 that it is unrealistic, if they had no coordination they  
6 couldn't operate. They would have to keep one 800 unit as a  
7 reserve.

8 So they get 800 units of power and they would be  
9 paying 800 units of capacity and they would be paying for  
10 1600.

11 Q Dr. Wein, there was a discussion in your cross-  
12 examination of excess capacity.

13 If we suppose that excess capacity exists on the  
14 transmission lines at the present time with the CAPCO companies,  
15 that municipal systems were willing to pay for the use of  
16 that excess capacity on the transmission lines from an  
17 economic viewpoint, would that be a benefit to the CAPCO  
18 companies who own those transmission lines?

19 A To the extent that they got some revenue which they  
20 didn't get before, it seems to me clearly a benefit to them.

21 Q Dr. Wein, with regard to an antitrust economist's  
22 viewpoint, what is your position with respect to municipal  
23 systems engaging in coordinated development of transmission  
24 facilities, let's say, with the CAPCO companies for use in the  
25 future?



mm3

1 MR. REYNOLDS: Let me have that back again,  
2 could I please?

3 (Whereupon, the reporter read from the record  
4 as requested.)

5 THE WITNESS: Do you mean, Mr. BERGER, if at some  
6 future date in planning additions to the system, in this  
7 case transmission, should the municipals coordinate with the  
8 CAPCO companies to the extent that they would be involved  
9 in the planning of it and if some transmission facilities which  
10 they felt were needed would be put into these plans and if  
11 they would not have been put into the plans by the CAPCO  
12 companies without them, then could the CAPCO companies  
13 adjust their plans upon payment of fair cost to do that?

14 If that is what you mean, the answer is yes. I  
15 think that would be helpful, and it would aid competition.

16 BY MR. MELVIN BERGER:

17 Q Dr. Wein, there was a line of cross-examination  
18 which dealt with the possibility of having separate generation  
19 transmission and distribution companies.

20 In the case of Buckeye are not the generation,  
21 transmission and distribution functions all done by separate  
22 entities?

23 A Yes.

24 Buckeye generates the major utilities' transmission  
25 and the REA Co-ops distribute.

mm4

1 Q In your earlier testimony you alluded to the  
2 fact that if generation-only companies and transmission-only  
3 companies existed, they might plan in a manner which would  
4 yield some excess capacities.

5 Does the fact that an excess capacity exists mean  
6 that there is economic waste?

7 A No.

8 Sometimes your best choice under given and prospec-  
9 tive conditions, is to have excess capacity at some particular  
10 element of your system.

11 Secondly, given the uncertainty of the future, the  
12 error of having planned for a given level of capacity when  
13 you have planned too much might entail less waste than the  
14 error that you have made when you plan too little.

15 IN the latter case you would have no excess  
16 capacity, but you couldn't meet the load. So that in general  
17 there is no symmetry between these two things in terms of the  
18 economic waste. By and large most of the American economy  
19 plans to have some excess capacity and you do that with simple  
20 inventory control systems. You plan to have a certain  
21 amount of capacity in order to avoid a certain runout.

22 And you may have some excess at that point.  
23 You couldn't have competition working very effectively  
24 unless there were some excess capacity in an industry. If  
25 everyone in a particular industry were jammed up at

mm5

1 100 percent of capacity, then what you are likely to get is  
2 a bidding up of the prices such as we have seen throughout  
3 the period from the end of World War II at occasional times  
4 in the steel industry, for example, where everybody is jumped  
5 up and the prices go way up.

6 And so you are looking at this problem in terms of  
7 the social accounting. It would have been better to have more  
8 capacity than less.

9 So in short, the answer is no. The fact that there  
10 may be some excess capacity which in any sense I think is  
11 inevitable for properly planned systems, that doesn't mean  
12 that there is an economic waste.

13 Q In your testimony you referred to the Ohio  
14 Antipower Statute. You refer to it as a cutoff.

15 Just so the record is clear on this point, will  
16 you please give us your understanding of that statute?

17 A As I understand it, it applies first to  
18 investor-owned utilities and the co-ops.

19 Secondly, it applies to retail and customers who  
20 happen to exist and are receiving some particular service. So  
21 that if I were a housing developer sitting close between two  
22 sources, one from Ohio Edison and one from Ohio Power, and  
23 I decided for whatever reasons I wanted to go to Ohio Power,  
24 now that Ohio Edison is serving me the only way I could  
25 get to Ohio Power and the only way Ohio Power could serve me

mm6 1 is that I would have to cut off for 90 days.

2 Q Dr. Wein, is the testimony that you have given  
3 based on this statute based on this understanding of the  
4 statute?

5 A Have I given any testimony contrary to that?

6 Q I didn't suggest that you gave any contrary  
7 testimony. I am asking you if that testimony is based on  
8 this understanding.

9 A Yes.

10 I thought you said misunderstanding.

11 Q I believe you also testified with regard to the  
12 establishment of the rates which would be charged a  
13 customer which -- in the State of Ohio which located outside  
14 one of the municipal areas, outside an area of a city or a  
15 municipality in the State of Ohio.

16 What is your understanding with regard to the  
17 rates charged by an investor-owned utility for a customer  
18 who is not located in a city or municipality?

19 A A new customer?

20 Q Let's take a new customer, yes.

21 A A new customer.

22 Well, if he is a new customer the investor-owned  
23 utility can charge a rate and if it is a new rate, all he  
24 has to do is file it.

25 CHAIRMAN RIGLER: He can have a special rate for

nm7

1 that customer?

2 THE WITNESS: He can have a special rate for that  
3 customer so far as I understand it.

4 If it is a new special rate investor-owned  
5 utility, they can give it to them and file it with the Public  
6 Utility Commission of Ohio, and that is it.

7 BY MR. MELVIN BERGER:

8 Q Dr. Wein, Mr. Reynolds asked you about -- some  
9 questions about the captive and noncaptive wholesale markets  
10 which you define in your direct testimony and which you classify  
11 as one market, your wholesale firm power market.

12 Do you know of any other economists who agree  
13 with this classification? In other words, the lumping together  
14 of the noncaptive and captive wholesale markets in the  
15 electric utility industry?

16 A Dr. Pace, for one, who is an economist for  
17 Applicants.

18 CHAIRMAN RIGLER: Where did he agree?

19 THE WITNESS: Alabama Power Company.

20 MR. REYNOLDS: Could I get a reference to that,  
21 please?

22 THE WITNESS: Yes.

23 Dr. Pace's testimony, direct testimony submitted  
24 in Alabama Power Company.

25 MR. REYNOLDS: May I ask him on voir dire in order



mnS 1 to clear up just what it is Dr. Wein is referring to?

2 CHAIRMAN RIGLER: Yes.

3 VOIR DIRE EXAMINATION

4 BY MR. REYNOLDS:

5 Q This is Dr. Pace's view with regard to his testimony  
6 in the Alabama case?

7 A Yes.

8 He believes that my distinction is valid.

9 MR. REYNOLDS: Maybe we had better read back the  
10 question then and ask the witness if he has responded to the  
11 question he was asked.

12 (Whereupon, the reporter read from the record  
13 as requested.)

14 THE WITNESS: Do you want me to answer it again?

15 CHAIRMAN RIGLER: No.

16 REDIRECT EXAMINATION (Continued)

17 BY MR. MELVIN BERGER:

18 Q Dr. Wein, in your testimony you have indicated that  
19 you believe that Buckeye, the wholesale rates --

20 A Can I just take five minutes? I am getting  
21 very --

22 CHAIRMAN RIGLER: All right.

23 (Recess.)

24

25

bwl  
S16

1 BY MR. MELVIN BERGER:

2 Q Dr. Wein, in your prior testimony I believe  
3 you stated that the Buckeye Wholesale rates had very little  
4 influence over the price Ohio Edison charged its wholesale  
5 customers, but that the Ohio Edison wholesale rates did  
6 influence the Buckeye wholesale rates to its distribution  
7 cooperatives.

8 MR. REYNOLDS: Can I have a reference  
9 to where you are taking that testimony from?

10 MR. MELVIN BERGER: Page 6930 and 6933.

11 MR. REYNOLDS: All right.

12 BY MR. MELVIN BERGER:

13 Q Dr. Wein, do you have those two references?

14 A Yes.

15 Q Why is it that one wholesale price influences  
16 the other, but that the reverse is not true?

17 A Well, I think I have given the reasons as to  
18 why Ohio Edison's prices would influence the REA's prices  
19 in this area.

20 Now, why wouldn't the converse hold?

21 Well, I think think there are two reasons for  
22 it. One of which I have alluded to before.

23 But Ohio Edison's wholesale market consists of the  
24 noncaptive and captive wholesale markets.

25 The noncaptive being a very small proportion of the

bw2

1 total. And the second reason is that by contractual  
2 provision between Buckeye and Ohio Edison, sales by  
3 an REA distributor in Ohio Edison territory is subject  
4 to this 90-day rule.

5 So Buckeye, its distributor, could not,  
6 under that contract between Buckeye and Ohio Edison do that  
7 unless, say, the municipality wanted to detach for 90 days.

8 And this, of course, is not at all possible  
9 for a municipality.

10 It might be possible for an individual  
11 customer to do so.

12 And if you could find such a municipality that  
13 was willing to do so, then Ohio Edison can refuse to wheel  
14 the power to the Buckeye distributor.

15 So for all intents and purposes, that contractual  
16 provision renders the competition on Ohio Edison from a  
17 Buckeye distributor pretty de minimis; that and the  
18 other description I gave. So here you have a one way  
19 influence much stronger than the influence going the other  
20 direction.

21 Now, I suppose you might ask why did I put them in  
22 the same wholesale market and that is for two reasons:

23 I think, absent that contractual provision they  
24 might have. But in any case there is the influence of  
25 Ohio Edison on the Buckeye distributors. And had I taken

bw3

1 them out and made rural electric cooperatives a separate  
2 wholesale market all it would have meant is that it would  
3 have increased the share that I showed for Ohio Edison  
4 had I done that.

5 So, it is one of those kinds of additions  
6 that we now and then make which don't fit neatly into a  
7 category. And I simply, out of an abundance of caution,  
8 did that trying to not raise the percentages any more  
9 than they, in my opinion, properly were, I simply did that,  
10 did not make them a submarket.

11 Q You just mentioned the Buckeye contracts, were  
12 you referring to the Ohio Power, Ohio Edison agreement  
13 or both of those agreements?

14 A I think they involve both of them. I am not  
15 sure.

16 Q I am going to refer you to the transcript,  
17 page 7,000, particularly line 25, and going on to the  
18 next page, 7001.

19 There you are asked to make a comparison  
20 between Toledo Edison, Ohio, and Ohio Edison on table 1  
21 in your prepared testimony, which is page 134.

22 I would like to ask you if the transcript  
23 reflects that you made a comparison between Toledo Edison and  
24 Ohio Power, rather than between Toledo Edison and Ohio  
25 Edison.

bw4

1 A What page is that on?

2 Q Page 134.

3 A What is the question?

4 Q The question is whether the comparison you made  
5 as reflected in the transcript was the one that you  
6 were actually asked to make, whether you made a comparison  
7 between Toledo Edison and Ohio Power, rather than between  
8 Toledo Edison and Ohio Edison?

9 A I guess it is between Ohio Edison and Ohio  
10 Power.

11 That is what these numbers are referring to.

12 Q I would like to refer you now to page 7005.

13 MR. REYNOLDS: I think that is still confused.

14 CHAIRMAN RIGLER: On page 7000 should the  
15 question read, "if he had made the proper comparison"?

16 MR. MELVIN BERGER: The question would have asked  
17 for a comparison between Toledo Edison and Ohio Power.

18 THE WITNESS: The question has Ohio Power and  
19 Toledo Edison in it.

20 CHAIRMAN RIGLER: So on page 70001, line one,  
21 where his answer was "Toledo Edison and Ohio Edison,"  
22 how should that have read to validate the comparisons?

23 MR. MELVIN BERGER: "Ohio Power."

24 CHAIRMAN RIGLER: And the same thing on line  
25 15 on page 7001, the reference to Ohio Edison should have been



Dw5

1 Ohio Power?

2 MR. REYNOLDS: I don't want to change my question.  
3 If they want to change the answer that is fine with me.  
4 But my question is exactly as it is stated there. I have  
5 no problem if they want to change the answer.

6 Or if they would want to ask the question  
7 to get a comparison between Toledo Edison and Ohio Edison.

8 The answer relates to a comparison between  
9 Toledo Edison and Ohio Power, as it stands now, which  
10 would not be a correct response to the question.

11 Now, I assumed that what Mr. Berger was going  
12 to pursue was to get Dr. Wein to give the answer for a  
13 comparison between Toledo Edison and Ohio Edison, which  
14 was the question that was asked.

15 And that I agree with. But I don't thing the  
16 way to do it is to go back and change the question.

17 CHAIRMAN RIGLER: No, I agree.

18 THE WITNESS: Let me just go through now  
19 between Toledo Edison and Ohio Edison.

20 CHAIRMAN RIGLER: Before you do that, the  
21 question is properly posed as Applicants wished it posed  
22 on page 7000. The answer on line 1 would have to stand,  
23 line 1 of page 7001 would have to stand, notwithstanding that  
24 the Witness may have misspoken and meant to say Ohio Power.  
25

bw6

1                   However, when we come down to line 15, the  
2                   reference to Ohio Edison, we should note that probably  
3                   was meant to be Ohio Power, since the Witness just indicates  
4                   that was the comparison he made in the answer beginning  
5                   on line 3.

6                   THE WITNESS: No, that is not right.

7                   CHAIRMAN RIGLER: Then Mr. Berger, you had better  
8                   tell me what your problem is.

9                   THE WITNESS: I don't know what his problem is  
10                  either. But the first answer on 7000, that is between Ohio  
11                  Edison and Ohio Power.

12                 Now, I am just checking the arithmetic  
13                 in my head, and they seem to be approximately what they show.

14                 CHAIRMAN RIGLER: But the question was to Ohio  
15                 Edison and Toledo Edison.

16                 THE WITNESS: No. That is on the next page.

17                 I took the pair, the first pair, Ohio Power and  
18                 Ohio Edison. That is on page 7000.

19                 Is that right?

20                 MR. MELVIN BERGER: Yes.

21                 MR. REYNOLDS: You are talking about line 6  
22                 through 14 on page 7000?

23                 THE WITNESS: That is right.

24                 MR. MELVIN BERGER: I have no problem with  
25                 that.

1 that.

bw7

2 THE WITNESS: All right. Let's go down to  
3 page 7001, let's see if I did it arithmetically.  
4 That is all. It is a question of my arithmetic in  
5 my head.

6 Toledo Edison is about 7 percent higher than  
7 Ohio Edison. No that is not 7. That would be about 3.  
8 3 1/2 percent.

9 In 1970 it is about 9 percent. So change 7  
10 to about 3 1/3.

11 That is all we have to do there.

12 And in 1971, between Toledo and Ohio Edison,  
13 Toledo is about 11 percent higher.

14 And in 1972 it is about 11 percent higher.

15 And in 1973 it is about the same.

16 Toledo Edison and Ohio Edison.

17 In 1973 it is about the same.

18 So they are diverging and they coincide  
19 at a particular point.

20 Now, what is the question, Mr. Berger?

21 MR. MELVIN BERGER: I believe you answered the  
22 question.

2016

23

24

25

§17 mml 1

BY MR. MELVIN BERGER:

2 Q If we could refer now to page 7005 in the  
3 transcript, and particularly lines 7 and 8. There is a  
4 statement that there are no noncaptive wholesale markets.

5 Is that an accurate statement?

6 A No.

7 There are no noncaptive retail markets.

8 Q Dr. Wein, in your prior testimony you excluded  
9 the purchase of both coal and uranium from the regional power  
10 exchange market.

11 Does that mean that the purchase of coal and  
12 uranium have no competitive significance in determining the  
13 cost of producing power?

14 A No, it doesn't mean that.

15 Q Dr. Wein, have you examined data concerning  
16 competition which was obtained by -- strike that.

17 Have you examined documents concerned in competition  
18 which was obtained by the Department on discovery during this  
19 proceeding and placed in evidence, all placed in evidence  
20 by the Department in this proceeding?

21 A Yes, I have examined documents.

22 Q Did you discover in those documents, anything  
23 that would tend to indicate the existence of competition that  
24 would invalidate the geographic markets which you have  
25 employed?

mm2

1 A No.

2 Q Dr. Wein, in your testimony on cross-examination you  
3 used the term "economic dispatch."

4 What did you mean by that term?

5 A What I meant by that term was the efforts that  
6 a system or a group of systems make in trying to obtain the  
7 most economical generating source to meet a particular load  
8 on that system, or if they are interconnected systems,  
9 between those systems.

10 MR. REYNOLDS: Dr. Wein, I'm sorry, I am having  
11 trouble hearing you again.

12 THE WITNESS: Did you hear what I said?

13 MR. REYNOLDS: I caught the first part.

14 Maybe we could get it read back.

15 (Whereupon, the reporter read from the record  
16 as requested.)

17 BY MR. MELVIN BERGER:

18 Q Dr. WEIN, how does CAPCO practice economic dispatch?

19 A Well, at the present time and in the past so far  
20 as I can tell, CAPCO does this through telephonic communications  
21 between the people at the different control centers of the  
22 independent CAPCO companies.

23 MR. REYNOLDS: You will have to speak up again.

24 THE WITNESS: -- of the independent CAPCO companies.

25 So, for example -- and they have a lot of



mm3

1 telephonic communications between them, lots of lines and all  
2 that sort of thing. And if Toledo has a particular load  
3 and a particular generator which is operating say at 10  
4 mills for its incremental cost to supply that load, it has  
5 some information about the other members of the system and  
6 it would call up a control area in Ohio Edison, say, and inquire  
7 as to whether they have capacity available which would produce  
8 that power at less than 10 mills.

9 And then, they of course know the amounts and  
10 the purchases. And if they do that, Toledo will shut down  
11 or reduce the capacity of its 10 incremental generator and  
12 get it from Ohio Edison and will pay the price for this  
13 particular power usually on a split savings basis.

14 Now that is done in the CAPCO pool. It is only  
15 the beginning of more sophisticated economic dispatch which  
16 is based on a central control area in which computers are  
17 used and which a lot of stuff is fed into the computers.

18 CHAIRMAN RIGLER: That wasn't part of the question.

19 If your answer was, by telephone, that is all you  
20 need.

21 THE WITNESS: Okay.

22 I was trying to contrast it to the other type.

23 BY MR. MELVIN BERGER:

24 Q Dr. Wein, I would like to refer you now to  
25 question 27 of your direct testimony, which is on page 38.

nm41 A All right.

2 Q I believe you had previously testified that -- about  
3 the possibility of drawing conclusions from the concentration  
4 data contained in Question 27.

5 Did you mean by that previous testimony that you  
6 could draw no meaningful conclusions from this data alone,  
7 standing alone?

8 A No.

9 What I meant was that you could draw no  
10 necessarily valid conclusions, not meaningful, but necessarily  
11 valid conclusions, for example, about what was going on in a  
12 particular area on the basis of the national data.

13 It is certainly conceivable that in a particular  
14 state or region within a state, that there hasn't been any  
15 concentration for a long time, even though the national data  
16 show that in the United States as a whole, that there would  
17 be. But that the importance of bringing it in is because  
18 it reflects a general phenomena which I understand to be the  
19 policy of the United States that concentration and the  
20 elimination of independent firms is contrary to increases in  
21 concentration and elimination. It is contrary to the policy  
22 of the United States.

23 CHAIRMAN RIGLER: That is not the question.

24 THE WITNESS: What is the question.

25 CHAIRMAN RIGLER: Has he answered your question?

mn5 1 MR. MELVIN BERGER: I believe he has.

2 BY MR. MELVIN BERGER:

3 Q Dr. Wein, have you had an opportunity to check over  
4 the figures contained in answer to Question 27 and revise them?

5 A No, I have not had enough time yet to do that.

6 MR. MELVIN BERGER: I believe that would conclude  
7 the Department's redirect on Dr. Wein.

8 CHAIRMAN RIGLER: Mr. Lessy, do you have any  
9 questions?

10 MR. LESSY: I would like to ask three questions.

11 MR. REYNOLDS: I will object.

12 CHAIRMAN RIGLER: Overruled.

13 RECROSS-EXAMINATION

14 BY MR. LESSY:

15 Q First, Dr. Wein, would in your view a wholesale  
16 customer with no options of wheeling or ownership in large  
17 units, have any rate protection against either poor planning  
18 by management or excessively high construction costs by  
19 his wholesale supplier?

20 MR. REYNOLDS: Object as having been asked and  
21 answered.

22 CHAIRMAN RIGLER: Overruled.

23 THE WITNESS: No, I don't think he would have  
24 any protection.

25

mm6

1 BY MR. LESSY:

2 Q Secondly, what are the economic consequences of  
3 a requirement that in order to have access to a particular  
4 CAPCO nuclear power plant, the requesting entity must also  
5 agree to purchase like capacity from the total capacity  
6 program of the utility over the next ten years, involving  
7 approximately 11 base load power plants primarily nuclear?

8 A Let me see if I understand that question.

9 You mean if Entity A says to B, you want 10  
10 percent of this particular plant, you got to buy X percent  
11 over the next ten years?

12 Q Yes, sir.

13 A I think that would be a very restrictive arrange-  
14 ment.

15 Did you ask anything else?

16 Q I asked for economic consequences.

17 A The economic consequences would be, of course,  
18 that a customer of Entity A might be forced to purchase as  
19 a price of getting the one thing he wants, a lot of other  
20 things he doesn't want, in which case the cost would go up.

21 He would be engaging in exchange he didn't want  
22 and it amounts to taking from him the full value he sees  
23 in obtaining the first transaction by offering and forcing on  
24 him detriments which would offset the first transaction.

25 Q Third, what is the consequence of an additional

mm7 1 requirement to the one I just gave you about access to nuclear,  
2 that the maximum capacity available per unit over the 10-  
3 year period to the requesting entity would be limited to 10  
4 percent of the estimated peak load of that entity?

5 A Well, again it reduces options of the requesting  
6 entity if you assume that there is inflation, that therefore  
7 cost of the future entities are going to rise.

8 It takes from him the option by taking this par-  
9 ticular number, 10 percent, he might have in mind that  
10 there may be increases in the prices of these into generating  
11 entities. That instead of taking 10 percent, he wants 25  
12 percent, because he feels that that is more economical now  
13 compared to the others. And he may have a way of disposing  
14 that capacity or utilizing it as he wishes.

15 So it certainly poses again an uneconomic restric-  
16 tion which could be every uneconomical.

17 MR. LESSY: No further questions.

18 MR. HJELMFELT: I have no questions.

19 CHAIRMAN RIGLER: Do you have any recess,  
20 Mr. Reynolds?

21 MR. REYNOLDS: Yes.

22 If I could have about five minutes, I could  
23 probably pare it down to just a few questions.

24 CHAIRMAN RIGLER: All right.

25 (Recess.)



mm8 018 1

CHAIRMAN RIGLER: Okay.

2

Let's proceed.

3

BY MR. REYNOLDS:

4

Q Dr. Wein, have you made the calculations you indicated you were going to make for us during the lunch break?

5

A It is not necessary.

6

Q Why is that?

7

A I have accepted your chart as correct. It is just not necessary to do it.

8

Q That would be true even if the incremental cost increases at a slower rate?

9

A As long as it increases at any positive rate.

10

Q All right.

11

I believe you indicated in connection with Mr. Berger's question to you regarding Applicants' Exhibit 44 that it was your view that it was not desirable when compared to other alternatives including an ownership participation among some of the others that you listed, is that correct?

12

A An ownership participation and full coordination.

13

Q All right.

14

Is it not a fact that Applicants Exhibit 44 offers as an alternative, ownership participation?

15

A Yes.

16

It is a fact that it offers ownership participation.

17

Q In response to a question by Mr. Berger regarding

mm2 1 differential advantages that investor-owned utilities have over  
2 municipalities, you indicated deferred income taxes,  
3 and also accelerated depreciation.

4 If a taxpaying business gets a reduction in  
5 its corporate tax rates, does that provide a differential  
6 advantage over a firm which has under the law no tax obligation  
7 at all?

8 A Well, yes. It could provide it and sometimes they  
9 can get not only a reduction, sometimes they can get credit.  
10 That means they get money back.

11 Q How many isolated municipal systems are there in  
12 the CAPCO area?

13 A You mean generating systems?

14 Q Yes.

15 How many isolated generating systems?

16 MR. MELVIN BERGER: Is that as of today or as of  
17 when these proceedings started, or --

18 MR. REYNOLDS: As of today.

19 THE WITNESS: Well, they can't be much less than  
20 what I have in my testimony.

21 I don't know. Some of them may have just stopped  
22 producing completely.

23 CHAIRMAN RIGLER: Well, what is the figure?

24 THE WITNESS: I would have to check my memory.

25 It is a small number. It depends on the term

mm3 1 "isolated."

2 As I view it, MELP would be isolated, Norwalk would  
3 be isolated.

4 BY MR. REYNOLDS:

5 Q Does Norwalk generate its electricity?

6 A I don't think so.

7 Q What is your definition of an isolated system?

8 A One which has generating units and uses them and  
9 one which has no coordination.

10 Q If a system has its own generation, but it is  
11 interconnected, would you consider it to be an isolated system?

12 A It depends on the nature of the interconnection,  
13 what the restrictions are on it.

14 Q So it might be?

15 A I gave you a definition.

16 If it is interconnected and does not get access  
17 to all the possibilities such as you have in a power exchange  
18 market, it is isolated. That is my definition.

19 Q Dr. Wein, as to industrials which perform a whole-  
20 sale function, did you put them in the wholesale market or  
21 the retail market for purposes of this proceeding?

22 A I put them in the market in which the Applicants  
23 put them, which is the retail market.

24 Q Will you define for me what your understanding  
25 is of the term excess capacity?

man4 1 A If an entity expects to have a demand for 1000  
2 units over a time interval, it has capacity in that time  
3 interval of something greater than 1000 units, it has excess  
4 capacity in that time interval.

5 Q I believe you indicated in response to another  
6 question by Mr. Berger, that in connection with the Buckeye  
7 arrangement, separate functions are performed at the generation,  
8 transmission and distribution level.

9 Is it not a fact, Dr. Wein, that the cooperatives  
10 that perform the function at the distribution level also  
11 own the Buckeye generation?

12 MR. MELVIN BERGER: I would object.

13 I think there is a mischaracterization of  
14 Dr. Wein's testimony.

15 MR. REYNOLDS: He just agreed with me.

16 MR. MELVIN BERGER: I believe Dr. Wein testified  
17 that the different entities perform the three different  
18 functions.

19 Is that what Mr. Reynolds had in mind?

20 MR. REYNOLDS: All right.

21 I mean, he agreed with my statement.

22 THE WITNESS: A particular REA in, say, Ohio Edison's  
23 territory is not the company which is operating the generation.  
24 Maybe an owner of it is not operating it; maybe one of many  
25 owners.

mm5

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. REYNOLDS:

Q Why do you say that the cooperatives do not operate the Buckeye generation?

A Buckeye itself is a separate incorporation or separate entity, as I understand it. And the ownership is in that entity of the Cardinal plants, and they are the ones who own that particular generation. A particular individual rural electric distribution system may be one of the owners.

But it is not in the sense in which I have given you actually operating that function of generation.

Q Do you know whether the co-ops are represented on an operating committee of Buckeye which operates a generation?

MR. MELVIN BERGER: Objection.

I think this is well beyond the scope of the redirect.

CHAIRMAN RIGLER: I will permit it.

THE WITNESS: Yes, I think they may have representatives.



S19

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. REYNOLDS:

Q Dr. Wein, what is the basis for your testimony that if a customer locates outside a municipal area, a new customer, and is served by an investor-owned utility, that that investor-owned utility can charge a special rate for the new customer and the PUCO has no choice but to accept that rate?

A I said if the customer, if the utility files a new rate or a new customer, as I understand it, and as Counsel has informed me, and we have both read the language, it seems to me that that is correct.

Now, that is a legal question which you can discuss.

I am not an expert on Ohio law.

Q Does the utility file a new rate for each new customer that locates outside the municipality?

A The new utility has a choice.

They can either say that this customer is in this class in which it files the same rate, or if it wishes, it could say that this customer is in a special class for which I have no rate on file, and this is the rate I am now filing.

As I understand it, when he takes that option, all he has to do is file the rate and the only thing the PUCO can do is review it the next time he wants



1 to raise the rate.

bw2

2 Q Do you know whether any of these applicants  
3 have filed such a special rate for a new customer locating  
4 outside a municipality within the last ten years?

5 A No, I have not made that investigation.

6 Q And what is the basis for your testimony des-  
7 cribing the manner in which the CRPCO companies engage in  
8 economic dispatch?

9 A I read a deposition by Mr. Van-something or  
10 the other. Van Bradford.

11 Q Did you read any of the CRPCO agreements?

12 A No. I didn't read the CRPCO agreements.

13 I read this testimony by Van Bradford in which he describes  
14 what they do.

15 It seems to me that that is what they do.

16 I also mention to you the document written by the three  
17 engineers from CEI, which states that CRPCO  
18 team power and thus engages in economic dispatch.

19 That term has two senses.

20 MR. REYNOLDS: I don't have anything further.

21 CHAIRMAN RIGLER: All right.

22 Dr. Wein, thank you very much.

23 MR. MELVIN BERGER: I believe we have one  
24 more question relating to something Mr. Reynolds asked  
25 him about.

bw3

1 CHAIRMAN RIGLER: All right.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. MELVIN BERGER:

4 Q Dr. Wein, when a rate is filed by an IOU  
5 in Ohio for a new customer, which is not located within  
6 a city or municipality, does the public utilities commission  
7 of Ohio have any power to change that rate?

8 A As I understand it, only if the rate is raised  
9 and I am not sure about that.

10 But I know they certainly have no power to  
11 change it, if it is the same or it is lowered.

12 Now, whether they on their own can change it  
13 without someone changing, I am not quite sure of that,  
14 Mr. Berger.

15 MR. REYNOLDS: Let me have the last part  
16 of that back, you faded out.

17 THE WITNESS: I said I am not sure whether  
18 on our own initiative if -- well, if it is a new rate they  
19 can't change it. They have no power to review it at all  
20 at the first shot.

21 Q CHAIRMAN RIGLER: Thank you very much.

22 (Witness excused.)

23 CHAIRMAN RIGLER: Off the record.

24 (Discussion off the record.)

25 MR. MELVIN BERGER: The other day we were asked

bw4

1 to retype the tables that contained certain numerical  
2 erros, and we have distributed copies of Table 2, 3 and  
3 4 of Dr. Wein's prepared direct testimony.

4 We would now like to move that DJ-587, which  
5 is Dr. Wein's prepared direct testimony and also DJ-596,  
6 which is the chart Dr. Wein prepared and testified about the  
7 other day.

8 We would like to move that both of these be  
9 accepted in evidence.

10 MR. REYNOLDS: No objection.

11 MR. SMITH: You are throwing away the regular  
12 charts?

13 MR. MELVIN BERGER: Yes.

14 MR. REYNOLDS: What are we throwing away?

15 MR. SMITH: The charts that are replacing those  
16 other charts.

17 CHAIRMAN RIGLER: All right. Absent objections,  
18 we will receive into evidence Exhibit 596 and Exhibit  
19 587 at this time.

20 MR. REYNOLDS: Subject to the prior rulings?

21 CHAIRMAN RIGLER: Yes.

22 (The documents previously  
23 marked Exhibits DJ-587 and  
24 and DJ-596 for identification,  
25 were received in evidence.)

bw5

1 CHAIRMAN RIGLER: Off the record.

2 (Discussion off the record.)

3 CHAIRMAN RIGLER: All right. Let's roll  
4 right ahead.

5 MR. REYNOLDS: Where are we rolling to?

6 MR. MELVIN BERGER: I would like to enter a  
7 number of stipulations which the Department has reached  
8 with CEI and they are as follows:

9 Between September 1, 1965, and his retirement  
10 in 1975, Mr. Lee C. Howley was an officer of CEI.

11 Between September 1, 1965, and the present,  
12 Mr. R. M. Ginn, capital G-i-n-n, Mr. R. W. Wyman, and  
13 Mr. R. A. Miller, have been officers of CEI.

14 Between September 1, 1975, and their retirement,  
15 Mr. H. L. Williams, Mr. H. T. Sealy, S-e-a-l-y, and  
16 Mr. F. W. Brooks were officers of CEI.

17 I will stand corrected that Mr. Williams has  
18 not yet retired and he is still an officer of CEI.

19 On DJ-Exhibit DJ-400, the initials R.M.K.  
20 stand for R. M. Kemper, K-e-m-p-e-r.

21 The exhibit was written by Mr. J. F. Greenlade,  
22 Jr.

23 On Exhibit DJ-338, the initials D.R.K. stand  
24 for D. R. Davidson.

25 And this exhibit -- the notes which are this

b26

1 exhibit were taken by F. P. Sener, S-e-n-e-r.

2 On DJ 396 the initials D.H. stand for Donald  
3 Hauser, the initials D.R.D. stand for D. R. Davidson.

4 The initials H.E.C. stand for H. E. Caruso  
5 and the initials F.P.S. stand for F. P. Sener, S-e-n-e-r.

6 On Exhibit DJ-384, the initials W.R.K. stand for  
7 W. R. King.

8 The initials R.H.H. stand for R. H. Herrick,  
9 H-e-r-r-i-c-k.

10 On DJ-330, the initials D.E.J. stand for  
11 D. E. Jankura, J-a-n-k-u-r-a.

12 And Mr. Kender, who is named here, at that  
13 time he was the manager of industrial sales.

14 And, finally, on Exhibit DJ-388, the name  
15 Lee, L-e-e, is Lee Howley, H-o-w-l-e-y.

16 CHAIRMAN RIGLER: Is that so stipulated,  
17 Mr. Greenslade?

18 MR. GREENSLADE: Yes, sir.

19 MR. MELVIN BERGER: We would like to mark a  
20 number of documents now for identification.

21 I would like to have marked for identification  
22 as DJ-598, a one-page document entitled "Planning  
23 Project Log." Then in quotations "Elimination of Isolated  
24 Electric Power Generation Facilities in Eastern District."  
25 This bears the document identification number 3-177.

.7  
bw7

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I would like to have marked for identification as DJ-599, a document entitled "Outline of Program to take Advantage of the MELP's Philosophy of Independent Operation."

MR. GREENSLADE: Can I have an offer of proof on that document, DJ-599?



§20 mel  
7

1 MR. MELVIN BERGER: On this document there  
2 apparently was a second document or a part of a second  
3 document attached to the first document.

4 The document we are introducing consists of eight  
5 pages, and the remainder of it should be disregarded. The  
6 page number after page 3 on the document is page 2.

7 And the second document, or a portion of it should  
8 be disregarded.

9 This document will be offered to prove certain  
10 objectives which CEI had -- excuse me, would be offered to  
11 prove that CEI had the objective requiring the municipal  
12 electric light plant -- it would go to prove that certain  
13 of CEI's actions, which if looked at in isolation would  
14 not seem overtly anticompetitive were really part of a plan  
15 to acquire MUNY.

16 In addition, it would also go to prove that in CEI's  
17 opinion, an interconnection with MELP would drastically affect  
18 the possibility of acquisition.

19 The stipulation on this document is that it was  
20 prepared in late 1967 or early 1968 by multiple authors.

21 MR. REYNOLDS: Mr. Berger, you said that the  
22 attachment following page 8 should be disregarded.

23 There is nothing redlined, so why would I regard  
24 it anyway?

25 MR. MELVIN BERGER: That attachment is not part of

1 the document.

2 I guess I should have said discarded. It is  
3 apparently a separate document.

4 MR. REYNOLDS: All right.

5 CHAIRMAN RIGLER: Which will not be identified or  
6 introduced?

7 MR. MELVIN BERGER: That is correct.

8 CHAIRMAN RIGLER: So we can throw it away?

9 MR. MELVIN BERGER: Yes.

10 We would like to have marked for identification  
11 as DJ-600, a two-page document entitled Painesville  
12 Presentation, President's Council, Friday, June 10, 1966,  
13 which bears an internal document number of 1-310.

14 The stipulation is as follows:

15 This presentation outlined in this document was  
16 made as indicated.

17 MR. GREENSLADE: May I have an offer of proof on  
18 this document, please?

19 MR. MELVIN BERGER: This document would be  
20 offered to prove that CEI had an interest in purchasing the  
21 Painesville system and a possible plan to effectuate that  
22 goal.

23 It would also be offered to prove that CEI feared  
24 an FPC ordered interconnection between itself and the  
25 municipal systems.

rvn3

1 It also would be offered to prove that CEI  
2 formulated a plan of combatting the Painesville-MUNY  
3 expansion, which plan was anticompetitive in nature.

4 CHAIRMAN RIGLER: Next?

5 MR. MELVIN BERGER: I would like to have marked  
6 as an exhibit for identification, DJ-601, a memorandum  
7 from H. Lester and C. C. Chopp, to C. T. Loshing. It bears  
8 an internal number of 1-69.

9 It consists of 7 pages.

10 CHAIRMAN RIGLER: Next?

11 MR. MELVIN BERGER: I would like to have marked  
12 for identification as DJ-602, a request from R. W. Coan to  
13 R. M. Ginn, which consists of four pages, and bears an  
14 internal number of 1-126.

15 I would like to have marked for identification as  
16 DJ-603, a document which bears the internal number of 1-253  
17 and the front cover of which is a handwritten note dated  
18 11-29-65.

19 MR. GREENSLADE: Could I have an offer of proof for  
20 this document, Mr. Berger?

21 MR. MELVIN BERGER: Yes.

22 It consists of 11 pages and we would add,  
23 redlining pages 3 and 4 of this document. They should be  
24 redlined in their entirety.

25 MR. GREENSLADE: Could you better identify pages 3

mm4 1 and 4?

2 MR. MELVIN BERGER: Yes.

3 Page 3 has a handwritten note in the upper right-  
4 hand corner, "not used," and a typewritten legend on the  
5 top, "Come on, you have got the ball!"

6 Page 4 bears the number 2 at the top of the page.

7 MR. REYNOLDS: Is this document being introduced  
8 for the truth of the matter asserted therein?

9 MR. MELVIN BERGER: The offer of proof on this  
10 document is as follows:

11 It is being offered to prove the desire to  
12 purchase MELP on the part of CEI and it is offered in support  
13 of the Department of Justice position that CEI is  
14 rational about the substandardization of 20 percent of the  
15 citizens of Cleveland by the other 80 percent is really a  
16 technique to realize the company's objective to acquire  
17 MELP or to compel a rate fixing agreement with MELP.

18 MR. REYNOLDS: Can I get an answer to my question?

19 MR. MELVIN BERGER: Which portion are you referring  
20 to?

21 MR. REYNOLDS: Well, which portion is being offered  
22 for the truth of the matters asserted therein and which is not?

23 MR. MELVIN BERGER: Do you wish us to go through  
24 this document line by line?

25 MR. REYNOLDS: No, redline by redline would be

mm5

1 sufficient.

2 (Laughter.)

3 MR. MELVIN BERGER: The memorandum which is  
4 page 3 of the document would be offered for the truth.

5 The advertising copy and the other display which is  
6 attached to it would not be offered for the truth of the  
7 matters asserted therein.

8 CHAIRMAN RIGLER: Next?

9 MR. MELVIN BERGER: I would like to have marked  
10 for identification as DJ-604, a memorandum from E. H. Naugans  
11 to R. W. Wyman, which bears internal number 3-127 and con-  
12 sists of 11 pages.

13 MR. REYNOLDS: On my copy I have got a very close  
14 margin on the right-hand side and I can't tell whether it  
15 is all redlined or none of it is redlined, or portions of  
16 it are redlined.

17 CHAIRMAN RIGLER: Mr. Chazno will work that out  
18 with you.

19 MR. MELVIN BERGER: I would like to have marked  
20 for identification as DJ-605, a document entitled "Marketing  
21 Group Planning Project."

22 It bears internal number 3-130.

23 MR. GREENSLADE: I would like to have an offer of  
24 proof for that document, please.

25 MR. MELVIN BERGER: It consists of 9 pages.



MMc 1 We would request that a red line be added to page  
2 7, the results of survey page.

3 The red line would be added for the first line  
4 across which refers to the comment in that line, just --  
5 in other words, just the first line for the Fanner  
6 Manufacturing Company be redlined all the way across the  
7 page.

8 MR. REYNOLDS: I don't understand what you just  
9 said.

10 What did you say?

11 MR. MELVIN BERGER: Just this portion.

12 MR. REYNOLDS: All right.

13 MR. MELVIN BERGER: The stipulation on this document  
14 is that RWW, in the upper right-hand corner where it  
15 says "approved by RWW," RWW is R. W. Wyman. He is the vice  
16 president. He was the vice president at that time.

17 And the other initials are those of Mr. Kendar,  
18 the manager of industrial sales.

19 The document would be offered to prove that this  
20 disadvantage that MUNY was under competing for industrial  
21 customers, the fact that there is a rate differential  
22 between CEI and MUNY, that it would be better for CEI  
23 if MUNY's rates are raised and that MUNY's capacity was limited  
24 in 1965 and 1966.

25 And I would like to have marked as DJ-606, a



nun7

1 document, the first page of which just has the word  
2 Category 1 on the outside.

3 The second page of which is entitled, Marketing  
4 Group Planning Project.

5 It bears an internal number of 3-95.

6 MR. GREENSLADE: Could I have an offer of proof on  
7 that?

8 MR. MELVIN BERGER: It consists of 19 pages.

9 This document would be offered to prove that  
10 CEI engages in coordinated operation with industrials;  
11 that CEI have an overall plan to capture industrial customers,  
12 including suggesting things to them to disrupt their ability  
13 to generate their own power.

14 It would be offered to prove that CEI felt that it  
15 would be harder to take over a generating company which had  
16 coordination and also that it was not necessary for CEI  
17 to take over -- excuse me. It was not as necessary for  
18 CEI to take over a company with which a coordinated, an  
19 industrial company with which it coordinated.

20 It would also be offered to prove that there is  
21 great flexibility on CEI's part in setting rates and that  
22 CEI was able to offer certain types of inducements to  
23 customers in order to get them to sell or to stop generating  
24 their own power.

25 That is all the documents we have. We would move

nun8

1 them into evidence at this time.

2 CHAIRMAN RIGLER: Is there objection?

3 MR. GREENSLADE: If I could have two minutes with  
4 Mr. Reynolds, we will attempt to dispose of this.

5 CHAIRMAN RIGLER: All right.

6 One of us has a conflict this evening. We  
7 are going to take these others as the first order of business  
8 tomorrow.

9 MR. REYNOLDS: We can probably move through them  
10 rapidly tomorrow.

11 I think we could probably have plenty of time  
12 tomorrow to do that, and also his documents, if witnesses  
13 are not coming on until Friday.

14 CHAIRMAN RIGLER: All right.

15 (The documents referred to  
16 were marked DJ Exhibit Nos. 598,  
17 599, 600, 601, 602, 603, 604,  
18 605, 606 for identification.)

19 CHAIRMAN RIGLER: We will see you at 9:30  
20 tomorrow.

21 (Whereupon, at 4:20 p.m., the hearing in the  
22 above-entitled matter was adjourned, to resume at 9:30 a.m.  
23 Thursday, 25 March 1976.)

24

25