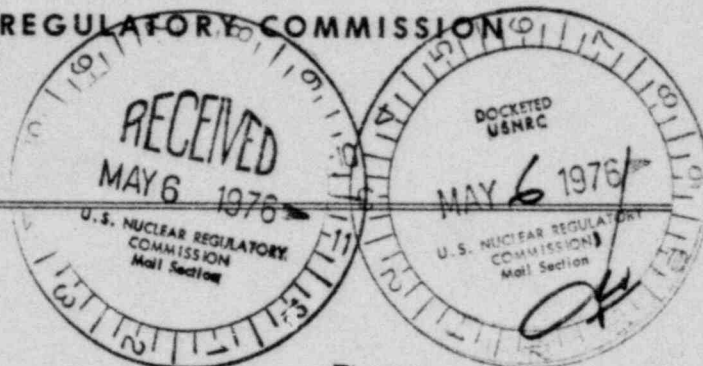


NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

Regulatory Docket File

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

Docket 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 - Tuesday, May 4, 1976

Pages

8528-8661

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

4515

NATIONWIDE COVERAGE

8002 260 850 N

CR8035  
EAK:bwl

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) :
:
and :
:
CLEVELAND ELECTRIC ILLUMINATING CO. : 50-440A
et al. : 50-441A
:
(Perry Nuclear Power Plant :
Units 1 and 2) :
:
-----X

```

First Floor Hearing Room  
7915 Eastern Avenue  
Silver Spring, Maryland

Tuesday, May 4, 1976

The hearing in the above-entitled matter was  
reconvened, pursuant to adjournment, at 10:00 a.m.,

BEFORE:

MR. DOUGLAS RIGLER, Chairman

MR. JOHN FRYSIAK, Member

MR. IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

by

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>VOIP BILL</u>
Stanley G. Schaffer	8531	8561	8608	8514	
Philip Fieger	8616	8624			

ExhibitsFor IdentificationIn Evidence

EAK:bw1

P R O C E E D I N G S

S1

1  
2 MR. LESSY: I'm distributing copies of  
3 NRC Exhibit 212 which was not fully distributed when it  
4 was received in evidence on Thursday.

5 One preliminary housekeeping matter under the  
6 24-hour rule, Duquesne Light was kind enough yesterday to  
7 indicate to us which documents the Witnesses today under the  
8 24-hour rule intended to address, even though most of the  
9 documents were already received in evidence as exhibits  
10 by the Staff, The Department or the City of Cleveland.

11 However, we were advised at that time that  
12 Applicants, as opposed to Duquesne Light, took the position  
13 there was no requirement under the 24-hour rule to designate  
14 documents that had been received in evidence already.

15 I think it is clear that there are a thousand  
16 exhibits in evidence, and the purpose of the rule is to give  
17 some reasonable notice of the scope of the testimony.

18 I note that following the Staff, the Department  
19 complied with that.

20 If there is any question at all, I think it  
21 should be that the documents to be used by the Witness should  
22 be designated within 24 hours.

23 If they already have been received in evidence  
24 that should be so indicated.

25 CHAIRMAN RIGLER: The Board agrees with that.



Lw2

1 The 24-hour rule will apply to documents already  
2 in evidence.

3 MR. OLDS: Shall we proceed, Mr. Rigler?

4 CHAIRMAN RIGLER: Please.

5 MR. OLDS: MR. Schaffer, please.

6 Whereupon,

7 Stanley G. Schaffer

8 was called as a witness and, having been first duly sworn,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION:

11 BY MR. OLDS:

12 Q Mr. Schaffer, would you state your name, your  
13 residence and your position with Duquesne Light Company?

14 MR. MELVIN BERGER: Mr. Chairman, I object.

15 I believe there are other potential witnesses  
16 here sitting in the rear of the room at the present time.

17 MR. OLDS: Mr. Rigler, this same position was  
18 presented by the Department of Justice last Thursday, and  
19 I must confess that I am disturbed by it.

20 Is this based on some Departmental policy we are  
21 not familiar with, or is it based on some special case that  
22 the Department has with reference to the testimony of our  
23 witnesses?

24 I think that we are entitled to some kind of a  
25 statement on this.

bw3

1 CHAIRMAN RIGLER: We have made our ruling,  
2 Mr. Olds.

3 It was indicated at that time that it is not  
4 through any thought that there is any conscious effort on  
5 behalf of Duquesne for one Witness to influence another.

6 It is to guard against inadvertence. It is not  
7 that unusual a procedure.

8 Indeed, it is provided for, as the Department  
9 pointed out in the Federal Rules of Evidence.

10 We will adhere to our ruling.

11 There is no intention on the Board's part to  
12 single out Duquesne.

13 It will apply to all Applicants and apply  
14 usefully throughout the proceedings at any time that such  
15 a party make a request to the Board.

ES1

16

17

18

19

20

21

22

23

24

25

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. OLDS: I will ask the Duquesne personnel who are here who propose to be Duquesne witnesses to withdraw at this time.

MR. REYNOLDS: I note my objection on behalf of all of the other Applicants. I think it is highly unusual in a proceeding of this sort. The Federal Rules are not binding in this context on this particular point. This is not a criminal trial.

MR. OLDS: Shall I proceed?

CHAIRMAN RIGLER: Yes.

MR. OLDS: May the witness now answer the question?

Do you recall the question?

THE WITNESS: I'm Stanley C. Schaffer. My home is in Pittsburgh, Pennsylvania, and I am the president of Duquesne Light Company.

BY MR. OLDS:

Q Mr. Schaffer, what is your educational background?

A I have a Bachelor of Science Degree from the Pennsylvania State University in mechanical engineering. I am a registered professional engineer in the State of Pennsylvania. I am a Fellow in the American Society of Mechanical Engineers.

Q How long have you been associated with Duquesne Light Company?

1 A It will be 36 years this June.

2 Q Mr. Schaffer, will you speak a little louder  
3 or is your microphone turned on?

4 A It is turned on. I don't know if it's  
5 effective or not.

6 Q I get no impression that it is indeed operating.

7 A Can you hear?

8 CHAIRMAN RIGLER: Off the record.

9 (Discussion off the record.)

10 BY MR. OLDS:

11 Q Mr. Shaffer, would you describe your responsibilities  
12 with Duquesne Light Company since 1965, since September 1965,  
13 approximately?

14 A I was general superintendent of power stations  
15 from mid-'65 to '66. I was vice president of operations  
16 from mid-'66 to mid-'67.

17 I was executive vice president from mid-'67 to  
18 <sup>been</sup> mid-'68. I have/president of the company since that time.

19 Q Did you personally participate in the discussions  
20 that led to the formation of the CAPCO power pool?

21 A I did.

22 Q And have you since the formation of the pool  
23 personally participated in the meetings of the executives  
24 concerning the activities of the members of the pool?

25 A I have.

1           Q       Mr. Schaffer, under the CAPCO pool program, is  
2 Duquesne engaged in a program of construction of jointly-  
3 committed generating units?

4           A       It is.

5           Q       Could you describe in general terms what that  
6 program is?

7           A       We operate the CAPCO pool on a one-system basis  
8 in which the requirements for the pool area involving all  
9 companies are treated as though it were one system. We have  
10 established a criteria for reliability which is known as  
11 the one negative day concept. And having established the  
12 capacity necessary, to maintain that degree of reliability  
13 through probability methods, the capacity allocation  
14 responsibility is then proportioned among the parties on  
15 what is known as the P over N ratio, intended to establish  
16 responsibility in accordance with the use of the system.

17                   Under these conditions, Duquesne Light Company has  
18 certain capacity allocation responsibilities.

19           Q       Would you state what is meant by the one negative  
20 day concept as it is used in connection with the process  
21 you have described in the CAPCO pool?

22           A       The days of the year which are normally heavy load  
23 days ruling out such things as Saturdays and Sundays and  
24 holidays in some cases, are considered as days when capacity  
25 needs to be available and our standard indicates that the



ar4

1 capacity that will be adequate under our probability  
2 theory to the point where only one day out of the year  
3 would it be necessary for us to go outside the CAPCO pool  
4 in order to obtain the capacity necessary to meet our load.

5 Q When you use the pronoun "us," in that answer,  
6 are you referring to Duquesne Light Company or the CAPCO  
7 pool members?

8 A The CAPCO pool members. It is a one-system concept.

9 Q When you refer to the P over N ratio as a mechanism  
10 for distribution of responsibility, could you explain that  
11 generally?

12 A Well, the P applies to those days when the  
13 individual company has positive capacity. In other words,  
14 capacity in excess of its needs.

15 The N represents the days in which it has  
16 negative capacity or is unable to satisfy its own needs.

17 By taking the possible over the negatives, we  
18 receive a number which is a ratio of positive to negative.  
19 And the concept is that since systems are of different  
20 sizes, the best way to determine the requirements that it has  
21 to provide capacity is on a basis where its support of the  
22 pool and its requirements from the pool are in the same  
23 ratio as that of every other company.

24 Q In your answer you used the pronoun "it." Are you  
25 referring to each of the individual CAPCO companies by the

1 use of that pronoun?

2 A In this case, since we are dividing up the  
3 capacity among the various entities, the "it" would be each  
4 individual company, Duquesne Light Company in my case.

5 Q Mr. Schaffer, what benefits does Duquesne receive  
6 from the program of joint construction and joint commitment  
7 to the construction of CAPCO generating units?

8 A Well, the pool was established basically to  
9 provide reliability to each of its members including  
10 Duquesne Light in this case, and to provide the maximum  
11 in economic benefits.

12 By the reliability criteria that we have set  
13 up, the one negative day concept, we feel that the reliability  
14 of Duquesne Light Company is assured.

15 On the basis of Duquesne Light Company being  
16 able to take the advantages of large units without ownership  
17 of the total unit provides them with the economic benefits  
18 which they -- the economic benefits of scale which they  
19 would not be able to provide as an individual company.  
20 And at the same time the reserves of all of the companies  
21 are available to meet the back-up for any failures or  
22 requirements of the Duquesne Light Company system, providing  
23 therefore the benefits of scale, the back-up and the overall  
24 reliability.

25 Q Mr. Schaffer, what are Duquesne's specific

1 construction obligations under the joint construction  
2 program you have described?

3 A The actual construction of the Beaver Valley  
4 No. 1 and Beaver Valley No. 2 Units have been assigned to  
5 Duquesne Light Company.

6 Q What are Duquesne's financial obligations with  
7 reference to the joint construction program?

8 A Duquesne Light Company is participating as an  
9 owner in common with all of the units that have so far been  
10 authorized by the executive board of the CAPCO pool, with  
11 the exception of the Davis-Besse No. 1 Unit.

12 It is providing the capital fund necessary to  
13 finance their allocation responsibility.

14 Q Approximately how much capital has Duquesne  
15 contributed toward the CAPCO construction program to date?

16 A Approximately \$500 million.

end 2

17  
18  
19  
20  
21  
22  
23  
24  
25

S3

bwl

1 Q Through the date when the stations presently  
2 committed are completed, how much is it estimated that  
3 Duquesne will in total contribute?

4 MR. LESSY: It would be helpful, if you could  
5 outline which stations are presently committed.

6 Without objection.

7 BY MR. OLDS:

8 Q Mr. Schaffex, perhaps before you give the  
9 answer to the question I just asked, I will withdraw it  
10 for the sake of clarity of the record. And I will ask you  
11 if you will be kind enough to state for the record what  
12 stations have been constructed or are under construction,  
13 and those that are committed.

14 A The first unit in the CAPCO group was the Sarnis  
15 unit being built by Ohio Edison. Sarnis Number 7, and it is  
16 now in operation.

17 The second unit was the Eastlake Number 5 unit,  
18 constructed by Cleveland Electric Illuminating, and it is  
19 now in construction.

20 Q Are either of those nuclear stations?

21 A They are both coal-fired units.

22 Q Perhaps, as you go through the rest of the list,  
23 indicated which are nuclear and which are fossil fuel.

24 A The third unit was intended to be the Beaver  
25 Valley 1 unit, which is nuclear and being

bw2

constructed by Duguesne Light Company.

The fourth unit was the Davis-Besse Number 1 unit, nuclear, constructed by Toledo Edison.

Now, these two units have slipped out of sequence slightly by virtue of delays which were experienced.

There are three other coal-fired units.

They are Mansfield Number 1, Mansfield Number 2 and Mansfield Number 3.

All three of those units are being constructed by Pennsylvania Power.

The number one unit at Mansfield is currently in preliminary operation and commercial for a portion of the capacity installed there.

The remaining units, not so far mentioned, were Davis-Besse Number 2 and Number 3, constructed by Toledo Edison, Perry Number 1 and Number 2, constructed by Cleveland Electrical Illuminating, and Erie Number 1 and Number 2, constructed by Ohio Edison.

All of those units, after the Mansfield units, the Perry units, Davis-Besse units and Erie units are nuclear units.

Q Perhaps if you will foregive me for leading you, I think there is one other unit you inadvertently overlooked, also bearing the name Beaver Valley.

A Beaver Valley Number 2.

Q I don't think you mentioned it.



bw3

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

A I had mentioned it earlier. That is nuclear.

A Does that complete the list of the units that are committed for at the present time?

A That is right.

Q Could you answer the question I originally posed?

Would you state for the record what is the approximate total obligation which has been assumed by Duquesne Light with reference to the completion of that construction program?

A As I indicated, approximately \$500 million has been spent already by Duquesne Light Company, and at the present time it is contemplated that there may be an additional \$1 billion amounting to a total of \$1,500,000,000.

However, I think it is important that I emphasize that on almost all of these construction programs for one reason or another there have been delays.

Those delays always increase the costs.

I'm not sure how firm the future \$1 billion may be.

ES3

arl 1 Q Under the CAPCO construction program, what  
2 obligations does Duquesne have, if any, as to provision  
3 of maintenance or back-up?

4 A Duquesne Light Company obviously has the  
5 responsibility for the maintenance of that equipment which is  
6 on its system.

7 And furthermore, factored into the installation  
8 of capacity, is reserves spread around all of the  
9 systems and Duquesne Light Company has its responsibility  
10 to provide the reserve to other parties in CAPCO in  
11 accordance with the available reserve it has, and the needs  
12 of the other parties, and conversely has the right to  
13 receive capacity and the associated energy from other  
14 parties in CAPCO in accordance with its needs.

15 Q How is the reserve-sharing accomplished under  
16 the CAPCO pool arrangement?

17 A The CAPCO has a coordinating office. Each of  
18 the parties reports in daily to that coordinating office  
19 its available capacity. The coordinating office can then  
20 arrange for the capacity available on one system to be  
21 supplied to that system which has a need.

22 Q What is the basis for the determination of reserve-  
23 sharing under the CAPCO pool?

24 A I don't think I understand your question.

25 Q Is there a formula utilized in connection with

1 the allocation of responsibility for provision of reserves?

2 A Well, under normal conditions a system is  
3 anticipated to have a 5 percent spinning reserve or a 3  
4 percent operating reserve, 2 percentage points of which  
5 are spinning.

6 This is in connection with the overall reliability  
7 requirements for the reliability region in which Duquesne  
8 Light Company operates.

9 Q What benefits does Duquesne receive under the  
10 reserve-sharing program of CAPCO?

11 A Well, it provides the opportunity for Duquesne  
12 Light Company to get the reserves that it needs at various  
13 times with the installation of a lesser quantity of reserve  
14 than it would have to have under the same conditions if it  
15 were operating as an independent company.

16 CHAIRMAN RIGLER: Mr. Olds, I'm sorry to interrupt.  
17 We will have to take a five or 10-minute break here because  
18 we started late. I have a commitment to take a phone call  
19 at 11:00.

20 I will be back in five minutes.

21 (Recess.)

22 BY MR. OLDS:

23 Q Mr. Schaffer, with reference to the financial  
24 obligations which you have just entailed, could you tell us  
25 on what basis those financial obligations were established  
for Duquesne Light Company under the pool arrangement?

1           A       As I specifically indicated, the capacity  
2 requirements of the pool were established on the one negative  
3 day concept and the allocation of the capacity responsibilities  
4 to the individual companies were established on the P over N  
5 ratio basis.

6                   Having established that financial responsibility,  
7 then the method for carrying out that responsibility  
8 initially was on a three-possibility basis, one of which  
9 was the advance of capital.

10                   The second of which was the payment of the  
11 carrying charges on the unit, and the third, of course,  
12 was on an ownership basis.

13                   For all units after the sixth unit, the financial  
14 responsibility is to be carried out by ownership.

15           Q       Mr. Schaffer, when was the determination made  
16 approximately that after the sixth unit, the financial  
17 obligations would be discharged by ownership?

18           A       Mid-1973.

19           Q       Now with reference to the matter of the distribu-  
20 tion of responsibility for capacity, does that distribution  
21 include responsibility for providing reserve capacity?

22           A       Well, the one negative day concept is a reliability  
23 criteria and obviously in order to maintain that degree of  
24 reliability it is absolutely necessary that reserve be  
25 provided and it does indeed provide the reserve to produce

1 that degree of reliability.

2 The P over N ratio distributes all of the  
3 capacity among the respective companies in an equitable  
4 proportion and on that basis the reserve is also  
5 distributed among the various parties.

6 Q Has the one negative day concept worked to  
7 achieve reliability for Duquesne Light?

8 A Yes, to the degree that we have so far been able  
9 to achieve it. Initially an unbalance among the companies  
10 required the installation of capacity to get us to the one  
11 negative day concept. We so far have had only two units  
12 in operation until within the last month or so.

13 Consequently we have not at all times achieved  
14 the one negative day reliability.

15 With the addition of the Mansfield No. 1 Unit,  
16 and the Beavery Valley No. 1 Unit, we will have that degree  
17 of reliability and I'm certain that it will provide the  
18 reserve capacity that we each need.

19 Q You used the term "equitable" in an answer you just  
20 made with reference to the operation of the P over N ratio  
21 as a mechanism for the distribution of responsibility for  
22 providing capacity. Would you state for the record why  
23 Duquesne believes that the P over N method is an equitable  
24 method for determination of responsibility for providing  
25 capacity?



1 And a company that has a large number of outages on their  
2 capacity will require more frequent assists from the  
3 CAPCO pool.

4 So these are the factors that are brought to bear  
5 in the computer program by which these calculations are  
6 made.

7 Q Has Duquesne's reserve responsibility been  
8 higher or lower since it joined the CAPCO pool?

9 A Their reserves have been somewhat higher.

10 Q Why has that been?

11 A Well, the reserve margin that was determined  
12 as desirable by the chief executives of the CAPCO pool is  
13 somewhat higher than Duquesne Light Company had previously  
14 maintained.

15 This pool came into existence not too long  
16 after the Northeast blackout. As a result of that blackout,  
17 an upgrading of the reserves on a nationwide basis was  
18 effected in order to reduce the probability of any recurrence  
19 of that blackout.

20 Q Does Duquesne engage in coordinated maintenance  
21 with the other CAPCO companies under the pool arrangement?

22 A Yes, the maintenance program is a necessary  
23 program in order to establish the reliability criteria  
24 of which I have previously spoken.

25 The equipment obviously out of service and

1 incapacitated for maintenance is not available either  
2 for generation or for back-up. So when a program involving  
3 the reliability of the CAPCO pool is established, it has  
4 to factor in the necessary planned outage for maintenance.

5 If any one of the CAPCO companies chose on its  
6 own to remove equipment on a planned basis for maintenance,  
7 each might plan to do its maintenance at the same time. If  
8 it did so, the reliability of the pool would be jeopardized.

9 As a result of that, we have a coordinated  
10 maintenance program which allows for the outages of the  
11 units in such a manner as to not seriously jeopardize  
12 pool reliability.

and 4

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S5  
bwl

1 Q How are the aspects of coordination you have  
2 described, accomplished? What is the mechanism?

3 A Each system determines the maintenance requirements  
4 for those units for which they have responsibility, their  
5 own individual units, and those CAPCO units which they have  
6 responsibility for.

7 Representatives from our generation departments  
8 in the various companies meet and schedule the maintenance  
9 for the whole pool, thereby coming up with a  
10 coordinated maintenance program.

11 Q Now, you have described a construction program,  
12 a reserve-sharing program and a maintenance program  
13 under the pool arrangements.

14 Do the pool arrangements give individual  
15 pool members an option to participate or not  
16 participate, as they may choose in these different  
17 programs you have described?

18 A No, the pool is, as I have indicated on several  
19 occasions; a one-system concept and if each of the parties  
20 are to be permitted to share in reserves and in the capacity  
21 of the units, the whole program is integrated in such a  
22 manner that failure to participate in each of the items  
23 would unduly upset any of the programs of sharing in  
24 capacity and generation.

25 Q One aspect of generation I didn't ask you about is

b2

1 peaking capacity, Mr. Schaffer.

2 Is peaking capacity a joint construction  
3 project under the CAPCO pool arrangement?

4 A No, the peaking capacity is jointly determined  
5 on the basis of pool needs.

6 But the construction and ownership of peaking  
7 capacity is an individual responsibility.

8 I might add to that, that this is the way felt  
9 necessary, because of the small fragmentation involved  
10 in peaking capacity, in some cases involving as little as  
11 two megawatts.

12 Q Does Duquesne engage in a joint program to  
13 construct transmission facilities under the CAPCO Pool  
14 arrangement?

15 A Yes, the transmission facilities are continually  
16 being determined in such a manner as to provide the facilities  
17 to transmit electric energy from units which the Duquesne  
18 Light Company owns on other people's systems and also to  
19 transmit power from units on Duquesne Light Company's  
20 system in which other people have allocation entitlements.

21 In addition to that, the transmission capacity  
22 must be adequate, in order to provide the backup needed  
23 for capacity outages on Duquesne Light Company's system or  
24 any of the other parties' systems.

25 Q On what basis have Duquesne's obligations for

b<sub>w</sub>3

1 participation in the construction of CAPCO transmission  
2 facilities been determined?

3 A. The Duquesne Light Company has had the obligation  
4 to construct several transmission lines within its service  
5 area for that purpose, including a line that runs between the  
6 Beaver Valley station and the Sammis station and two other  
7 lines that are headed into Ohio, the Mansfield Highland  
8 line and the Mansfield Hanna line.

9 Duquesne Light Company has the responsibility  
10 for construction of transmission facilities which are  
11 constructed in its service area.

12 And each of the other companies have the  
13 responsibility for continuing those lines to their service  
14 area where required.

15 The ownership of the lines rests with the  
16 company in whose service area they have been constructed,  
17 and rental is paid on those lines by all of the parties  
18 in accordance with the prescribed provisions.

19 CHAIRMAN RIGLER: These lines were constructed  
20 for the specific benefit of CAPCO?

21 THE WITNESS: Yes.

22 CHAIRMAN RIGLER: Under your one negative day  
23 concept, there have been occasions in which CAPCO members  
24 have had to obtain power from outside of the CAPCO system?

25 THE WITNESS: That is true. As I indicated, we

bw4

1 really have not, up until now, achieved our one negative  
2 day concept and, even if we had the one negative day concept,  
3 that still dictates the possibility of having to go out  
4 on the possibility basis.

5 CHAIRMAN RIGLER: When CAPCO goes outside to secure  
6 power for its deficit, do they use the CAPCO transmission  
7 lines to bring that power into the CAPCO system?

8 THE WITNESS: They may.

9 CHAIRMAN RIGLER: Suppose it was Ohio Edison  
10 that was experiencing the deficit, and they could obtain power  
11 from somebody to the south of Duquesne, is it possible that  
12 Duquesne would use its CAPCO line to help transmit that  
13 power to Ohio Edison?

14 THE WITNESS: It is possible. Transmission lines  
15 know no ownership when they are interconnected and power  
16 can flow over any of them, private individual lines, CAPCO  
17 lines or both of them.

18 BY MR. OLDS:

19 Q. Mr. Schaffer, what types of operating coordination  
20 does Duquesne engage in with the other CAPCO companies?

21 A. Well through the coordinating office; of course,  
22 any of the needs other than those that are part of their  
23 allocation entitlement can be arranged for.

24 This can be the different types of power.  
25 Short-term, emergency, economy, et cetera.



bw5

1 Q Does Duquesne engage in a banking of energy  
2 with the other CAPCO members?

3 A Yes, that is a basic ingredient of the CAPCO  
4 program, the idea being that if each party is balanced in  
5 its benefits from the pool, and its obligations to the pool  
6 over a period of time, each of the companies will be  
7 obtaining power from others in the pool and as the result  
8 of that, the banking principle was established whereby,  
9 in taking power from another company over a period of time,  
10 you would be supplying power back to that company and, of  
11 course, the intent is over a period of time that would balance  
12 out to zero.

13 Q Mr. Schaffex, what have been the principle changes,  
14 if any, in the CAPCO pooling arrangements, since its  
15 formation in 1967?

16 MR. LESSY: Excuse me.

17 That is an awfully broad question.

18 Is Mr. Schaffex testifying in answer to that  
19 question or is it your intent with respect to Duquesne or  
20 with respect to CAPCO in general?

21 If it is with respect to CAPCO in general, I don't  
22 think there is a basis here for him to testify that broadly.

23 He can testify from the Duquesne point of view.

24 MR. OLDS: I'm happy to have him testify, and I  
25 intended him to testify from his viewpoint of Duquesne. If

bw6

1 there is any difference, I urge the Witness to view it from  
2 the standpoint of his position, as an officer of Duquesne.

3 THE WITNESS: I think that the primary change that  
4 has been made with regard to Duquesne Light Company,  
5 and its effect on Duquesne Light Company, is probably  
6 the principle which adjusted the proration determination  
7 that was originally established in the memorandum of  
8 understanding. To have that proration principle apply to  
9 the first six units and have ownership responsibility apply  
10 to the remaining units.

11 BY MR. OLDS:

12 Q Could you explain what the proration concept  
13 amounted to from the standpoint of Duquesne Light Company?

14 A It was a situation where the -- each of the units  
15 were considered as being made up of some four or five,  
16 depending on whether you include Pennsylvania Power with  
17 Ohio Edison or not, four or five independent smaller units.

18 And regardless of what the allocation responsibility  
19 of the party was in that particular unit, the unit was  
20 considered as having a size so far as Duquesne Light Company  
21 was concerned equal to its allocation responsibility in all  
22 of the CAPCO Units as compared to the total capacity of the  
23 CAPCO units.

24 Consequently, if Duquesne Light Company had a  
25 200 hundred megawatt ownership in all of the CAPCO units,

bw7

1 and all of the CAPCO units represented 800 megawatts, it  
2 would, therefore, have the equivalent of 25 percent  
3 ownership in each of the units, even though it might have  
4 all 800 megawatts in one unit.

5 Q What was the change that was accomplished that  
6 you mentioned, you referred to ownership?

7 A What we came up with after the sixth unit, was  
8 a situation where each company would own its allocation  
9 in each unit, as they were constructed and have responsibility  
10 for that specific allocation.

11 Q And why did Duquesne urge that change?

12 A Well, we felt that the arrangement that existed  
13 relative to the pro rata system was inequitable and  
14 required capacity installations on the part of Duquesne,  
15 in excess of what they really should have been assigned.

16 Q When was that change accomplished?

17 A Mid-1973, I believe, July 5 or 6.

18 Q Was the making of that change in any way  
19 related to the request of the City of Cleveland to join  
20 CAPCO?

21 A No.

22 Q What benefits has Duquesne received as a result  
23 of that change?

24 A A more equitable assignment, in our opinion, of the  
25

bv 8

- 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

CAPCO allocation responsibilities.

MR. OLDS: If the Board will indulge me for a moment, I think I am just about at the end of my questioning of Mr.Schaffer.

HDS

arl 1

BY MR. OLDS:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Mr. Schaffer, under the CAPCO arrangements, can Duquesne enter into an understanding with someone not in CAPCO to construct and operate generation?

A Not without approval of the executive board of CAPCO.

Q Why is that a requirement?

A Well, the concept that we started out here was that we had a pool and our designing was on a one-system basis.

Consequently, it was a group that had gotten together in order to provide these benefits and requirements, and we feel they can be supplied and handled only if we dealing among ourselves.

Q Can Duquesne purchase power from nonCAPCO members?

A Yes, on a day-by-day basis, if we have a need and there is power available from someone else, we can purchase that.

Q Is the same answer true with reference to long-term firm power commitments?

A In that case only with the approval of the executive committee of CAPCO.

Q Why is there such a provision?

A It comes back to the same arrangement whereby our planning is on a one-system basis. If individuals go off

1 and make other agreements, it is hard to effect long-range  
2 planning.

3 CHAIRMAN RIGLER: Suppose a CAPCO member  
4 company at the time it entered CAPCO had a long-term  
5 arrangement to obtain power from outside of the CAPCO area.  
6 Could that have been factored into the overall plan for  
7 CAPCO?

8 THE WITNESS: Not only can, but it was. There  
9 was such an incident and it was done at that particular  
10 time. It then became a coming-in basis and certain capacity  
11 they had available. Obviously if that had an expiration  
12 date on it, then the CAPCO planning for capacity would have  
13 to recognize that there would be a deficiency in the pool  
14 by that amount when that was terminated unless provisions  
15 were made to replace it.

16 CHAIRMAN RIGLER: Suppose that a CAPCO member  
17 company wished to enter into a long-term transmission  
18 agreement with a utility outside of the CAPCO area. Would  
19 that be subject to approval by the CAPCO executive committee?

20 THE WITNESS: It seems to me it would be. It is  
21 not one of those things that, to the best of my memory,  
22 in any of the provisions we now have that was contemplated  
23 at that particular time.

24 Each member of the pool came to the pool with  
25 certain transmission facilities on their own systems. These



1 were dedicated to the pool as might be required.

2 Then on top of this the determination of the  
3 transmission capacity necessary to satisfy pool needs  
4 was contemplated and since has been constructed and is in  
5 the process of being constructed.

6 Whether there are any facilities available at  
7 the present time in excess of the pool's needs which  
8 could be contracted by a party with someone else, I don't  
9 know.

10 BY MR. OLDS:

11 Q Mr. Schaffer, what was the basis upon which  
12 Duquesne was allocated the responsibility under the pool  
13 arrangement for the construction of Beaver Valley 1 and  
14 Beaver Valley 2?

15 A The construction of those two units was based on  
16 two things:

17 One, so far as Beaver Valley No. 1 Unit is  
18 concerned, this was fundamentally a coming-in situation  
19 where each of the companies assumed the responsibility for a  
20 unit. Sammis 7 for Ohio Edison, Eastlake 5 for Cleveland,  
21 Beaver Valley, Duquesne Light Company and Davis-Besse No. 1  
22 for Toledo Edison.

23 The subsequent units were located on the basis  
24 of having generating capacity as near as was reasonably  
25 possible to the load that it was serving, and the availability

1 of sites which were thought to be acceptable for the  
2 installation of that capacity.

3 In the case of Beaver Valley No. 2 Unit, it was  
4 hoped this could be very close to a duplicate unit to the  
5 No. 1, as close as the regulations permitted, and that there  
6 would be some financial benefits from locating a second  
7 unit similarly constructed at the same site.

8 Furthermore, there was added room on the Beaver  
9 Valley site for a second unit.

10 MR. IMSSY: Would the reporter read back the  
11 question?

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

14 BY MR. OLDS:

15 Q Was there any special requirement of eligibility  
16 for Duquesne in view of the fact that those two plants were  
17 nuclear?

18 A Not that I know of.

19 Q Was Duquesne required to make a showing of its  
20 experience and responsibility before it was permitted  
21 to construct Beaver Valley 2.

22 MR. LESSY: Showing to whom?

23 MR. OLDS: To the AEC at that time and now the  
24 NRC.

25 THE WITNESS: Any nuclear unit requires many

1 approvals and showings in connection with their construction,  
2 Beaver Valley 1, as well as Beaver Valley No. 2.

3 They need to be licensed for construction and  
4 eventually licensed for operation.

5 MR. OLDS: Cross-examine?

6 MR. LESSY: I wonder if we can recess until  
7 12:00? Maybe we can compact this. I would like to take  
8 15 minutes.

9 MR. REYNOLDS: I can get mine done probably  
10 between now and 12:00. Should I go ahead?

11 CHAIRMAN KIEGER: That is a good idea.

12 CROSS-EXAMINATION

13 BY MR. REYNOLDS:

14 Q Mr. Schaffar, did Duquesne Light have to  
15 demonstrate to the regulatory body in connection with its  
16 construction of Beaver Valley 1 and 2 any particular  
17 competence to engage in that kind of construction program?

18 A Yes. Those things were covered in the licensing  
19 procedures.

20 Q Did you have to file any kind of certificate  
21 that would indicate it had the capability and expertise in  
22 order to engage in this kind of construction?

23 A The request for the license and the PSMR were  
24 required documents in that respect.

25 Q You indicated that each of the companies paid

ar6

1 rental in connection with the transmission facilities.

2 Do you know how that rental was determined?

3 A The lines were identified either as nonCAPCO  
4 lines, as 50 percent CAPCO lines, or as total CAPCO lines.

5 Having established the type of line it was,  
6 the rental charges are based on their carrying and maintenance  
7 costs and divided in proportion to the individual peak load  
8 of the company to the total of all companies.

9 Q You also made reference to a banking concept in  
10 connection with the CAPCO pool. What advantages to Duguesne  
11 Light were there by virtue of the banking concept?

12 A Well, the banking concept lets Duguesne Light  
13 Company and, of course, each of the other companies to  
14 replace the power that they have borrowed from somebody else  
15 at their own system costs.

16 And consequently it makes the situation look as  
17 though it supplied its own reserve from an economic stand-  
18 point.

19 Q If an entity were to join the pool and not be  
20 capable of providing any energy to the bank, would that  
21 have an adverse effect on the operation of the banking  
22 concept?

23 MR. HJELMFELT: Objection.

24 MR. LESSY: I will object to that question.

25 MR. HJELMFELT: It exceeds the scope of the

ar7

1 direct examination. There is no testimony dealing with  
2 admission of new members.

3 MR. LESSY: In addition, it is a hypothetical  
4 question of this witness.

5 MR. REYNOLDS: I'm on cross-examination. The  
6 witness did talk about banking and the advantages to Duguesne  
7 Light.

8 If you want, I will say in Duguesne Light's  
9 view, would that be a disadvantage under the banking concept.

10 CHAIRMAN RIGLER: May I hear the question again?

11 (Whereupon, the reporter read the  
12 pending question, as requested.)

13 MR. LESSY: He's being asked to draw a conclusion  
14 as to an adverse effect. I join in the objection that  
15 it is beyond the scope of direct.

16 CHAIRMAN RIGLER: Overruled.

17 THE WITNESS: Yes, it certainly would.

18 BY MR. REYNOLDS:

19 Q Why is that?

20 A Because that party would not be providing that  
21 energy that other people need when they are in a deficient  
22 position.

23 Q You indicated, I believe, that while there is  
24 joint planning of peaking capacity that the construction  
25 and ownership of peaking units is an individual

1 responsibility in CAPCO; is that correct?

2 A That's correct.

3 Q If an entity was capable of constructing,  
4 financing and maintaining only peaking units, would such an  
5 entity be able to make any contribution to the CAPCO  
6 joint construction program?

7 MR. LESSY: Objection; beyond the scope of direct  
8 and calls for a conclusion specifically, and there is no  
9 testimony here that this witness is qualified to make  
10 such a conclusion.

11 MR. REYNOLDS: I think it is clearly within the  
12 scope of direct and this witness is certainly in a position  
13 to give his opinion as to what impact -- what that entity's  
14 capability would be to contribute to the CAPCO pool;  
15 certainly based on his testimony thus far, he's in a position  
16 to give a qualified opinion.

17 CHAIRMAN RUGLER: I don't recall his testifying  
18 with respect to membership qualifications in CAPCO.

19 MR. REYNOLDS: I don't believe I asked about  
20 membership qualifications. I asked whether that entity  
21 would be able to make a contribution to the CAPCO joint  
22 construction program.

23 MR. LESSY: The question ought to be repeated as  
24 asked.

25 MR. REYNOLDS: Will you read it back?



1 (Whereupon, the reporter read  
2 the pending question, as requested.)

3 MR. LESSY: Why is the witness in a position  
4 to render an opinion on that? It has not been established  
5 in the direct examination.

6 CHAIRMAN RIGLER: I will overrule you on that.  
7 But I am going to sustain it on the ground that the  
8 explorations of the contributions part of the question does  
9 exceed the scope of direct.

10 BY MR. REYNOLDS:

11 Q If an entity was capable of constructing,  
12 financing and maintaining only a peaking unit, Mr. Schaffer,  
13 would that entity provide any benefit to Duquesne Light  
14 under the CAPCO joint construction program if it were to  
15 participate in the program only on that basis?

16 MR. LESSY: Same objection. Beyond the scope of  
17 direct. It is tailored merely in light of Duquesne Light.  
18 It is the same question. I object.

19 MR. REYNOLDS: It is tailored and tailored directly  
20 to the direct examination.

21 CHAIRMAN RIGLER: He testified with respect to  
22 benefits. I will permit the answer to that question.

23 THE WITNESS: Will you repeat the question?

24 (Whereupon, the reporter read the  
25 pending question, as requested.)

1 THE WITNESS: From the standpoint of the  
2 operation of the system, generation of any variety, if  
3 it is available to assist another company could do just  
4 that. But this tailors down the requirements that Duquesne  
5 Light Company is obligated to relative to its participation  
6 in the pool, and is also the case with all of the other  
7 companies.

8 MR. LESSY: Would you read the answer back,  
9 please?

10 MR. REYNOLDS: I'm not sure I fully understand.

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

13 BY MR. REYNOLDS:

14 Q Are you saying then that the capability of  
15 constructing only a peaking unit would be of a benefit to --  
16 an entity capable of constructing only a peaking unit  
17 would be a benefit to Duquesne Light in the joint construc-  
18 tion program of CAPCO?

19 A Yes, but it is not the contract under which  
20 CAPCO works.

21 Q What do you mean by that?

22 A The capacity in CAPCO, as I have said on several  
23 occasions, is determined by the requirements for sufficient  
24 installed capacity to meet the needs of the CAPCO pool.  
25 When that capacity is once determined, then the allocation

1 of the responsibility for it is made to all of the  
2 parties and consequently there is a requisite to take  
3 your share in the peaking -- or in the base load units.  
4 And the peaking units are only fill-in units and when approved  
5 are individual construction and ownership.

6 Q Mr. Schaffer, in connection with certain  
7 of the matters we have discussed, you indicated that they  
8 required executive approval. Is that unanimous approval by  
9 the executives?

10 A Yes.

11 Q Why is that?

12 A It was agreed upon, I think, on the basis that  
13 each individual company has a responsibility to its  
14 customers and its stockholders which it really couldn't  
15 relinquish.

16 Consequently it was determined that any program  
17 that we followed should be one where each respective  
18 company felt that it was treating its customers and its  
19 stockholders appropriately.

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

21 CHAIRMAN RIGLER: Do you want 10 minutes?

22 MR. LESSY: Yes, sir.

23 (Recess.)

24 BY MR. LESSY:

25 Q Mr. Schaffer, is it your testimony that there is a

1 causal relationship between the Northeast power blackout  
2 and the formation of the CAPCO pool?

3 A Not really.

4 Q Has ECAR adopted the CAPCO P over N formula or  
5 theory?

6 A ECAR has no provisions for installed capacity.

7 Q Did ECAR consider the adoption of a P over N  
8 theory or formula?

9 A It, and other schemes.

10 MR. REYNOLDS: I would object to that line of  
11 questioning if Mr. Lessy intends to go further with it.  
12 What relevance it has to the direct or matters in this  
13 case escapes me.

14 MR. LESSY: He has answered the question.

15 BY MR. LESSY:

16 Q Have any other power pools adopted the CAPCO  
17 P over N formula?

18 A I do not know.

19 Q Do you know if any have?

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

22 BY MR. LESSY:

23 Q Do you know if any power pools have adopted  
24 the CAPCO P over N formula?

25 MR. REYNOLDS: Same objection.

1 CHAIRMAN RIGLER: I will permit it.

2 THE WITNESS: No.

3 BY MR. LESSY:

4 Q Isn't it a fact that no power pools have adopted  
5 it?

6 MR. REYNOLDS: I object.

7 MR. LESSY: I don't mind your objecting, but  
8 I object to your editorializing, Mr. Reynolds.

9 BY MR. LESSY:

10 Q You indicated that the one negative day criteria  
11 haven't held up in all cases so far. Has the P over N  
12 theory been verified by actual practice in CAPCO?

13 A The P over N calculations have been made and the  
14 capacity assigned on that basis, the responsibility for it.  
15 It will take sufficient time to establish reliabilities  
16 before the full effect of it will be known.

17 Q Is it your testimony that the P over N theory  
18 has been verified by actual practice to date?

19 A I don't understand your question. What do you  
20 mean by "verified"?

21 Q Has the positive contribution in relation to  
22 the negative under P over N been the same for each member?

23 A I don't think that has been established. P over N  
24 ratio is a planning concept.

25 Q Does the banking concept or principle that you

1 testified to this morning apply to all types of energy?

2 A No.

3 Q What types does it apply to?

4 A It applies to the normal interchange of power.  
5 Economy interchange is treated differently as an example.

6 Q Does the fact that economy interchange is treated  
7 differently, for example, and that the other party with  
8 whom you are engaging in an economy interchange doesn't  
9 follow the banking principle or doesn't return the same amount  
10 of energy, destroy the concept?

11 A No. The banking situation is a replacement  
12 sort of thing that replaces that which you get from somebody  
13 else at some other time.

14 The economy interchange is a situation where  
15 replacement energy is not required in its direction, but  
16 there are economies to be obtained by the interchange of  
17 power under those principles and both parties benefit  
18 financially, on that kind of an arrangement.

19 MR. LESSY: I move to strike. I didn't ask why  
20 they were different. It was a simple question that required  
21 yes or not, and he went on to answer a question that wasn't  
22 asked.

23 Will you read the question?

24 CHAIRMAN RIGLER: And the answer.  
25



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

3 CHAIRMAN RIGLER: Denied.

4 BY MR. LESSY:

5 Q Mr. Schaffer, within CAPCO, the banking principle  
6 as it operates, what would happen if over a period of a review  
7 of time, a year or two or any period you picked, that  
8 the balance did not come to zero?

9 A Then the obligations relative to the deficits  
10 that you may have in the bank would be satisfied by financial  
11 payment.

12 Q Now you also testified that the -- strike that.  
13 With respect to the proportional ownership of  
14 the first six units, there was a proration principle.  
15 You felt it was changed because that was inequitable, if I  
16 understand your testimony.

17 Why did you and Duquesne, why did you as Duquesne,  
18 or why did Duquesne consider that principle as it was  
19 applied inequitable?

20 A Because certain other parties to the pool had  
21 units which dictated certain reserves in order to satisfy  
22 the requirements of that unit.

23 By the banking principle -- by the pro rata  
24 principle, their obligations were reduced. In the process  
25 of reducing the obligations of one party, you increase the

1 obligations of another.

2 If we are still going to maintain the reliability  
3 concept of the pool.

4 And consequently, it was inequitable.

5 MR. CHANNO: Could I have that back one more  
6 time?

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

9 BY MR. LESSY:

10 Q Are the reserves equal to each member with the  
11 P over N method?

12 MR. OLDS: Would you read the question back,  
13 please?

14 (Whereupon, the reporter read the  
15 pending question, as requested.)

16 BY MR. LESSY:

17 Q Are the reserves equal for each member under  
18 the P over N method?

19 MR. REYNOLDS: What do you mean by "equal"?

20 MR. LESSY: Percentage of reserves equal.

21 THE WITNESS: No.

22 BY MR. LESSY:

23 Q You testified notwithstanding the CAPCO arrangement,  
24 Duquesne Light could purchase power on a day-to-day basis.

25 What kind of power has Duquesne Light purchased

1 on a day-to-day basis, notwithstanding CAPCO or in addition  
2 to the CAPCO arrangements?

3 MR. REYNOLDS: Since when?

4 MR. LESBY: Since he has been president, if he  
5 knows.

6 THE WITNESS: I don't know exactly what kind of  
7 power you are talking about. It could be emergency power  
8 and we have interconnections with other companies, and there  
9 have been occasions when we have purchased power on an  
10 emergency basis.

11 We also have had occasions where we have  
12 purchased short-term power. When we had a known requirement  
13 for additional capacity in energy.

14 end 6  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S7 1 Q If the only emergency power that Duquesne  
bwl 2 Light could purchase outside outside of CAPCO, required  
3 the purchase of that power for a period of three years  
4 or the payment of part of that power without recommendation  
5 that Duquesne Light purchase it.

6 Q Now, are the transmission line rental charges  
7 which CAPCO charges to each other, are those charges subject  
8 to FPC rate jurisdiction?

9 A I don't know.

10 Q All transmission is not installed CAPCO  
11 transmission. I believe that was your testimony. Some  
12 of it is, some of it isn't, some is individual; is that  
13 correct?

14 A that is correct.

15 Q Is the installation of nonCAPCO transmission  
16 by Duquesne, subject to the approval of the CAPCO Executive  
17 Committee?

18 A Duquesne does not construct CAPCO transmission,  
19 other than that determined by the pool.

20 We may construct internal transmission to move  
21 the power around on our system, but to move power from system  
22 to system is a CAPCO function.

23 Q Now, the question was, is the installation of  
24 nonCAPCO transmission by Duquesne subject to approval by the  
25 CAPCO Executive Committee.

bw2

1 Q Therefore, isn't Duquesne Light free, notwith-  
2 standing CAPCO or even taking into consideration CAPCO to  
3 make transmission interconnections or to arrive at trans-  
4 mission arrangements with other systems?

5 A That is true.

6 Q What are your duties with respect to -- how  
7 do you represent Duquesne Light with respect to the, I guess,  
8 participation in CAPCO, you personally?

9 A I participate with the chief executive  
10 officer, Mr. John Arthur, in the executive meetings of  
11 CAPCO and provide him with advise in that area.

12 The system planning manager of Duquesne Light  
13 Company reports directly to me as does the vice-president  
14 of engineering and construction and the vice-president of  
15 operations.

16 Therefore, I provide a link between the  
17 planning, enegineering, construction and operation of the  
18 Duquesne Light Company system to the chief executive officer.

19 Q Now, in 1968, Duquesne Light prepared on behalf  
20 of CAPCO a CAPCO facilities map; did they not?

21 MR. OLDS: Is that an appropriate part of the  
22 cross-examination?

23 CHAIRMAN RIGLER: It doesn't sound like it,  
24 thus far.

25 Where are you going?

1 MR. LESSY: To answer that question, I will  
2 have to ask the Witness to leave for a couple of minutes.

3 CHAIRMAN RIGLER: All right. Will you be excused  
4 for a minute, please?

(Witness temporarily excused.)

5 MR. LESSY: The Witness has testified about  
6 CAPCO and about CAPCO transmission.

7 Duquesne Light prepared the '68 map of CAPCO  
8 transmission and the Staff has, or the parties --  
9 CAPCO is, in addition, preparing another map showing the  
10 CAPCO facilities, including the new CAPCO transmission that  
11 this witness testified about.

12 The question is what is the status of preparation  
13 of that map, and why haven't we received it, and we have  
14 a suggestion.

15 CHAIRMAN RIGLER: I don't understand how that  
16 would be an appropriate question for this witness.

17 It certainly doesn't relate to anything he said  
18 on direct.

19 MR. LESSY: What he relates to is the new CAPCO  
20 transmission that was required as a result of the new units.

21 MR. REYNOLDS: Mr. Chairman --

22 MR. LESSY: Let me go about it a different  
23 way. I think the question of the new CAPCO transmission  
24 was right in the middle of the direct testimony.

25

bw3



1 CHAIRMAN RIGLER: It may have been, but the present  
2 line certainly isn't addressed to that. It is too remote.

3 MR. LESSY: Okay.

4 MR. OLDS: Shall we recall the witness?

5 Whereupon,

6 STANLEY G. SCHAFER

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

9 CROSS-EXAMINATION (Continued)

10 BY MR. LESSY:

11 Q Are you familiar with the new CAPCO transmission  
12 which had to be built, as you described it this morning in  
13 connection with the planning of the CAPCO units, which you  
14 described this morning from Sammis Number 7 up there, Erie  
15 One and Two, including Beaver Valley One and Two?

16 A No. I don't recall all of the transmission require-  
17 ments.

18 They have been specified, as we have gone along  
19 and they have been added to the system. I do not remember  
20 all of them. I remember three that we have so far  
21 been directly responsible for construction of, parts of them,  
22 at least.

23 Q Could you tell us about those three, then?

24 A They are the line that runs from the Beaver  
25 Valley switchyard to the Sammis 7 Unit, and then there are

1 two others that extend up into Ohio.

2 They run from the Mansfield Station and one is  
3 intended to terminate at Highland Substation and the other  
4 at Hanna.

5 And we have constructed those, or are in the pro-  
6 cess of constructing them in the Duquesne Light Company  
7 territory.

8 Q Are they all 345 kv?

9 A There are no CAPCO lines under 345 kv any more.  
10 There was an initial line that connected with Toledo  
11 and 138, but that was temporary.

12 The CAPCO capacity would all be 345 kv or higher,  
13 and at the present we don't have any higher.

14 Q So those three lines are all at 345 kv?

15 A That is right.

16 Q Where is the line that you constructed that  
17 terminates at Highland? What is at Highland?

18 A That is a substation, and I'm not familiar  
19 with whether that is Ohio Edison or Cleveland. It is one  
20 of the two.

21 Q That line connects with the CAPCO transmission  
22 grid there?

23 MR. REYNOLDS: May I ask where this line is going  
24 and what relevance it has to the direct examination?

25 CHAIRMAN RIGLER: I think it is still related

bw61 to the Direct to a sufficient degree to let it continue  
2 for a minute?

3 MR. LESSY: Is there a pending question?

4 (Whereupon, the reporter read the pending  
5 question, as requested.)

6 BY MR. LESSY:

7 Q The Highland line.

8 A It connects with the Highland Substation, and I  
9 don't know the details of the transmission lines out of  
10 Highland.

11 Q Are you more familiar with the Hanna line?

12 A No, and the same thing is true of it. These are  
13 terminations in Ohio.

14 My system planning engineer is familiar with  
15 them. I am not.

16 Q You say there is another line from Beavery Valley?

17 A The line from Beavery Valley to the Sannis station.  
18 There is another line on our system that is identified,  
19 at least in part, as a CAPCO line.

20 It is an interconnection between our Beaver  
21 Valley Station and our Collier Substation which are two  
22 principal substations on the Duquesne Light Company system.

23 Since this may be required to carry power  
24 needed by CAPCO, from our interconnection with Ohio Power  
25 at Collier, it has been designated as a CAPCO line.

bw7 1 Q What is the capacity of that line?

2 A It is 345 kv and I don't know what the ampereage  
3 is.

4 Q How is Duquesne Light going to get power  
5 delivered from the Perry Plant, either one?

6 A I do not remember the transmission facilities that  
7 are associated with the specific units at Perry. However,  
8 we do have these two lines, as I indicated, into Ohio  
9 and to the degree that power is supplied to Highland and  
10 to Hannah, it can be transmitted over these two lines,  
11 but I'm not familiar with the specific transmission designed  
12 to deal with the power out of the Perry units.

13 MR. LESSY: NO further questions.

14 BY MR. CHARNO:

15 Q Mr. Schaffer, initially when you were testifying  
16 on Direct about CAPCO transmission, I believe your testimony  
17 was that that transmission was used to transmit power that  
18 came from jointly-owned generation and to transmit the back-  
19 up for that power.

20 Do you recall that testimony?

21 A That is true.

22 Q Is CAPCO transmission utilized for any other  
23 purpose?

24 A Except for the fact that power flows through  
25 lines in an unrestricted manner, which can provide actually  
for internal transmission under certain conditions, it was

b7B

1 not so designed.

2 Q Is CAPCO transmission used for purchase power  
3 on behalf of CAPCO or any of its members from outside the  
4 CAPCO system?

5 A It could carry such power.

6 Q Has it, in fact, carried such power?

7 A I don't know. It is hard to identify electrons.  
8 They flow as the opportunity provides it, and we have bought  
9 power from Cleveland, who may have bought it from other  
10 places, and so consequently the power may have come over  
11 some of these lines.

12 Q Are you aware of any specific transaction where  
13 Duquesne Light was receiving power over CAPCO facilities  
14 and that power was purchased outside the CAPCO area?

15 A There was power purchased outside the CAPCO  
16 areas that has had to come through other parties' systems.  
17 Which lines they traveled on, I'm sure I don't know.

18 Q Would it have been an acceptable use of CAPCO  
19 transmission facilities to transmit such power under these  
20 circumstances?

21 A There is no way of restricting where power will  
22 flow.

23 In the determination of lines our system planning  
24 engineers must determine where power is and where load is.

25 And they run very complicated studies to determine

bw9

1 whether, in the flow of such power, the lines will be  
2 overloaded.

3           Should they be overloaded, it becomes time to  
4 construct additional transmission lines to remove that  
5 overload.

6           There is no way of identifying any specific line  
7 to carry any specific amount of power on a totally  
8 interconnected system.

9           Q       Perhaps I'm not stating myself clearly.

10           My question did not go to whether it was  
11 possible to determine from an engineering viewpoint whether  
12 those lines had been used but, rather, was it  
13 a contractually acceptable usage of CAPCO transmission to  
14 transmi+ purchase power under the circumstances outlined  
15 early?

16           A       I think so.

17           Q       Sir, with respect to the banking of emergency  
18 power, how long after Duquesne Light takes power, does it  
19 have the option to repay that in kind?

20           A       Duquesne Light Company does not have the option  
21 to repay it. The repayment of it comes from the requirement  
22 by somebody else that they need it.

23           Q       If you were having an emergency on your  
24 system at the same time somebody requested repayment of that  
25 power, what effect would that have upon your bank account?



bw10

1 A No effect.

2 Q So that you would still remain a debtor on the  
3 bank account?

4 A If I haven't repaid it, which I couldn't, if  
5 I needed all my own capacity for myself, I haven't paid  
6 my debt.

7 You are establishing or bringing up hypothetical  
8 cases, as to what would happen, if this happened and that  
9 happened.

10 It is almost impossible to reconstruct all of  
11 these hypothetical cases.

12 Q How long a period could elapse after  
13 you had taken emergency power and owed the bank, before you  
14 would have to pay a cash settlement?

15 A That is a different question.

16 the provisions, I think, of it were that under  
17 normal conditions you could be expected to repay it after  
18 the year is up.

19 If you use the power over a year, and the end of  
20 the year came, and you still owed somebody, they could  
21 expect you to replace it within the matter of the next  
22 couple of months or pay for it.

23 On the other hand, there are occasions where  
24 the other party knows that he has an outage coming up  
25 for maintenance or something else and during that

bwill

1 period of time will need power.

2 So he now has a credit in the bank, and he lets the  
3 credit stand, so he can draw on it, subsequent to that.

4 Q Do you have a banking arrangement similar to  
5 the CAPCO arrangement with respect to any other utility  
6 with which you have emergency power arrangements?

7 A Yes.

8 Q What utility would that be, sir?

9 A West Penn of Allegheny Power system and Ohio  
10 Power of American Electric Power System.

11 Q Are the terms substantially similar on those?

12 A Substantially so.

13 Q Could you tell us how they differ?

14 A Well, they are not necessarily defined in the same  
15 terms as the CAPCO arrangement is.

16 But it is a situation where we call on these  
17 people for help or they call on us for help and having  
18 supplied them the power, the option exists on the part of  
19 the seller as to whether he would just as soon let it accumu-  
20 late in a bank from which he could draw on later or whether  
21 he would prefer to have it paid for right now.

22 It is his option.

ES7

23

24

25

arl 1 Q What are the factors that Duquesne Light takes  
2 into account when determining whether or not to exercise  
3 an option?

4 MR. OLDS: On option for what?

5 MR. CHIARNO: To be paid back in kind or in cash.

6 THE WITNESS: Duquesne Light Company has normally  
7 been satisfied to be paid in kind. I think we have had a  
8 series of situations over the last year or two with regard  
9 to the availability of capacity that we have been more  
10 likely to be the party who owes somebody some than the  
11 party to whom it is owed.

12 And generally speaking, during this period of  
13 time, we have been perfectly happy to let anything that  
14 someone owed us stand with the idea in mind that we would  
15 be needing that some time in the future.

16 BY MR. CHIARNO:

17 Q Sir, earlier you answered a question concerning an  
18 entity that was capable of building and maintaining and  
19 owning peaking capacity.

20 I would like to ask you a question in that vein.  
21 If there were an entity which had built peaking capacity  
22 and was capable of building peaking capacity and at the same  
23 time was capable of participating in a share of the ownership  
24 and maintenance of CAPCO base load units, would the member-  
25 ship of that entity in CAPCO benefit Duquesne Light under

1 the CAPCO joint construction program?

2 A I wasn't totally clear on what the question was  
3 when I was asked before, and I'm not quite clear on the  
4 specifics you are asking now.

5 The CAPCO companies have an agreement and  
6 they function under that agreement. It is a contractual  
7 sort of thing. There are certain rules and regulations  
8 that are associated with capacity that was added. And  
9 the determination in advance that I will be a party to this  
10 and not to that, or I will do this and not that, I don't  
11 think is left to the determination of the individual entity.

12 In the process of forming the CAPCO pool, I  
13 guess we relinquished a certain amount of our own independence.  
14 And on that basis, a capacity that needs to be installed  
15 to satisfy the pool is determined, and after the capacity is  
16 determined, the financial responsibility is allocated and  
17 that is how the capacity is provided.

18 Now to say if you do this or do that, it just  
19 doesn't fit into the contractual arrangements.

20 BY MR. CHARNO:

21 Q I meant to be asking my question in the context  
22 you just set forward. If you had an entity which was  
23 capable of independently building peaking units, and which  
24 was capable of participating in its allocated share of  
25 CAPCO base load generation, would the membership of that

1 entity in CAPCO benefit Duquesne Light under CAPCO's  
2 joint construction program?

3 A I can only indicate that the only way this will  
4 be beneficial and will work is by its contractual require-  
5 ments.

6 The ability to construct peaking capacity in itself  
7 has nothing to do with the contract.

8 Q Well, am I correct in assuming that your --  
9 strike that.

10 Would it be correct to say, sir, that an entity  
11 which was capable of participating then in its allocated  
12 share of CAPCO base load units, would benefit Duquesne  
13 Light under the CAPCO joint construction program?

14 A We assumed that in the establishment of the  
15 original group, so I would say.

16 MR. REYNOLDS: Could I get the question and answer  
17 back, please?

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

20 BY MR. CHARNO:

21 Q Sir, can you tell us what relationship the  
22 allocation of capacity through the P over N formula bears  
23 to the allocation of reserves for that capacity?

24 A The allocation of P over N establishes reserves  
25 capable of handling the needs of each particular company.

1 Q Was it also your testimony that the allocation  
2 of capacity was accomplished through using P over N?

3 A That is the way it is established.

4 MR. REYNOLDS: Could I have the last question  
5 and answer back?

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

8 MR. REYNOLDS: May I ask whether you meant  
9 capacity responsibility when you asked for allocation of  
10 capacity?

11 MR. CHARNO: When I'm asking about the allocation  
12 of capacity, what I was attempting to ask was are the shares  
13 of the various CAPCO units assigned to different members  
14 of CAPCO on the basis of the P over N formula?

15 THE WITNESS: Not entirely. The original units  
16 were a compromise arrangement. Certain other units  
17 were allocated with the idea that certain people would  
18 settle their responsibility by means other than their owner-  
19 ship in those units and the more recent  
20 ones that are established on an average basis.

21  
22 BY MR. CHARNO:

23 Q You testified in 1973 in July, there was a  
24 change in the manner of allocating capacity in the CAPCO  
25 units; is that correct?



1 A That's correct.

2 Q And that at that date you changed to  
3 utilizing ownership in the units?

4 A That's right.

5 Q Was that also referred to in internal papers  
6 as the investment responsibility method?

7 A Yes.

8 Q What was in use prior to the investment responsibil-  
9 ity? Was that the proration method?

10 A Proration method was involved originally from  
11 the memorandum of understanding. Investment, the  
12 allocation could be satisfied originally by others  
13 than the ownership principles.

14 So if you are referring to investment responsibility  
15 as literally ownership, that was not required prior to that  
16 time.

17 Q Is it your testimony that the proration method  
18 was utilized from the memorandum of understanding until  
19 July of '73 and then at that point CAPCO shifted to the  
20 investment responsibility method and carried that forward?

21 A On the units after the first six.

22 Q So that there would have been some of the first  
23 six that were coming in after July of '73?

24 A And still have not come in.

25 Q Those will still be based upon proration?

1 A That's right.

2 Q Is there any difference between investment  
3 responsibility and proration on how the size or number of  
4 units is treated?

5 A No, not if you mean the determination of the  
6 size and number of units to be installed.

7 Q I meant in terms of the allocation of individual  
8 units.

9 Let me ask, in terms of capacity allocation,  
10 is a CAPCO unit viewed as a number of hypothetical units?

11 A Under proration?

12 Q Is it so viewed under investment responsibility?

13 A No.

14 Q Would the difference between these two methods  
15 have any effect on the amount of reserves that were  
16 required to be carried with respect to a single unit?

17 A If you are talking in terms when you say reserves,  
18 percent reserves, the answer is yes.

19 Q Can you tell us what that impact would be, or  
20 what the difference would be?

21 A Well, the size of a unit dictates the amount  
22 of reserve that is required to cover it. If an 800 megawatt  
23 unit goes out of service, either on a planned or forced  
24 basis, a corresponding amount of megawatts must be available  
25 to replace it.

1           If any one entity owned a major portion of  
2 that, let's say 400 megawatts on a 1200 megawatt system,  
3 backing up that one unit would be one third of his system.  
4 400 divided by 1200.

5           Therefore, if that occurred as a single incident,  
6 in order to back it up, a minimum of at least one third  
7 reserve would be required, or 33-1/3 percent. That would  
8 take care of only the first contingency.

9           It would not provide for regulation or forecast  
10 error, and would not take into consideration any  
11 maintenance outages that you had at that particular time.

12           On the other hand, if you had a 1200 megawatt  
13 system and you took only 100 megawatts in a unit, that  
14 would be only 1/12 or a little over 8 percent. The reserve  
15 requirement in terms of percentage would be appreciably  
16 smaller.

17           This is the reason why the reserve criteria  
18 was anticipated, because it did not reflect conditions  
19 as they literally existed.

20           And what actually happened, it resulted in the  
21 establishment of the pro rata system was the fact that  
22 by the pro rata system it was possible to provide back-up  
23 for far less than the unit which actually went out.

24           Since the party provided far less, somebody else  
25 had to provide more. Therefore, the situation was not

1 equitable.

2 Q Sir, tracing back, I'm not sure you identified  
3 in your answer which of the situations that you described  
4 was investment responsibility and which was pro rata.  
5 Could you tell us that?

6 A Investment responsibility is the case where  
7 the allocation responsibility you have, you discharge  
8 by investing money and buying capacity in accordance  
9 with the capacity that you were required to install.

10 On pro rata, you would be held responsible  
11 in the determinations of the P over N for a unit of smaller  
12 size than actually your ownership in that unit was, and  
13 consequently you did not provide in the truest sense  
14 reserve for the capacity that you had.

15 Q So with respect to a single unit, is it true  
16 that the reserves in your example would be lower for pro  
17 rata under the pro rata method than they would be under  
18 the investment responsibility method?

19 A Yes.

20 MR. REYNOLDS: Could I ask whose reserves you  
21 were referring to in that question?

22 MR. CHARNO: Let's ask the witness now, he  
23 was answering the question.

24 THE WITNESS: I understood that to be for any  
25 single entity.

1 MR. CHARNO: That is certainly acceptable.

2 BY MR. CHARNO:

3 Q In the period between January and March of 1973,  
4 are you aware of consideration by CAPCO of the impact --  
5 pardon me -- the impact that a choice of either the  
6 investment responsibility or the pro rata method would have  
7 on new members in the CAPCO pool?

8 A No, I don't think that could be determined until  
9 you analyzed the system of any new member.

10 Q Are you then unaware of discussions by the  
11 allocation review task force during the period of January  
12 through March of 1973 concerning the impact upon new pool  
13 members of that choice between investment responsibility  
14 and pro rata?

15 A I don't serve on that task force. If I have been  
16 informed of their findings by any specific method, I do not  
17 remember it.

18 Q Again in the choice of pro rata as opposed to  
19 investment responsibility, do you recall having it brought  
20 to your attention the fact that a distribution-only  
21 electric utility would have much lower reserves under pro  
22 rata if it were to join the CAPCO pool than it would under  
23 the investment responsibility method of determining  
24 reserves and capacity?

25 A I don't remember that having been brought to my

1 attention, but I don't know that a distribution-only system  
2 gets involved in either pro rata or investment responsibility  
3 because they have nothing to have pro rata of or investment  
4 in.

5 Q If a distribution-only system were to join the  
6 CAPCO pool and receive an allocation of one of the CAPCO  
7 units, at that point would it result in much lower  
8 reserves for that system under a pro rata calculation of their  
9 reserve responsibility than under an investment responsibility  
10 calculation of their reserve responsibility?

11 A The only unit they would have then would be the  
12 one they received an allocation in and they would have to back  
13 that unit up, and I don't know, it depends on how much of  
14 an allocation they have in the unit as to which would be the  
15 greater.

16 Q Wouldn't it have to be a lower figure if you  
17 spread an allocation over six units than if you took an  
18 allocation entirely out of one unit?

19 A It is conceivable, but I don't know what the  
20 allocation was going to be.

21 It might be one megawatt, and you can't get much  
22 lower than that. One megawatt on a large system, if that  
23 is all you had to back up, depending on how large the  
24 system is, the allocation would be miniscule.

25 Q Are you saying that the impact of that upon the



1 system would be relative to the size of the system?

2 A Relative to the size of the unit, and of course  
3 to the system.

4 Q So that, for example, an allocation of one megawatt  
5 for a very small system could be substantial for that  
6 very small system?

7 A Depending on how small the system is. If the  
8 system is small enough, you may want to get into kilowatts  
9 instead of megawatts.

10 Q Sir, when you were talking about the construction  
11 of peaking generation, you said that it was the amount of  
12 peaking generation was jointly determined, but individually  
13 owned and constructed; is that correct?

14 A That's correct.

15 Q You said that this resulted from this decision  
16 to handle peaking generation in this way. It resulted  
17 from the fragmentation that would be entailed by anything  
18 else.

19 Is that a correct statement of your testimony?

20 A I think that is pretty close to what I said.

21 Q What is the fragmentation that you were referring  
22 to there?

23 A Well, in the addition of certain of the peaking  
24 capacity, it was decided by the company who was going to own  
25 this that they desired to have their peaking capacity spread

1 rather widely.

2 And while you might install peaking capacity  
3 in as much or more than 50 megawatt units, to best serve their  
4 immediate needs, units as small as two megawatts were  
5 installed on their system. To get to the point where you  
6 break up the allocation and ownership of two megawatts  
7 among four or five entities, it just becomes an impossible  
8 economic situation.

9 So it was decided that each of the parties that  
10 were involved here had the financial capability of putting  
11 in units of some reasonable size and so up to what we  
12 currently consider normally in terms of peaking, each  
13 individual could handle the reserves and financial costs of  
14 construction for those as units on their own system.

15 So as a result of that, those units were deci-  
16 designated as individual capacity.

17 MR. REYNOLDS: Is this a good place to stop?

18 MR. CHARNO: We have no objection to that.

19 CHAIRMAN RIGLER: How much more do you have?

20 MR. CHARNO: Given some time to tie this together,  
21 I could probably do it in another five minutes.

22 CHAIRMAN RIGLER: Can you do it now?

23 MR. CHARNO: I can, sir.

24 CHAIRMAN RIGLER: Mr. Hjelmfalt, how much do you  
25 have?

1 MR. HJELMFELT: I guess now I probably have 10  
2 minutes.

3 CHAIRMAN RIGLER: It would be my preference to  
4 finish Mr. Schaffer before lunch, if possible, since we got  
5 such a late start this morning. We could start fresh with  
6 your next witness after lunch.

7 MR. OLDS: We are agreeable.

8 BY MR. CHARNO:

9 Q Was the P over N formula originally established  
10 in the memorandum of understanding?

11 A There was an Appendix A to the original memorandum  
12 of understanding which dealt with the method of allocation  
13 and it was indicated in there, as I remember it, that the  
14 requirements of a party would be taken into consideration  
15 in proportion to his contributions.

16 I'm not sure whether the total computer program  
17 for this purpose was available at the time of the signing of  
18 the memorandum of understanding.

19 Q When was the one negative day standard established?

20 A That was established in advance of the signing  
21 of the memorandum of understanding in September of '67.

22 Q Now is there any year since 1967 in which CAPCO  
23 has achieved the one negative day standard?

24 A I can't answer that. I'm not sure. It may have  
25 been achieved in 1975, but I'm not sure.

1 Q Do I understand you correctly to say that the  
2 one negative day standard was not achieved from 1967 through  
3 at least 1974?

4 A I do not think it was. Our aims were to do so,  
5 but the delays on certain of the units as much as three years  
6 adversely affected the one negative day.

7 Furthermore, the one negative day was a planning  
8 concept as to the capacity that one would install.  
9 Recognizing there would be adverse effect and you might not  
10 achieve it.

11 But in order to provide a reliable system, it was  
12 necessary to use it as a planning base.

13 Q What relationship does the one negative day reliability  
14 standard have to the amount of reserves carried by the CAPCO  
15 members?

16 A It is a variable among the respective members  
17 and it is not a direct computation. It can be determined by  
18 taking, if you are interested in percent reserve, it can be  
19 taken by the capacity that any single entity has over their  
20 annual peak load and divided by the peak, but the formula  
21 is not a direct interchangeable one and is dependent on the  
22 conditions of each independent system.

23 Q I believe you testified your reserves were  
24 somewhat higher after you had entered the CAPCO pool than  
25 they were when you were operating outside the pool; is that

1 correct?

2 A That's right.

3 Q Can you tell us how much higher?

4 A I really don't know. We were operating at close  
5 to zero reserves as a result of certain equipment that had  
6 not been put in in adequate time. The result is how much  
7 the CAPCO pool affected those reserves, I'm not entirely  
8 sure. Although we did add over 400 megawatts to our system  
9 capacity as a result of the Sammis 7 and Eastlake 5 units.

10 MR. CHARNO: I have no further questions.

11 Thank you, sir.

12 BY MR. HJELMFELT:

13 Q Mr. Schaffer, I believe early on when you were  
14 listing the CAPCO units, I understood you to say that  
15 Eastlake 5 was still under construction?

16 A Mansfield 1 is just coming into operation.  
17 Eastlake 5 and Sammis 7 were the two initial units both  
18 of which have been operating for several years.

19 Q With respect to the one negative day criteria, was  
20 that arrived at as a compromise between the parties?

21 A It was part of the original memorandum of  
22 understanding. All of the factors in the memorandum of  
23 understanding represented a composite of the individual  
24 entity's feelings.

25 Q Did that result in Duquesne Light using a higher

1 standard of reliability for planning purposes than it  
2 had previously?

3 A I think that is correct.

4 Q Am I correct that insofar as Duquesne Light is  
5 concerned, it joined CAPCO to improve reliability and  
6 obtain the benefits of economies of scale and reserve-  
7 sharing?

8 A That's correct.

9 Q Is there a difference in CAPCO between capacity  
10 responsibility and ownership of units?

11 A I think you are talking about allocation  
12 responsibility, not capacity responsibility.

13 Q Fine.

14 Is there a difference, then, between allocation  
15 responsibility?

16 A I think I had indicated that a party can satisfy  
17 his financial responsibility with regard to allocation in  
18 more than one way. Ownership being only one of them.

19 Q And --

20 A That was, of course, prior -- for all units,  
21 1 through 6. For units beyond the sixth unit, we have  
22 agreed that it would be ownership as the method of  
23 satisfying it.

24 Q Now is the P/N method used to -- was that used  
25 for the first six units, was that used to determine financial



ar17

1 responsibility?

2 A Allocation responsibility, but also financial  
3 responsibility which I say again could be satisfied in more  
4 than one way.

5 Q Now for units after unit 6, does the P/W method  
6 then determine the ownership in each unit?

7 A Very close to it. We have taken the last eight  
8 units and we have averaged the responsibility and have assigned  
9 a corresponding percentage to all eight units.

10 In certain years, the amount of ownership will be  
11 slightly short of satisfying the allocation responsibility.

12 In other years, it may be slightly long. We  
13 have then come up with what we referred to as tentative buy-  
14 sells.

15 For those small, very near adjustment, in the  
16 interests of providing a scheme that was simpler to work  
17 with, we used this buy-sell arrangement.

18 In the case of Duquesne Light Company, we have a  
19 13.74 percent ownership in Units 7 through 11.

20 In reality, in certain of those years, we have  
21 slightly higher responsibility so far as allocation is  
22 concerned or slightly lower.

23 During those periods of time we will buy or sell  
24 to balance that out and others will have the opposite  
25 arrangement so that it meshes.

s9  
bw1

1 Q On what basis is it determined which company will  
2 install peaking capacity?

3 A Well, we have have only saw it incidences of that.  
4 It has normally been done on the basis of that. It has  
5 normally been done on the basis of trying to come to some  
6 reasonable balance on the respective systems of what might  
7 be classified as baseload capacity, intermediate  
8 capacity and peaking capacity which can provide for the various  
9 segments of the load duration curve.

10 Q Would a party be required to install a certain  
11 amount of peaking capacity on that basis?

12 A The peaking capacity has been one where  
13 I think the individuals have been interested in installing  
14 it up to a very limited amount.

15 And there is peaking capacity, I think, on every  
16 one of the systems in CRPCO.

17 I'm sure that you are familiar with certain of  
18 the correspondence which has given some idea of  
19 preference for the next peaking capacity to Toledo Edison.

20 Q Was the capacity responsibility for the  
21 first four units determined by the P/ method or was it  
22 a negotiated arbitrary assignment?

23 A Primarily negotiated on the basis of a coming  
24 in position for each of the companies.

25 Q Was that because the companies came in with

b72

1 different systems, and it was felt desirable to have a  
2 transmission period into the use of the P/I method?

3 A If I understand your question, I think the  
4 answer to that is, yes.

5 Q How did you understand my question?

6 A Each of the individual systems had various amounts  
7 amounts of capacity on their own systems. Some of them  
8 carried greater amounts of reserves than others had at that  
9 particular instant in time.

10 And, so a period of time was provided for a  
11 form of equalization of the systems, in order to give a base  
12 point from which the program that we had outlined could move.

13 Q With respect to the banking, has it occurred that  
14 certain members of CAPCO have, in fact, incurred  
15 increasingly larger debts to the bank?

16 A I don't understand your question.

17 Q Have certain CAPCO members found that they were  
18 having difficulty repaying the bank?

19 A I don't think that has been a major problem.

20 Duquesne Light Company, for example had had  
21 rather large equipment outages that had resulted in excess  
22 of 40 million kilowatt hours that we owed the bank.

23 Then we turned around and other people  
24 had problems and we had excess, and I think we wiped the  
25 whole thing out.

bw3

1 We have since borrowed some more from the bank,  
2 and I see no reason why it can't over a period of time be  
3 repaid.

4 I don't think any of the problems associated with  
5 the banking principle are insurmountable, and I could not  
6 know of any cases where any member of the pool has been called  
7 upon to see their banking situations by monetary methods.

8 Q In planning the CAPCO transmission system,  
9 is it necessary to consider also the nonCAPCO transmission  
10 within the CAPCO territory?

11 A Not by CAPCO. The individual systems have a  
12 responsibility for their own internal system, and when  
13 I say, "internal system," that is transmission from one end  
14 to the other end.

15 And their records will indicate any of their  
16 own transmission lines which may be becoming overloaded.  
17 And on that basis they must then provide alternate trans-  
18 mission of their own.

19 Q I understand your testimony to be that Duquesne  
20 has obtained power from sources outside of CAPCO which  
21 could have flown over either CAPCO or nonCAPCO lines.

22 Was it considered that the CAPCO arrangement  
23 provided the contractual basis for that power flowing  
24 to Duquesne?

25 A I think that is essentially the same question

bw4

1 that was asked before, and as I indicated, I know of no  
2 way at all from an electrical standpoint that you can forestall  
3 that sort of thing.

4 With the inability to forestall it, it had to,  
5 whether identified specifically or not, had to be part of  
6 the understanding.

7 CHAIRMAN RIGLER: In your previous answer, you  
8 indicated, in essence, that it was contemplated by CAPCO  
9 arrangement that that power would flow over the CAPCO lines.

10 THE WITNESS: Because there was no way to do it  
11 on the other hand. Not necessarily on a planned basis, but  
12 all of the parties that are responsible for transmission,  
13 and they are primarily electrical engineers which, I am  
14 not understood there will be power flow in many channels  
15 over which you have no control.

NAOD

16 BY MR. HJELMFELT:

17 Q Would the same be true, that CAPCO power could  
18 actually flow over nonCAPCO lines?

19 A Yes.

20 Q In receiving power from a nonCAPCO source,  
21 did Duquesne make contractual arrangements beyond the  
22 CAPCO agreement to provide for the transmission of that  
23 energy?

24 MR. OLDS: Could you read that question,  
25 please?

bw5

1 (Whereupon, the reporter read the pending  
2 question, as requested.)

3 MR. OLDS: Is this at any time?

4 BY MR. HUELMFELT:

5 Q Since the formation of CAPCO, has Duquesne  
6 Light received power from a source which the shortest  
7 transmission path would lie across CAPCO members territories?

8 For example, from the west side of CAPCO in which  
9 Duquesne Light made contractual arrangements, other than the  
10 CAPCO agreements to provide a transmission path for that  
11 power?

12 A No.

ES9

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



arl 1 MR. HJELMFELT: I have no further questions.

2 CHAIRMAN RIGLER: The Board has one or two  
3 short questions for you.

4 You have referred to your participation in  
5 the Sammis 7 unit which you described as a coal unit.

6 THE WITNESS: That's right.

7 CHAIRMAN RIGLER: What is the size of that unit,  
8 and what is Duquesne's share?

9 THE WITNESS: It is a 600 megawatt unit, and  
10 we have 203 megawatts.

11 CHAIRMAN RIGLER: Why did Duquesne not build its  
12 own 203 megawatt plant?

13 THE WITNESS: The CAPCO pool came into being at  
14 that time and as a result of that, there was no reason  
15 for Duquesne Light Company, and it was not in accordance  
16 with the pooling arrangement for Duquesne Light Company  
17 to build any of its own capacity.

18 Duquesne Light Company, absent the pool,  
19 presumably could have built a 200 megawatt unit. But the  
20 position we were looking for here was a long one, not just  
21 a one-unit situation in which the ability to pool reserves  
22 would be truly beneficial to Duquesne Light Company.

23 Included in Duquesne Light Company's system is one  
24 large unit. It is our Chestwick Unit. Among other things,  
25 the pooling that we have here would provide reserve back-up

1 for that unit.

2 The other thing is that it is uneconomical  
3 in today's world to build 200 megawatt units.

4 CHAIRMAN RIGLER: There was economies of scale  
5 by purchasing 200 megawatts of capacity out of a 600 MW  
6 unit, as opposed to building a 200 megawatt unit?

7 THE WITNESS: That's right. Operation under a 600  
8 megawatt unit would be analogous to operation of a truck vs.  
9 a Volkswagen. In each you have only one driver. If you  
10 can operate a 600 megawatt unit with the same number of  
11 personnel that you would operate a 200 megawatt unit, there  
12 are operating personnel savings associated with it.

13 You can get better efficiency and thirdly,  
14 usually in the construction of a large unit, the unit cost,  
15 cost per kilowatt is lower than it is on a small unit.

16 CHAIRMAN RIGLER: Do you have any idea of the  
17 magnitude of the economic savings?

18 THE WITNESS: No.

19 CHAIRMAN RIGLER: In response to a question of  
20 Mr. Chamo's, you said that in joining CAFCO, Duquesne  
21 relinquished a certain amount of independence. Was the --  
22 was joint agreement or understanding among CAFCO members  
23 to reach decisions to substitute for that independence?

24 THE WITNESS: I think that that is correct. We  
25 do have the unanimity agreement which was referred to here

ar3

1 earlier and this is to provide any one company protection  
2 against very violent demands on the part of other parties.  
3 but to the degree possible, we try to make the necessary  
4 concessions to reach an agreement which does require some  
5 modest relinquishing of our own autonomy.

6 CHAIRMAN RIGLER: Do you have much redirect?

7 MR. OLDS: Not really.

8 REDIRECT EXAMINATION

9 BY MR. OLDS:

10 Q Mr. Schaffer, you were asked a question about  
11 the difference between the impact of the pro rata method  
12 of allocating reserve responsibility, reserve capacity,  
13 and responsibility and the investment responsibility method.

14 Did you intend by your answer to that question  
15 to suggest that utilization of the pro rata method would  
16 involve a lower responsibility, a lesser responsibility  
17 for every entity in each unit?

18 A No.

19 Q Could you explain, using an illustration to make  
20 clear what you did mean when you said that the pro rata  
21 responsibility could produce a lower or lesser responsibility  
22 for any single unit or any single entity?

23 A Well, the pro rata system is a quite complex  
24 arrangement. Normally these things are done by computers.  
25 To sit here and put together numbers is not as easy as it

1 might seem.

2 On the other hand, if we are talking in terms  
3 of an 800 megawatt unit, and one company has a requirement  
4 to take 200 megawatts, the -- actually let's say they  
5 have a requirement in the 800 megawatt unit of 400 megawatts,  
6 and let's say that there is a total of 1200 megawatts  
7 installed in the CAPCO pool.

8 This individual would have 400 megawatts in this  
9 unit, but he would be looked at as though he had a piece  
10 of all of the units that were involved, and his total  
11 ownership or total allocation responsibility could be a  
12 fraction of these numbers.

13 It is hard to put the specific numbers together  
14 sitting here on a basis such as this. But the individual  
15 could own sizeably more in a unit than his percent of the  
16 total CAPCO units. On a basis such as that, that unit  
17 would be looked at as a smaller unit.

18 Q Will you stop right there and you say looked at.  
19 Are you using a term of art in connection with a determination  
20 of some kind of responsibility?

21 A It would be looked at in the computer program.  
22 The computer program would see by proration a smaller  
23 percentage of the unit than he literally owns.

24 Q And when you answered the question about the  
25 difference in the impact, were you referring specifically to

1 that kind of a situation where there was an ownership  
2 in fact of a very large portion of a single unit, but  
3 by this computer simulation, on the pro rata basis,  
4 the look-at indicated a lesser percentage? Is that the  
5 situation we are referring to?

6 A This is correct. I don't like to use the  
7 specifics with regard to other companies. But in rough  
8 numbers, the Toledo Edison system was one of about 1200  
9 megawatts. Their unit was the No. 4 unit. And they have an  
10 ownership on the order of 450 megawatts. So having 450 mega-  
11 watts ownership in that unit represents a very large  
12 percentage of their system. Approximately 33 percent of  
13 their system.

14 But what their ownership would be, what would  
15 happen is it would be divided among all four of the first  
16 units on a percentage basis. And as the result of that,  
17 the simulated or pro rata system made the 400 megawatt  
18 unit, for example, look like about a 250 megawatt unit in  
19 the computer program.

20 Since the unit appeared smaller in the computer  
21 program than it literally was, so far as Toledo Edison  
22 was concerned, it requires a lower amount of reserve for  
23 back-up.

24 Q Where did the reserve have to come from to make  
25 up for the difference between the actuality of Toledo

1 Edison's ownership in the specific illustration you are  
2 using, and the computer simulation?

3 A From the other companies. We felt a sizeable  
4 amount of it from Duquesne Light Company. It was for that  
5 reason that we strongly requested and proposed that the system  
6 be converted from the pro rata system to the investment  
7 responsibility, and we are agreeable to allow again for a  
8 transition period which covered through the first six units  
9 and then moved to the ownership situation.

10 Furthermore, by the time we got to those laser  
11 units, the allocation of capacity responsibility more  
12 nearly matched what would be the numbers coming out of  
13 pro rata.

14 Q Well, in the illustration that you have utilized  
15 of the particular situation of Toledo Edison's ownership of  
16 a substantial large share, if the investment responsibility  
17 had been applied to that unit, what would have been the  
18 effect upon Toledo Edison's obligations?

19 A It wasn't the investment responsibility relative  
20 to that unit that was the problem, if there was one. It was  
21 the fact that there was no investment responsibility on the  
22 part of Toledo for the Sammie 7, the Eastlake 5, and the  
23 Beaver Valley 1.

24 Had they had their respective investment  
25 responsibility in each of those units, then their



ar7

1 responsibility in the Davis-Besse No. 1 Unit would have  
2 been smaller.

3 On that basis, the pro rata situation would  
4 have had little, if any, effect.

5 Q You were asked in cross-examination whether it  
6 would be of benefit to Duquesne if an entity could  
7 construct peaking units only, but was also capable of  
8 participating in CAPCO units according to allocation of  
9 responsibility.

10 I believe your answer was affirmative. Now  
11 was your answer related in any way to a presumption on  
12 your part of the size of the allocation responsibility which  
13 such an entity could accept?

14 A It was predicated on the basis that whatever  
15 other entity might join the CAPCO pool would be able to  
16 follow through on all of the contractual requirements of  
17 the CAPCO pooling arrangement.

end 10

18

19

20

21

22

23

24

25

S11  
bwl

1           When it was indicated that they could purchase  
2 baseload stations in accordance with their assigned  
3 allocation, and when they could purchase peaking capacity,  
4 if they so wanted it, and it was needed on the system, I had  
5 to assume that this was the equivalent of Toledo Edison,  
6 Cleveland Electric Illuminating, Ohio Edison,  
7 Pennsylvania Power or Duquesne Light Company.

8           I don't know what the entity is. But if there were  
9 benefits of our pooling in connection with sharing the  
10 reserves, it would appear to me that still further sharing  
11 of the reserves from a responsible entity would have benefits.

12           MR. OLDS: I have no other questions.

13           MR. REYNOLDS: I have nothing further.

14           MR. CHARNO: I have one follow-up question  
15 on recross.

16                           REXCROSS EXAMINATION

17           BY MR. CHARNO:

18           Q       If I understood your example correctly,  
19 Mr. Schaffer, you postulated a situation where a utility  
20 took a block in the fourth of four units, block of capacity  
21 in the fourth of four units, and that was represented under  
22 the pro rata method, as blocks of capacity which were  
23 smallest in size of all four units; is that correct?

24                   That is the pro rata principle.

25                   That would be true, would it not, regardless  
of the size of the block taken in the fourth unit? It wouldn't

bw3

1 matter whether it was 20 megawatts, 200 megawatts, that  
2 breakdown would still be applied?

3 A The pro rata merely divides up whatever capacity,  
4 CAPCO capacity the individual has an allocation for to the  
5 total capacity in CAPCO units.

6 That gives a ratio. Having established that  
7 ration that is applied to each of the units in CAPCO and  
8 the actual ownership doesn't apply.

9 That is the pro rata system.

10 MR. CHARNO: Thank you.

11 I have nothing further.

12 CHAIRMAN RICLER: All right.

13 Thank you, Mr. Schaffer.

14 (Witness excused.)

15 (Whereupon at 1:40 p. m., the hearing was  
16 recessed, to be reconvened at 2:30 p. m.)

17

18

19

20

21

22

23

24

25

ari

AFTERNOON SESSION

(2:30 p.m.)

MR. REYNOLDS: Mr. Chairman, are you going to read into the record or hand out the ruling on the schedule for answering our motion to dismiss today?

CHAIRMAN RIGLER: We have given you the order and we do have a bench order which I will read into the record, but I will do it on an occasion when we have more time.

It will be in the next day or so, but I don't know if it will be today.

MR. OLDS: Mr. Flegler.

Whereupon,

PHILIP FLEGER

was called as a witness on behalf of the Applicants and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OLDS:

Q Mr. Flegler, could you state your name and your residence address and the last position you held with the Duquesne Light Company?

A My name is Philip A. Flegler, F-l-e-g-e-r. I reside in Ligonier, Pennsylvania, and my last official position with Duquesne Light Company was chairman of the board and chief executive officer.

1           Q        Could you describe the positions you held with  
2 Duquesne Light Company during the period subsequent to  
3 the year -- beginning in the year 1955  
4 and continuing to the end of your active employment  
5 with the company?

6           A        Actually I was chairman and chief executive  
7 officer of Duquesne Light Company from 1950 until 1958.  
8 And as I recall it, I held the additional office of  
9 president from 1958 to 1968 when I retired. I'm sorry, 1967,  
10 the year before I retired.

11          Q        Mr. Flegar, as the chief executive officer of  
12 Duquesne, did you personally participate in the formation  
13 of the CAPCO power pool?

14          A        I did.

15          Q        Could you state the reasons why Duquesne made  
16 the decision to enter into the CAPCO power pool?

17          A        We in Duquesne Light entered the CAPCO pool to do  
18 two things:

19                 Improve our efficiency, and to improve our  
20 reliability.

21                 It was the opinion of our planning, operating  
22 and engineering people that the pool could accomplish this  
23 by, one, building larger, more efficient generating units;  
24 two, by coordinating maintenance; and three, by sharing reserve  
25 capacity.

1           In the mid-'50s, when I was chairman of the  
2 predecessor CAPCO pool, which was then a 10-company  
3 pool, including the five companies in the present CAPCO  
4 pool, I had a meeting of the predecessor group,  
5 expressed to the other members our view as to the desirability  
6 of this type of pool.

7           After they had had a chance to consider the  
8 matter, I canvassed the group at a subsequent meeting and  
9 the five members of the present CAPCO group signified a  
10 desire to form this pool.

11           Then each of the companies had the planning and  
12 operating and engineering people make a careful study of what  
13 this would entail preliminary to meetings at which we  
14 would attempt to reach an agreement to bring this pool  
15 into being.

16           And as I recall it, the first meeting of the  
17 executives and the various people on their staffs that were  
18 involved in the studies of this pool was held in the early  
19 part of '67, and we had a series of meetings which culminated  
20 in a memorandum of agreement, memorandum of understanding,  
21 I think is the exact term, and which, incidentally, was  
22 reached in September of 1967 principally because Duquesne  
23 Light Company had a deadline to meet for the ordering of a  
24 sizeable generating unit which it would require if the pool  
25 was not in existence or agreement reached to have such a pool



1 in advance of this deadline.

2 I mention this because this, of course, resulted  
3 in the need to make some compromises and some decisions  
4 with respect to the early units that were subsequently  
5 modified to some extent.

6 Q Mr. Fleger, was Duquesne's decision to enter  
7 into the CAPCO pool related to any consideration of the  
8 competitive environment of the other CAPCO pool members?

9 A I can say without any equivocation that in all  
10 my consideration of this matter, leading up to the formation  
11 of the pool, that I gave absolutely no consideration to the  
12 inclusion of other parties to the pool.

13 Insofar as your reference to a competitive  
14 situation is concerned, I at that time, and still do, did not  
15 consider that we were involved in a competitive situation  
16 for the simple reason that it was my understanding  
17 that we had what Pennsylvania called a regulated  
18 monopoly as distinguished from a destructive competitive  
19 situation.

20 And this was true of other investor-owned  
21 utilities in the pool, but also it was my understanding  
22 that as far as the noninvestor-owned parties, such as  
23 municipal systems were concerned, were restricted likewise  
24 insofar as the area and the customers that they could serve.

25 In addition, I repeat that the reason I introduced

1 the deadline that Duquesne Light had, to have within the  
2 time factors which involved a deadline that was first some  
3 time in September of -- maybe August or September of '67,  
4 and October 25, which was the final date that we could get  
5 for the longest time that we could cancel without a severe  
6 penalty, it was because of this deadline that throughout  
7 all of my thinking it never occurred to me that it would be  
8 worthwhile to give any thought to bringing in any other  
9 parties whether they be municipals or whether they be other  
10 investor-owned utility companies.

11 And certainly at no time did I feel that we were  
12 involved in a competitive situation with anybody, investor-  
13 owned or municipal, and therefore I never gave the slightest  
14 thought to it and merely concentrated on the key question,  
15 could we get this pool into existence before the deadline  
16 that Duquesne Light had to meet.

17 And I said to one of my counsel, not too long  
18 ago, that after they had sent me some of the documents  
19 that involved my participation, that when I look back and  
20 thought of what we undertook and what was accomplished in  
21 this relatively short period of time between early '67, and  
22 I think September 24, 1967, it is hard for me to believe  
23 that we ever did it.

24 And, of course, it follows that I thought it was  
25 impossible for us to considering doing this, bringing in

1 any other parties whether they be municipals, or investor-  
2 owned utility companies.

nd 12

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

S13  
bwl

1 Q Mr. Flegar, do you recall a request by the Borough  
2 of Pitcairn to Duquesne Light Company with reference to  
3 membership in CAPCO?

4 A I very distinctly recall the request of the  
5 Borough of Pitcairn which took the form of a letter  
6 making what the Borough solicitor called an official request  
7 of Duquesne Light Company to join in the CAPCO pool. This  
8 letter, as I RECALL IT, I received a month or two  
9 after the memorandum of understanding had been  
10 signed, and a public announcement had been made of this  
11 fact.

12 Q And --

13 MR. CHARNO: Mr. Chairman, can I interrupt  
14 Counsel for a moment and ask if the Witness is referring  
15 to some documentary materials before him in answering the  
16 questions? It appears he is.

17 Is that true, Mr. Flegar, are you?  
18 I noticed you shifted pages when you went to one question  
19 or another.

20 THE WITNESS: I wasn't referring to documents,  
21 when I was shifting the pages here. I don't know what you  
22 mean.

23 MR. CHARNO: Are you referring to some documents  
24 on the table in the course of your testimony?

25 THE WITNESS: As to the request from Pitcairn?

bw2 1 MR. CHARNO: No, since you have begun testifying.

2 THE WITNESS: No, I haven't referred to any  
3 documents in my testimony up to this point.

4 BY MR. OLDS:

5 Q Mr. Fieger, the response that you made on behalf  
6 of Duquesne Light Company to the Borough is already in  
7 evidence. It is Staff Exhibit 6. And my specific question  
8 to you with reference to that response is, that you  
9 explain the basis for that negative response.

10 A When I received the letter from the Pitcairn  
11 solicitor, I asked our system planning, operating engineering  
12 people to study it and advise me of their conclusions.

13 They did so, and informed me that because of the  
14 maximum reserve capacity of Pitcairn of less, I believe, of  
15 2 mw, somewhere between 1 1/2 and 2 mw, that Pitcairn  
16 could not contribute anything to the pool for the reasons  
17 that its reserve capacity would not permit the pool to  
18 reduce the reserve requirement of the pool as had been  
19 determined by it prior to the reaching of the memorandum  
20 of understanding.

21 They also informed me of a technical problem,  
22 which I am not qualified to speak of, specifically. But  
23 which involved, as I recall it, an interconnection that  
24 would have been required if Pitcairn were to be brought  
25 into the pool.

bw3 1

2 And some problem by reason of the small size of  
3 Pitcairn's generating capacity would have cost an economically  
4 prohibitive sum of money, as they expressed it.

5 They, therefore, advised me that it was their  
6 opinion that Pitcairn could not contribute anything to the  
7 CAPCO pool, and that any participation by it would, therefore,  
8 be a one-sided arrangement.

9 MR. OLDS: Cross-examine.

10 CROSS-EXAMINATION

11 BY MR. REYNOLDS:

12 Q Mr. Flegler, you had indicated in the beginning  
13 of your testimony that you had had conversations with  
14 what were members of what was the predecessor to the CAPCO  
15 arrangements in the mid-1950s. Did you mean 1950s or mid-1960s?

16 A I meant mid-1960s.

17 MR. REYNOLDS: I have nothing further.

18 MR. LESSY: The order will be the Department,  
19 Staff and then the City for this Witness.

20 MR. CHARNO:

21 Q Mr. Flegler, your Counsel made reference to the  
22 January 2, 1968 letter that you wrote back to the solicitor  
23 of the borough of Pitcairn.

24 Would you characterize that answer as a negative to  
25 pardon me, as a refusal to allow Pitcairn into CAPCO?

A It was intended as such.



bw4

1 Q Sir, you testified on Direct that you had  
2 given no consideration to the inclusion of other parties to  
3 the pool. Could you give us the time frame in which that would  
4 be true?

5 A As I mentioned, we first were in a position with  
6 the manufacturer of the generating unit, which we had to  
7 have, if we could not reach an agreement on the CAPCO pool,  
8 was some time in September. But we subsequently negotiated  
9 an understanding with the manufacturer that would enable  
10 us to cancel the order for the unit without penalty up to  
11 October 25, and in the meetings that we had, in the period  
12 around August, and even earlier, we were so concerned about  
13 this that I pressed very hard for not waiting until the  
14 last minute until we did reach an agreement.

15 Q In August of 1967, do you recall a CAPCO meeting  
16 in which you brought up the possible matter -- when I say  
17 "you," I mean you personally -- of Allegheny Power remaining --  
18 Pardon me -- later joining the CAPCO pool?

19 A Yes, I do remember that. But that was not  
20 within the time frame that we were talking about, because  
21 the concern that I speak of and the deadline that I speak  
22 of, involved the strong desire on the part of Duquesne  
23 to reach an agreement on the pool that would preclude our  
24 having to -- within the time frame that would preclude  
25 our having to order this large unit.

bw5

1                   This reference to Allegheny Power did not  
2 presuppose that I thought that there was any chance of  
3 Allegheny joining within the time period that I am speaking  
4 of.

5                   that would have been impossible, especially, since  
6 Allegheny was one of the five companies in the predecessor  
7 CAPCO pool that had not indicated when I canvassed the  
8 group the first time, that they would be interested in  
9 joining the pool.

10                  Q       Is it your testimony then that there was  
11 consideration given to other possible participants in the  
12 pool, but not prior to the September -- pardon me, but  
13 not participation prior to the September --

14                  Q       24th, I think it is, '67.

15                  Q       September 1967 date?

16                  A       I wouldn't say "consideration." I would  
17 merely have to say that -- I think it is fair to say that  
18 I recognize that we couldn't foresee that there would  
19 not be a possibility some time in the future that some  
20 other company might wish to join the pool. We gave no  
21 consideration to it for the very reason that I mentioned,  
22 namely, that it was impossible to do it within the time frame  
23 we are talking about.

24                  Since it was, there was no point in considering  
25 it, when we were so concerned with getting this pool, as we

1 call it, off the ground?

2 Q Perhaps I have chosen the wrong word.

3 There was discussion of the possibility of Allegheny at some  
4 point becoming a member; is that correct?

5 A No, that is not correct. There was no discussion.  
6 I merely alluded to the possibility with no discussion of  
7 it for the reasons that I have mentioned.

8 At least, I don't recall any. I feel quite  
9 certain of it too.

10 Q Do you recall any discussion at any time in the  
11 formulation of the CAPCO agreements of the fact that municipal  
12 utilities might wish to participate in CAPCO or in the pool?

13 A I can recall that at one, or maybe more, of the  
14 meetings of the five companies, that there was some mention  
15 made of this possibility.

16 I do not believe that there was any real  
17 discussion of that.

18 Also, I do recall that I gave no thought to  
19 it, as far as Duquesne Light was concerned, for the reasons  
20 that I have already mentioned.

21 I don't even recall who it was that referred to  
22 this possibility of municipals joining the pool.

23 Q Well, as of 1967, do you recall being aware  
24 that the Borough of Pitcairn had indicated an interest in  
25 pooling with Duquesne Light?

bw6

1           A       I do recall a letter or memorandum, in which  
2 Pitcairn, in very general terms, mentioned the possibility  
3 fo an interconnection and what they just called "pooling"  
4 with Duquesne Light.

5                   I don't recall whether that was every pursued  
6 by Pitcairn, and we, in our consideration of the matter,  
7 did not pursue it or undertake to adopt the suggestion  
8 for the same reasons that I have indicated with respect  
9 to their participating in the CAPCO pool.

10                   For the reason that Duquesne Light, if we had done  
11 this, wouldn't have been able to make any adjustments in its  
12 rserve requirements, because of the very minor amount of  
13 maximum reserve capacity that Pitcairn had.

14                   I might say too, for information, we actually at  
15 that time had no assurances whatsoever as to the reliability  
16 of the Pitcairn system, and this would have required, of  
17 course, a complete appraisal of the system, before we could  
18 ahve formed an opinion, even as to that, not that it  
19 was material.

20           Q       Sir, do you recall in August of '67, at a CAPCO  
21 meeting, the names of Hiram and Oberlin and Cleveland being  
22 mentioned as municipal systems that might seek participation  
23 in CAPCO?

24           A       I have absolutely no recollection of any reference  
25 to them or any discussion about them. I'm not saying

bw7

1 there wasn't some reference to it or discussion about it,  
2 because, again, because of what I have said about our view  
3 of the municipal situation within the time frame we having  
4 to face, I just can't feel that we couldn't feel that we  
5 could concern ourselves with them.

6 Q Do you recall studies being made in April and  
7 May of 1967 concerning the effect upon a small system of  
8 membership in CAPCO under the then proposed method  
9 of allocating capacity and reserves?

10 MR. REYNOLDS: May I ask Counsel if he is  
11 talking about studies by Duquesne Light or studies by somebody  
12 else?

13 MR. CHARNO: Can I have the question  
14 back?

15 (Whereupon, the reporter read the pending  
16 question, as requested.)

ES13

17  
18  
19  
20  
21  
22  
23  
24  
25

arl

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. CHARNO:

Q This would be studies made by any company which was a member of CAPCO of which you were aware?

MR. OLDS: I assume you misspeak yourself ever so slightly. You mean the companies that eventually became CAPCO?

MR. CHARNO: That's correct.

THE WITNESS: I'm quite sure that there were such studies and discussions, but I have no recollection of my having considered them or participated in them personally.

BY MR. CHARNO:

Q Would it have been possible for other individuals employed by Duquesne Light to participate in some of these meetings at which you were not present or in some such discussions at which you were not present?

A Of course, it would be possible.

Q Sir, at the time the Borough of Pitcairn approached Duquesne Light concerning membership in CAPCO, had Duquesne formulated any intention with respect to the acquisition of the Pitcairn system?

A At any time -- will you read that back to me?

(Whereupon, the reporter read the pending question, as requested.)

THE WITNESS: I would have to refresh my recollection of the time factors involved in this. I hesitate to relate



1 it to a specific time. I can only say that Pitcairn did  
2 request us for membership in the pool a month or two after  
3 we announced the agreement to form the pool. And I'm not  
4 sure that I understand the point that you are trying to  
5 make with respect to this time factor.

6 BY MR. CHAMNC:

7 Q Let me try to be a little more specific.

8 Do you recall issuing any instructions concerning  
9 the purchase of the Borough of Pitcairn's distribution  
10 facilities at any time within an 18-month period prior to  
11 Pitcairn's letter of December 5, 1967 which requested  
12 admission to CAPCO?

13 A About that time Pitcairn had requested of us certain  
14 things, help them solve their situation. I recall that they  
15 specifically requested an addition to the interconnection  
16 and pooling that has already been mentioned, that we supply  
17 them with wholesale service. And I do recall that we  
18 advised them that according to our counsel, we were not  
19 legally obliged to do so. And in some of those discussions,  
20 the question of possible acquisition by Duquesne of the  
21 Pitcairn system, I believe, did arise.

22 And among the exhibits that were given to me by  
23 our counsel, because they related to my role in connection  
24 with the discussions between Pitcairn and Duquesne, I noticed  
25 that there was a memorandum by one of our representatives,

1 of what had taken place in the meeting.

2 The meeting, according to the memorandum, was  
3 opened by one of the Pitcairn councilmen and he opened  
4 the meeting by saying that Pitcairn did not wish to sell its  
5 system to Duquesne Light.

6 That is the first time, according to my recollec-  
7 tion, in any exchange of letters between Duquesne and Pitcairn  
8 that I can recall in which the subject of acquisition  
9 by Duquesne Light of the Pitcairn system was brought up  
10 and I do believe that at that meeting, our representative  
11 pointed out what our people thought were the advantages that  
12 Duquesne -- that Pitcairn should consider in respect to a  
13 sale of their system to Duquesne.

14 And, as a matter of fact, to indicate to you  
15 clearly what the situation was in these dealings, I further  
16 was impressed with the fact that the minutes of the meeting  
17 show that there was only one councilman that was opposed  
18 to the idea of Pitcairn's selling its system and there  
19 were two councilmen and the then-borough solicitor that  
20 favored selling the system to Duquesne Light.

21 Q Sir, when you said you responded to the request  
22 for the sale of wholesale power that was made by Pitcairn,  
23 I believe you said that you informed them that you were  
24 not obliged, legally obliged to sell them power at wholesale.

25 Did you mean obliged or that you were legally

1 prohibited from selling such power at wholesale?

2 MR. REYNOLDS: I object to that question as being  
3 beyond the scope of direct.

4 MR. CHARNO: This is not the beginning of the  
5 line. It is a point of clarification.

6 MR. REYNOLDS: I'm not sure that that would be  
7 relevant to my objection, that it is the beginning, middle  
8 or end of a line.

9 CHAIRMAN RIGLER: I will permit it.

10 You may answer.

11 THE WITNESS: I want to be fair in my answer  
12 to this question. It is a difficult thing to be certain  
13 that there is no misunderstanding. Speaking for myself,  
14 while I said that counsel advised us that we were not  
15 obliged to provide wholesale service to Pitcairn, there was a  
16 real question in my mind as to whether we could do it.

17 The question had never been decided. And we  
18 determined not to pursue it for the reason that we had had  
19 no experience with selling wholesale power to anyone, and  
20 we did not feel that it was incumbent upon us to pursue  
21 the matter with the Pennsylvania Public Utility Commission,  
22 and we thought it significant that Pitcairn did not see fit  
23 to pursue it as they could do with a simple application  
24 to the Pennsylvania Public Utility Commission or the Federal  
25 Power Commission.

1           And the fact that they did not see fit to do this  
2 in my mind could only be explained on the basis that I  
3 have mentioned that there was a division of opinion between  
4 the Pitcairn counsel as to what should be done.

5           BY MR. CHARNO:

6           Q       Sir, do you recall entering a consensus at an  
7 October 1967 CAPCO meeting that stated in part that the most  
8 appropriate means for public power bodies to participate in  
9 the benefits of CAPCO pool would be through the sale of  
10 capacity and energy by the pool members to these public  
11 power agencies under FPC rates?

12          A       When did this occur, this consensus?

13          Q       October 31, 1967. This would be apparently after  
14 the signing of the agreement.

15          A       And ---

16          Q       I'm sorry, October 22.

17          A       Where did the discussion occur, and in what  
18 context?

19          Q       At a Sunday morning meeting at the Cleveland  
20 Airport Hotel, in terms of the five-company agreement.

21               MR. OLDS: Is this a matter where it would be  
22 appropriate if the cross-examiner is interested in other than  
23 a memory contest, to show the witness a paper if the question  
24 is did he say that or something?

25               CHAIRMAN RIGLER: He may inquire as to his

ar6

1 memory before he shows him the paper.

2 THE WITNESS: Was I present at this meeting?

3 BY MR. CHARNIO:

4 Q Your name does appear on the minutes as being  
5 present.

6 A At the moment I have no recollection of this.

7 Q Sir, I'm going to hand you a document which  
8 is in evidence in this proceeding as Exhibit Cleveland 52.  
9 I direct your attention to the first several pages, specifically  
10 the first two paragraphs of page 2.

11 A The memorandum that you handed me does show that --  
12 it says that those present and in which I was included,  
13 reached a consensus that the most appropriate means for  
14 public power bodies to participate in the economic and other  
15 benefits of the pool would be through the sale of capacity and  
16 energy by parties of the pool to these public power bodies  
17 under FPC-approved rates.

18 In answer to your question, I am not sure that  
19 the term "consensus" is intended to mean unanimous. And  
20 as related to that, I do not believe that I felt that this  
21 was so, because as of this particular time, in fact, up  
22 until the time that I was head of Duquesne Light, the matter  
23 of FPC jurisdiction had not been resolved according to the  
24 advice that I had from our counsel. And I cannot, therefore,  
25 believe that I agreed that this was true.

1 Q Sir, do you recall a draft of these minutes  
2 being circulated and corrected?

3 A Yes.

4 Q Did you contribute to the corrections that were  
5 made on that draft?

6 A I don't think I made any corrections or suggestion,  
7 and I repeat that I doubt that I considered the reference  
8 to a consensus as meaning a unanimous determination by  
9 each of the companies involved for the reason that I have  
10 just mentioned.

11 In light of this question being raised, I would  
12 like to repeat my conviction that it was my understanding  
13 until the time I retired in June 30 of 1968, that the  
14 question of FPC jurisdiction to this effect had not been  
15 determined.

16 And, in fact, Pitcairn didn't precipitate  
17 it, as I recall it, until some time after I retired. I  
18 think it was in 1970, a couple of years after I retired.

19 Q When you refer to Pitcairn precipitating it,  
20 what action are you referring to, sir?

21 A The question of whether FPC had jurisdiction  
22 and would order Duquesne Light to sell wholesale power to  
23 Pitcairn.

24 Q When you say precipitated, do you mean file a  
25 complaint with the Federal Power Commission?



1 A Yes, yes.

2 Q Sir, I believe you testified on direct that  
3 you asked for a study to be performed concerning Pitcairn's  
4 participation in CAPCO.

5 Do you recall whether that study was completed  
6 before or after the time at which you communicated your  
7 answer to Pitcairn?

8 MR. OLDS: Mr. Fleger, don't answer that  
9 question.

10 I object. I do not recall that the witness  
11 said that he asked a study be made. He asked that the matter  
12 be studied. I think there is a significant difference.

13 MR. CHARNO: I'm sorry. I misinterpreted the  
14 witness' answer.

15 BY MR. CHARNO:

16 Q When you asked that the matter be studied,  
17 was a formal study executed?

18 A I don't recall that a written report or study was  
19 made. It may have been, but I don't recall one. Actually  
20 the views of our people, after looking into the matter,  
21 strongly suggested that it was almost self-evident that  
22 because of the limited maximum reserve capacity of Pitcairn  
23 that they could make any contribution to the CAPCO pool.

24 MR. CHARNO: Could we have a moment to confer?

25 (Pause.)

ar9

1 BY MR. CHARNO:

2 Q Mr. Flegler, I'm going to show you a document  
3 which is in evidence as Exhibit DJ 205, and I direct  
4 your attention to a notation in the upper right-hand corner.  
5 It is a handwritten notation which states P52-30 --

6 MR. REYNOLDS: Could you wait a minute until  
7 counsel find the document?

8 BY MR. CHARNO:

9 Q Sir, can you tell us the source of that notation  
10 in the upper right-hand corner? Do you recall it?

11 MR. OLDS: The upper right-hand corner?

12 MR. CHARNO: Yes.

13 MR. OLDS: It says 352-30.

14 MR. CHARNO: That's correct.

15 THE WITNESS: I cannot recall the notation.

16 BY MR. CHARNO:

17 Q Could that have been a file designation provided  
18 in your office as opposed to any other office in Duquesne  
19 Light?

20 A I don't know. I don't remember even looking at  
21 it. It might have been put on after I had seen the copy, or  
22 the original that came to me, and then photostated; but I  
23 don't recall what it meant or recall ever having seen it.

24 MR. CHARNO: Thank you very much, sir.

25 I have no further questions.

ar.10

1 BY MR. LESSY:

2 Q Mr. Fieger, in connection with your testimony  
3 today, you indicated that you had received certain materials  
4 from counsel; is that correct?

5 A Yes. Mr. Rieser sent me his selection of  
6 exhibits in which I was mentioned in some way, depending on  
7 the form of the particular exhibit, and I reviewed them to  
8 refresh my recollection.

9 Q And I would like to say that I refrained from  
10 discussing them with any of my colleagues in an effort  
11 to help me refresh my recollection, because I didn't want to  
12 leave the slightest doubt that in anything I said with  
13 respect to those documents that I was expressing my own point  
14 of view.

15 Q Do you have any records of your own, independent  
16 of what Mr. Rieser sent you, relating to this matter?

17 A I do not.

18 Q How many times did you meet with your counsel  
19 today with respect to your prospective testimony?

20 A Today?

21 Q Well, prior to your testimony today, did you meet  
22 with Mr. Rieser or Mr. Olds or anyone else prior to coming?

23 A Yes. About two weeks ago, I met with Mr. Rieser  
24 and Mr. Olds at Ligonier where I live. I met with them again  
25 yesterday and I believe that those are the only occasions

1 when I met with counsel to confer on this case.

2 Q What form did the meeting take?

3 A The meetings centered very largely around the  
4 area of my testimony and that in turn turned primarily on  
5 the question of what areas I was qualified to speak about  
6 and what areas I was not.

7 This was important, because the whole CAPCO  
8 project is a highly technical, very involved one. It not  
9 only requires a high degree of technical sophistication,  
10 but it is difficult to even communicate at times on the  
11 subject.

end 14

12

13

14

15

16

17

18

19

20

21

22

23

24

25

S15  
bwl

1                   And, as far as I was concerned, I wanted to make  
2 a clear distinction, as far as what I testified to in respect  
3 to matters of which I had knowledge and matters on which  
4 I, as a chief executive, had to depend upon the  
5 professional, technical advice, which I received from the  
6 members of our organization.

7                   This was the primary purpose of the discussions.

8           Q       Was one of the materials that Mr. Rieser sent you,  
9 a copy of the prehearing fact brief of the Duquesne Light  
10 Company?

11           A       Yes. And I went over it in my residence at  
12 Ligonier.

13                   At that point I hadn't given any thought to the  
14 matter. I went over it once and I called Mr. Lerach,  
15 who was the man who sent it to me, and told him that I  
16 didn't feel I was in a position to suggest any substantive  
17 changes, and I mentioned to him with apologies, a fair  
18 number of typographical errors which I was sure that, as I  
19 said to him, I was sure they had picked up.

20                   This was the gospel truth.

21           Q       Did you discuss that brief at the two meetings  
22 with Mr. Rieser and Mr. Olds?

23           A       No, I don't believe so.

24           Q       When you met with them in Ligonier and also  
25 yesterday?

bw2

1 A No, I don't recall ever having discussed it with  
2 them after the one time I went over it.

3 Q Now, with respect to the basis for your response,  
4 your letter to Mr. McCabe with respect to CAPCO membership, you  
5 indicated that you had some input from the systems planning  
6 department, and that the position there was one that Pitcairn  
7 couldn't contribute because of the reserves it had and  
8 two, the economically prohibitive cost that the  
9 equipment would require.

10 Is that a fair summary of your testimony?

11 A That is a fair summary of my recollection.

12 Q The economic prohibition. It was economically  
13 prohibitive from whose point of view?

14 A I would have to say it was economically prohibitive  
15 from both Duquesne's and Pitcairn's standpoint. Because it  
16 is inconceivable to me that if, just to assure such an  
17 interconnection was ever undertaken, it would only  
18 have been undertaken on the basis that Pitcairn would have  
19 to bear a very substantial part of the cost.

20 You couldn't expect Duquesne or the CAPCO pool,  
21 members to assume the entire cost.

22 Q Did you show, or do you know whether or not the  
23 figures that you say were economically prohibitive were ever  
24 showed to Pitcairn and asked whether or not they thought  
25 they were economically prohibitive?



bws

1 A I don't know? I don't know.

2 Q But at least from the point of view of Duquesne,  
3 Duquesne's costs, you say, were economically prohibitive?

ES15

4 A No, the cost of the pool, because the request  
5 was to join a pool.

6 And that involved, of course, necessarily, an  
7 interconnection.

8 And any such interconnection would have to be  
9 built and the cost borne by the members of the pool and,  
10 if Pitcairn was coming, in by Pitcairn.

11 MR. LESSY: I think there was an objection.

12 MR. OLDS: I didn't object. Just keep your voice  
13 up a bit. You dropped it, and I couldn't really hear your  
14 question, so I gathered its import from the answer.

15 MR. LESSY: We could have it repeated.

16 MR. OLDS: That is all right.

17 BY MR. LESSY:

18 Q Do you know whether or not with respect to  
19 what Pitcairn could contribute with respect to reserves,  
20 do you know whether or not there was any consideration  
21 by your systems planning people of distribution facilities  
22 that Pitcairn had that could back up Duquesne Light's  
23 distribution in the area of Monroeville?

24 A I never participated in any --

25 Q Mr. Reynolds; Just a minute, Mr. Flegel. Could I

bwd

1 have that question back?

2 (Whereupon, the reporter read the pending  
3 question as requested.)

4 MR. REYNOLDS: Do you understand the question?

5 THE WITNESS: I would have to ask what you mean  
6 by backup of the distribution facilities?

7 BY MR. LESSY:

8 Q As of that time, Duguesne Light Company served  
9 the area in Monroeville; isn't that correct?

10 A I would have to qualify that by saying we served  
11 part of the Monroeville area. You get pretty close to  
12 West Penn Power there.

13 As far as my knowledge is concerned they  
14 might serve a part of it, but we did serve a part of it,  
15 I'm sure.

16 Q In that area there were public buildings. For  
17 example, schools, hospitals and things of that nature?

18 A I'm not that familiar with the Monroeville area.

19 Q Will you answer my original question and I wonder  
20 if the reporter will read back the answer that was  
21 interrupted, in midstream?

22 MR. REYNOLDS: Are we going back?

23 MR. OLDS: I don't know if the witness has received  
24 any help from you as to the definition of backup facilities.

25 THE WITNESS: What is backup facilities?

bw5

1 MR. LESSY: If Duquesne Light System wasn't  
2 functioning or for some reason that Pitsairn could provide  
3 another source of reserves or something of that nature.

4 THE WITNESS: You asked whether I knew of any  
5 consideration by our people in their determining  
6 whether or not we could admit Pitsairn to the pool, and I  
7 can only say I don't know whether there had been any considera-  
8 tion given to that.

9 BY MR. LESSY:

10 Q When you asked your systems planning people that  
11 the matter be studied, did they report back to you that they  
12 had considered any possible backup of distribution facilities  
13 in Monroeville?

14 A No, the --

15 MR. REYNOLDS: I'm not sure --

16 Either I'm missing what Mr. Lessy said, or I have  
17 a very clear objection to the line of questioning.

18 I'm not sure where it or how it relates to anything  
19 that concerns the consideration of Pitsairn becoming a  
20 member of the CAPCO pool.

21 Maybe Mr. Lessy can help me out.

22 But at the moment, as I understand it, he  
23 has been talking about a situation involving Duquesne  
24 and Monroeville, and Pitsairn having nothing that I can  
25 see having to do with CAPCO participation.

bwe

1 MR. LESSY: The simple answer is that the  
2 Witness indicated that he referred the matter to the systems  
3 planning people who studied it and reported back that  
4 Pitcairn couldn't contribute, because of reserves, and that  
5 this was the basis.

6 Now, the question is what the systems planning  
7 people did study, and what they didn't.

8 And one of the matters here, Mr. McCabe indicated  
9 he felt that one of the basis for interconnection would  
10 be notwithstanding the fact their reserves, in quantity,  
11 were small, using the figure two megawatts, whether or not  
12 those reserves could be used in a specific manner.

13 MR. OLDS: One of the difficulties, Mr. Sigler,  
14 is that the question spoke in terms of distribution.

15 I believe inadvertently Mr. Lessy was using  
16 the wrong phraseology.

17 The distribution system is wires to go to  
18 people's houses.

19 I find it difficult to understand -- I'm sure  
20 Mr. McCabe never testified, although I didn't hear him, but  
21 he knew enough not to suggest that the wires that  
22 led to houses in Pitcairn could somehow back up wires  
23 that led to houses or hospitals in Monroeville.

24 Maybe Mr. Lessy meant something else. But the  
25 question asks whether the wires that go to the poles

bw7

1

to different houses in Pitcairn could back up the wires  
that go from poles to houses in Monroevilla.

2

3

The question is difficult to understand.

4

5

ES15

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHAIRMAN RIGLER: Perhaps Mr. Lesby will rephrase  
2 it in terms of generation.

3 BY MR. LESBY:

4 Q Do you know whether the systems planning people  
5 who studied the matter considered whether or not any of  
6 Pitcairn's reserves notwithstanding the fact that they were,  
7 as you said, approximately two megawatts, could effectively  
8 be used in a specific portion of the Duquesne service  
9 territory which was, say, for example, Monroeville?

10 You have an answer which was interrupted in mid-  
11 stream.

12 CHAIRMAN RIGLER: Well, take the answer to the  
13 question as it is stated now.

14 THE WITNESS: I think I did say in answer to one  
15 of your previous questions that our people, in reviewing  
16 the question of whether Pitcairn could join the pool,  
17 determined among other things that the maximum reserve  
18 capacity of Pitcairn was so small that it wouldn't permit  
19 the pool to make any reduction in its reserve requirements,  
20 and therefore it could not contribute anything to the pool.

21 And I repeat my question a moment ago of your  
22 reference to back-up of distribution facilities. All I can  
23 say on that is I don't know what you mean by back-up of  
24 distribution facilities, and at the same time I find it  
25 difficult to see how that could enter into a determination



1 that because of these distribution facilities, that Pitcairn  
2 could contribute anything that was significant.

3 BY MR. LESSY:

4 Q Now as opposed to contributing anything to the  
5 CAPCO power pool, could the two megawatts of reserve also  
6 not contribute to Duquesne's ability to meet its own load?

7 A I don't know, because the question that you now  
8 refer to because it wasn't the request that came from Pitcairn,  
9 I don't know whether that was ever raised.

10 Q Pitcairn asked to join the CAPCO pool?

11 A Yes. They weren't talking about at that point --  
12 at that point we weren't dealing with a request for an  
13 interconnection with Duquesne. They were talking about an  
14 interconnection with the pool. The two things are altogether  
15 different.

16 Q You would feel that the ability of a small system  
17 to provide reserve capacity to one pool member, although not  
18 necessarily to provide reserve capacity to an entire power  
19 pool, would be insufficient?

20 A It won't in this particular case, and I have already  
21 said in connection with Pitcairn's request for an interconnec-  
22 tion and what they call loosely pooling was rejected by  
23 Duquesne that for the very reason as applied to Duquesne  
24 compared with the pool, that the maximum reserve capacity  
25 of Pitcairn was too small to enable us to realize any

1 economies through a reduction of our reserve requirements.

2 Q When you say "us" in your last answer, you mean?

3 A Duquesne Light.

4 Q Do you know whether or not the systems planning  
5 people in studying this request or in studying the Pitcairn  
6 matter considered the tax-free financing advantages that  
7 Pitcairn had and could add to the pool?

8 A I don't see that this would add anything to the  
9 pool. All it would mean is that in financing its participa-  
10 tion in the pool, Pitcairn won't have to pay quite as much  
11 as Duquesne Light would because of its tax advantage.

12 Therefore, the benefit would all be in the  
13 benefit of Pitcairn.

14 Q You don't see the advantage to anyone other  
15 than Pitcairn?

16 A Absolutely not.

17 Q Now when you canvassed the members of the  
18 original CAPCO with respect to the formation of what we now  
19 call the CAPCO power pool, did you seek to canvass other  
20 utilities who were not members of the original CAPCO?

21 A No, we did not. It never occurred to me. And  
22 consistent with what I said previously about the tremendous  
23 problem that we faced in getting this pool off the ground  
24 and the time factors that were involved, that it would simply  
25 have been impossible to have thought of it in terms of the

1 pool that was bigger than the one we tried to put together.

2 Q But if you had had more time than the time  
3 constraint that you had, would you have been willing to  
4 consider other members who weren't members of the original  
5 CAPCO as members of what we know today as the CAPCO pool?

6 A I don't know.

7 MR. REYNOLDS: I will object to that question.

8 THE WITNESS: I don't know.

9 BY MR. LESSY:

10 Q Do you have any conceptual problem with a small  
11 publicly-owned system trying to improve its efficiency,  
12 cost and reliability by joining a power pool?

13 MR. OLDS: May I object at this point? I do  
14 not think this is proper cross-examination.

15 CHAIRMAN RIGLER: I agree. Sustained.

16 BY MR. LESSY:

17 Q You acknowledged, I believe, that during the  
18 time of the Pitcairn request for CAPCO membership that  
19 acquisition of the Pitcairn system had been discussed  
20 by Duquesne, is that correct?

21 MR. OLDS: I object. That was not the witness'  
22 testimony.

23 MR. LESSY: Then the witness can say no if it is  
24 not his testimony.

25 THE WITNESS: Would you read the question again?

1 (Whereupon, the reporter read the  
2 pending question, as requested.)

3 THE WITNESS: During what time?

4 (Whereupon, the reporter read the  
5 pending question, as requested.)

6 THE WITNESS: What do you mean by during the time  
7 of the request? You mean at the time of the request or  
8 some other period?

9 BY MR. LESSY:

10 Q In the approximate same year or so. The same  
11 general time frame, if not the same date. His request to  
12 you, I think, was December 5, '67. Generally in that  
13 time frame.

14 MR. OLDS: I object unless the questioner makes  
15 it possible for the witness to think of a more  
16 specific defined time frame of reference. "Generally" is  
17 entirely too broad.

18 MR. LESSY: December 5, plus or minus a year.

19 THE WITNESS: Could I inject something here?

20 I have already testified here, I think it was in  
21 previous cross-examination of an occasion, a meeting of  
22 some of our representatives with Pitcairn counsel at which  
23 the question of possible sale by Pitcairn to Duquesne was  
24 brought up and how it was brought up.

25 I couldn't add anything to that in answer to your

1 question.

2 BY MR. LESSY:

3 Q Think about that acknowledgment in the context  
4 of your testimony earlier that at the time of the formation  
5 of CAPCO, you weren't aware of any competitive situation  
6 involving Duquesne Light.

7 A Of course not, because we were limited to serving  
8 the people in our prescribed service area and Pitcairn  
9 was limited to the prescribed area that it could serve,  
10 although it did for a while illegally serve customers in a  
11 part of our service area which we subsequently negotiated  
12 an acquisition of, which clarified it.

13 Therefore, as I tried to stress here, one of the  
14 things that has puzzled me about this whole matter is  
15 that as far as I'm concerned, there is no competition  
16 between Duquesne Light and Pitcairn, and legally there cannot  
17 be any competition between the two.

18 The law prohibits it. And for reasons of public  
19 policy.

20 Q If you acquired the Pitcairn system, wouldn't  
21 Duquesne -- by you, I mean if Duquesne at that time -- wouldn't  
22 it then be serving in the area in which Pitcairn had its  
23 franchise?

24 A Yes. But we would have to get approval of the  
25 Pennsylvania Commission to expand our territory. Until we

ar7

1 had reached an agreement and gotten approval of the  
2 Pennsylvania Commission, we couldn't do it.

3 I'm merely talking about the situation that we are  
4 dealing with and we are dealing with at the time you referred  
5 to.

6 MR. LESSY: I have no further questions.

7 MR. HJELMFELT: I have no questions.

8 MR. OLDS: I have no questions.

9 I beg your pardon, Mr. Rigler. I'm sorry.

10 CHAIRMAN RIGLER: Thank you very, Mr. Flegler.

11 THE WITNESS: Thank you.

(Witness excused.)

12  
13 MR. OLDS: We did have Mr. Dempler here, but he  
14 was sequestered and it seemed to us it was unreasonable  
15 to hold him. We did release him. I'm sorry. I didn't  
16 appreciate we would be able to proceed so expeditiously  
17 with Mr. Flegler. I don't have him here.

18 I hope tomorrow we won't be very long with Mr.  
19 Dempler and Mr. Stark. They are our witnesses for tomorrow.  
20 We did have Mr. Munsch listed. I'm not sure the occasion  
21 for calling him will still exist.

22 CHAIRMAN RIGLER: You have two witnesses on tap  
23 for tomorrow?

24 MR. OLDS: Yes, sir.

25 CHAIRMAN RIGLER: Does that conclude your case,



1 then?

2 MR. OLDS: That will conclude our case.

3 MR. REYNOLDS: The Board requested there be a  
4 witness on the rate matter.

5 MR. OLDS: We had said to you in response  
6 to your question we would look into that. I was speaking  
7 of the case we had prepared. That was a matter that only  
8 came up recently. But we would expect those that we  
9 have ready to be finished tomorrow.

end 16-17

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

end  
EAK1

1 CHAIRMAN RIGLER: I think we can break here for  
2 the day. I will read into the record the bench order we have  
3 prepared relating to responses to the various motions submitted  
4 by the Applicants at the conclusion of the opposition case.

5 The Board has decided it would be appropriate for  
6 the opposition parties to reply first to the individual  
7 company motions. As Applicants have agreed at transcript  
8 pages 8323 and 8324, with a but see reference to 8340,  
9 the presence of a single viable issue, i.e., an issue upon  
10 which the opposition parties would prevail in the absence  
11 of any rebuttal by Applicants, the presence of such a  
12 single viable issue would defeat the motion for summary  
13 disposition with respect to the entire proceedings.

14 If Applicants' opponents have prevailed at  
15 this point of the record in demonstrating a situation  
16 inconsistent with the antitrust laws affecting the  
17 activities under the license, then the Board would be  
18 required to consider appropriate relief, meaning the imposition  
19 of license conditions.

20 Here, parenthetically, we might add that Applicants  
21 have suggested that the identification of issues or  
22 allegations as to which opponents have prevailed would be  
23 appropriate so that the hearing can then be diverted to  
24 a relief hearing. That was made at page 8328 of the transcript.

25 That is untenable. In essence, the Applicants

eak2 1 would be seeking final findings of fact and conclusions  
2 of law with respect to all alleged situations inconsistent  
3 which plainly is not the scheme required by the rules of  
4 this agency or other administrative agencies and which  
5 secondly would constitute a complete disruption of these  
6 hearings.

7 Moreover, even assuming the Board was willing  
8 to undertake this lengthy and burdensome procedure, Applicants,  
9 of course, would have the opportunity to present a rebuttal  
10 case prior to any consideration of relief. Thus, it  
11 is plain that Applicants' suggestion is tantamount to a  
12 motion for a preview final opinion prior to the presentation of  
13 their rebuttal case, and that suggestion is rejected.

14 Since the individual Applicant companies each  
15 have filed motions seeking summary disposition as to allegations  
16 relating primarily to activities of individual companies,  
17 it seems clear that the existence of viable allegations which  
18 require the denial of the individual company motions in whole  
19 or in part would have an effect upon our disposition of the  
20 blanket motion for summary disposition. Applicants' loss  
21 of their motion for evidentiary rulings pursuant to Rule 105  
22 of the Federal Rules of Evidence is an indication that the Board  
23 is of the opinion that at least some evidence supporting the  
24 concept of joint, concerted and combined action is before  
25 us.

eak31

Thus, the denial of portions of the individual motions may adumbrate the outcome with respect to the broad blanket motion. If there are allegations relating to individual company anticompetitive acts, and if the Board considers that substantial evidence has been introduced with respect to a common plan or objective as to which these individual acts contribute, it is probable that the blanket motion could not be granted. Therefore, it seems appropriate to focus our attention initially on the individual motions.

If Applicants prevail with respect to these motions then the chance that Applicants as a group will prevail on the blanket motion is substantially enhanced.

It should be emphasized that we are not prejudging the blanket motion. These remarks are addressed merely to the question of timing of consideration of that motion and the factors which cause us to concentrate first on the individual company motions. If Applicants fail with respect to these individual motions, and if opposition parties convince the Board that a preponderance of the evidence now suggests that the individual activities were components of a combination or concerted plan of action among all Applicants, again, without reference to any rebuttal -hat the Applicants may make during their portion of the hearings then the disposition of the blanket motion becomes more obvious.

Also, the burden on the parties in responding to the

25

eak4

1 200-odd pages of the motions may be reduced. Further, as we  
2 direct the opposition parties with respect to the time and order  
3 of their response to this barrage of motions, we might comment  
4 that the mandate of the Commission in Waterford that:  
5 "We remind the Board" -- emphasize the Board -- "and the parties  
6 that if it becomes apparent at any point that no meaningful nexus  
7 can be shown, all or part of the proceeding should be summarily  
8 disposed of. This can be done under the provisions of  
9 10 CFR Section 2.749 or by any other appropriate means."

10 That particular language of the Commission has been  
11 considered by the Board throughout these proceedings. If  
12 the Board thought it apparent that no meaningful nexus  
13 can be shown, it has had the authority and the capability to  
14 act even without awaiting the summary disposition motion  
15 made on behalf of the Applicants.

16 We could either have directed the parties to  
17 address the nexus issue pursuant to instructions of the Board,  
18 or we could have suggested the appropriateness of a summary  
19 disposition motion from Applicants. Once again, we emphasize  
20 that we shall give the most careful consideration to the  
21 arguments raised by Applicants with respect to the nexus issue,  
22 but it also is apparent that at the close of the opposition  
23 case, the Board was not prepared on its own volition to  
24 determine that no meaningful nexus can be shown.

25

1           We no longer are basing our actions on a record  
2 consisting of allegations with no factual support. At the  
3 point of these proceedings, where the opposition parties  
4 have concluded their case, the Board would be irresponsible  
5 in not assessing the nearly 8000 pages of testimony before  
6 it and in commencing to form tentative conclusions.

7           The slate no longer is blank. Applicants  
8 themselves correctly assess the present posture of the  
9 proceedings, e.g., Motion of Toledo Edison Company for  
10 Dismissal of Allegations Made Against It, dated April 20,  
11 1976, page 2, which reads:

12           Having now before it all of this evidence upon  
13 which opposing parties rely, this Board is in a position  
14 to review and balance this evidence against the statutory burden  
15 which the opposing parties must meet and thereby to determine  
16 whether a sufficient showing has been made to warrant continued  
17 inclusion in this proceeding of certain allegations.

18           We have concluded that the length of the motions,  
19 their importance to these proceedings, and the fact that we  
20 do not consider it reasonable or expeditious to defer  
21 the presentation of Applicants' case so that opposition  
22 parties necessarily must prepare for hearings on a day-by-day  
23 basis, makes the request for 30 days in which to answer  
24 these motions not excessive.

25           At the same time, we have made a careful assessment



1 of the proposed hearing schedule indicated by Applicants  
2 and we have attempted to evaluate the type of time demands  
3 which will be placed upon opposition parties.

4 We have concluded that it will be appropriate for  
5 opposition parties to respond to all individual company  
6 motions no later than May 17 and to the blanket motion  
7 for summary disposition no later than May 21, 1976.

8 (Whereupon, at 4:10 p.m., the hearing  
9 was adjourned, to reconvene at 9:30 a.m.,  
10 Wednesday, May 5, 1976.)

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----