

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
CO.

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

Docket Nos.

50-346A

50-500A

50-501A

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

(Perry Nuclear Power Plants, Units 1 & 2

50-440A

50-441A

Place - Silver Spring, Maryland

Date - Thursday, March 4, 1976

Pages 5988-6161

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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	: 50-501A
(Davis-Besse Nuclear Power Station,	:
Units 1, 2 and 3)	:
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and	:
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<u>et al.</u>	: 50-440A
	: 50-441A
(Perry Nuclear Power Plant,	:
Units 1 and 2)	:
	:
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First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Thursday, 4 March 1976

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

BEFORE:

MR. DOUGLAS RIGLER, Chairman

MR. JOHN PRYSIAK, Member

MR. IVAN SMITH, Member

APPEARANCES:

As heretofore noted.

C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Roland A. Kampmeier (resumed)		6001	6115	6148

<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Applicant's Exhibit 103 (Page II-2-40 from 1970 National Power Survey)	6098	6098
DJ-453 (two-page document, titled on the second page "The Utility Industry." from Electrical World, June 1, 1974.)	6118	6119
DJ 454 (pages 272 and 273 from Volume I, 1964 National Power Survey)	6124	6124
DJ-455 (3-page document from Electrical World, Jan. 15, 1974.)	6128	6131

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P R O C E E D I N G S

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2 CHAIRMAN RIGLER: Mr. Reynolds, did you have
3 anything further you wish to add this morning in response
4 to the case citations upon use of deposition testimony
5 that Mr. Charno gave us yesterday?

6 MR. REYNOLDS: Yes, Mr. Chairman, I do.

7 I think that the Government's cases, as I
8 understand them, do support the proposition essentially
9 that the Government cited them for, except that I think it
10 may have been overstated by the government to the extent
11 that, as I understand the position of Mr. Charno, he indicated
12 if the Board failed to introduce designated portions of
13 depositions of parties that that would be reversible
14 error.

15 I think that one of the four cases would lend
16 support to that conclusion. However, that was a situation,
17 and I'm referring to the Community Counseling v. Reilly
18 discussion -- that was a situation where the Court of Appeals
19 held it was reversible error on the particular facts of that
20 case not to admit the deposition in order to demonstrate the --
21 let me rephrase it.

22 That it was reversible error, because the District
23 Court had indicated that the moving party had not met its
24 burden of proof in that fact situation and had declined
25 in making that determination to take into account the
deposition testimony.

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1 I think the context of that decision, it held
2 that the failure in that instance to take into account the
3 deposition testimony was reversible error.

4 I don't read that decision to stand for the
5 general proposition that the failure of this Board or a
6 Court to introduce or to accept deposition testimony would
7 in all cases be reversible error, and I think that the
8 other three cases that were cited by the government, while
9 they do support the proposition that it is permissible
10 to accept deposition testimony of a party, don't go so far
11 as to say the failure to do so would be reversible error.

12 CHAIRMAN RIGLER: Let me interrupt you here.

13 I had not understood Mr. Charno's argument to
14 be that this Board would commit reversible error by refusing
15 to admit deposition testimony, but merely that it could be
16 reversible error in the Federal Court.

17 MR. REYNOLDS: I thought if he said if it was
18 reversible error in the Federal Court, then a fortiori
19 it would be reversible error with respect to this Board.

20 CHAIRMAN RIGLER: I thought he argued if it was
21 reversible error in the Federal Court that the more liberal
22 rules of administrative agencies could require a like
23 result.

24 However, he can clear that up or you can clear it
25 up on the record.

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1 MR. REYNOLDS: I would let him clear that up.
2 I don't want to be in a position of mischaracterizing his
3 statement.

4 CHAIRMAN RIGLER: Maybe I misunderstood what he
5 said yesterday.

6 MR. REYNOLDS: The point I want to make is if his
7 position was that the cases cited locked this Board into a
8 reversible error position in the event that this Board
9 should conclude not to accept the deposition testimony,
10 then I would quarrel with his reading of the cases.

11 If he is saying that those cases do stand for the
12 proposition that this Board can appropriately -- or that
13 the Courts can appropriately, and therefore under the more
14 liberal rules that this Board can appropriately accept
15 deposition testimony of parties, I have to say I agree
16 with his reading of those cases.

17 Given that, I would summarize the position of
18 the applicants to be that to the extent the excerpts of
19 deposition testimony which the Department intends to
20 introduce relate to deponents who are officers, directors
21 or managing agents of the company, I would have to say that
22 I think this Board does have the legal authority to
23 accept the deposition testimony of those individuals.

24 I do not think that any of the cases cited by
25 Mr. Charno and I don't know of any other cases, stand

1 for the proposition that deposition testimony of
2 individuals other than directors, officers, or managing
3 agents can be introduced and used in lieu of having
4 the witness appear and testify.

5 Indeed, I think that the limitation in Rule 32
6 to officers, directors or managing agents would support the
7 notion that when we are dealing with individuals other
8 than that, they should be brought in and should testify
9 that those individuals are not parties in the intended
10 meaning of that or use of that term in the cases that Mr.
11 Charno cited or in the rule.

12 I think that the law also indicates that it
13 is the Department's burden to show which individuals fit
14 into the category of managing agent. We would be
15 prepared to stipulate who was an officer or director at
16 the time of the deposition, but as to managing agents,
17 it is the Department's burden of proof to show which
18 individuals were managing agents and that is to be
19 determined on a case-by-case basis.

20 I would cite the board to Troseus,
21 T-r-o-s-e-u-s, vs. Anchor Line Limited, at
22 26 Federal Rules, Decision 165, District of New York 1960,
23 which indicates that the Department would have the
24 burden in this regard.

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1 And I would also point out that in terms of
2 who is a managing agent, we do know that in-house general
3 counsel, for example, would not be considered a managing
4 agent. And on that one, let me direct the Board's
5 attention to Schilling, S-c-h-i-l-l-i-n-g, hyphen
6 Hillier, H-i-l-l-i-e-r, and then a bunch of initials,
7 SAIEC versus Virginia Carolina Chemical Corporation, 19
8 Federal Rules Decision 271, 274, in the Southern District
9 of New York, 1956. Also a distributing agent is not considered
10 to be a managing agent. And for that I will cite
11 Gillam, G-i-l-l-a-m, versus A. Schyman at 22 Federal Rules
12 decision 475, District of Alaska 1958 and also the manager
13 of a sales division, department or the supervision of
14 sales and shipping is not considered to be a managing
15 agent.

16 It is indicated in Colonial Capital Company
17 versus General Motors Corporation, 29 Federal Rules
18 decision 514, District of Connecticut, 1961.

19 I would also point out, in addition, that
20 Moore on Federal Practice indicates that the test as to
21 who is or is not a managing agent within the scope of the
22 rule is similar to the test used for service of process
23 under Rule 4 and that appears at Volume 4-A of Moore
24 on Federal Practice, paragraph 32.04 at page 32-20 to 32-21.

25 So, in short, it is our view that as to

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1 officers and directors and those individuals whom
2 the Department can sustain its burden of proof to be
3 managing agents as to, that this Board has the legal
4 authority to use excerpted portions of those depositions.

5 We would continue to maintain that that is not
6 a judicious exercise of discretion, and we would object
7 to the use of depositions of those individuals. If the
8 Board rules otherwise, we would reserve the right to
9 red-line those portions of the deposition that the
10 Department has not chosen to red-line, which would be
11 related to the excerpted portions they have red-lined.

12 And we reserve the right to call those people
13 as witnesses on the Applicants' affirmative case.

14 As to deposition testimony of individuals who
15 do not fit within the category of a party, i.e.,
16 an officer, director or managing agent, we do not think
17 that the Board has the authority to look to the deposition
18 testimony of those individuals, but that they must be
19 called to testify, and we would object to the use of any
20 portions of those depositions or the introduction of
21 any portions of those depositions.

22 CHAIRMAN RIGLER: What is your authority for the
23 proposition that we may not use the depositions of
24 employees other than officers, directors or managing
25 agents.

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1 MR. REYNOLDS: The Federal Rules would indicate
2 that the use of depositions is limited to those depositions
3 of parties.

4 I think the Federal Rules have a hundred-mile
5 limit which might, in the federal courts at least, give
6 rise to an argument that nonparties outside the hundred-
7 mile limit or of the subpoena power of the federal courts,
8 could, because of the hundred-mile limitation, that those
9 depositions could be used.

10 But I don't think the Commission has any such
11 limitation on its subpoena power, so I feel that is not a
12 legitimate basis to bootstrap the depositions of
13 nonparties into this proceeding.

14 I think that all of the cases that the
15 Government has cited, very clearly relate to deposition
16 testimony of parties.

17 I have not found any reference of cases
18 which speak to the matter of deposition testimony
19 being introduced of nonparties.

20 However, let me also add that given the time
21 period I had to look into this question, I am sure
22 that that research is not exhausted.

23 CHAIRMAN RIGLER: I'm not sure. After all, you
24 filed a pleading on it. The last few minutes of your
25 argument paralleled colsely the first footnote in the

1 pleading you filed.

2 Apparently, you have had opportunity to look
3 into this.

4 MR. REYNOLDS: I indicated I have not had
5 the opportunity.

6 CHAIRMAN RIGLER: Do I gather from what you
7 said just now, that you have no authority in support of
8 the proposition that the Board may not utilize depositions
9 of employees other than your analogy to the Federal Rules?

10 MR. REYNOLDS: I have not see any cases that
11 would support that proposition. The Federal Rules, it
12 seems to me, are very clear in indicating that the
13 authority to use depositions is limited to the depositions
14 of parties.

15 CHAIRMAN RIGLER: Thank you.

16 MR. CHARNO: I think I can respond very briefly.

17 Let me clarify the argument the Department
18 was making yesterday.

19 We were citing the four cases we cited
20 for the proposition that it was an error or would be an
21 error, as a matter of law to exclude the deposition
22 testimony of a party opponent.

23 CHAIRMAN RIGLER: In an NRC proceeding or in
24 a federal court proceeding?

25 MR. CHARNO: In a federal court proceeding.

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In other words, we are saying it is not discretionary.

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2 It is error. Whether or not it is reversible error, depends,
3 as Counsel pointed out, on the facts of the case, and
4 whether that error can be subsequently remedied or is
5 subsequently remedied.

6 It is clear that it is not, in our minds,
7 discretionary with respect to the deposition of a party.

8 To respond to the statements concerning
9 managing agents, I would like to quote briefly from
10 Wright on the Law of the Federal Courts,
11 Second Edition, 1970.

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1 And leaving out, unless requested by the Board,
2 the supporting citations, I would quote from page 374.

3 "Though the question of whether a particular
4 person is a managing agent is to be answered
5 pragmatically on an ad hoc basis, the Courts look to see
6 if the individual involved is invested by the corporation
7 with general powers to exercise his discretion and judgment
8 in dealing with corporate matters. Whether he can be
9 depended upon to carry out his employer's direction, to
10 give testimony at the demand of a party engaged in litigation
11 with the employer, and whether he can be expected to
12 identify himself with the interests of the corporation
13 rather than with those of other parties."

14 These are the three basic tests that have been
15 utilized by the Courts in a multitude of decisions to
16 determine whether or not a specific individual under
17 specific circumstances is a managing agent.

18 We don't believe that the cases cited by Applicants
19 under the prevailing rule of law which we have just
20 presented have a binding effect or should have a binding
21 effect as to a determination as to one of their employees
22 and whether that employee is a managing agent in the
23 context of his duties and with respect to the testimony he
24 gave on deposition.

25 Finally, we would note that with respect to the

1 100-mile rule referred to by counsel which sets forth in Rule
2 32(a)(3) of the Federal Rules, this is not an
3 obligatory direction concerning the use of depositions.
4 This is discretionary as to whether or not a Federal Court
5 may use the depositions of a deponent who resides over 100
6 miles from the place of the hearing.

7 We would note that this rule is applicable in
8 antitrust cases and in antitrust cases there is nationwide
9 service of process provided for in the antitrust laws.

10 We would further note that the 100-mile rule
11 doesn't even -- the 100-mile area doesn't even remotely
12 approximate service of process in a number of districts
13 throughout the country.

14 This rule is for the convenience of witnesses
15 so that they won't have to travel more than 100 miles
16 if their deposition could be used in place of their
17 testimony, for the convenience of the parties who wouldn't
18 have to transport them.

19 We would say that it is definitely relevant here,
20 and certainly gives a Federal District Court the discretion
21 to admit such a deposition. We would argue again
22 under the broader rules of evidence applicable in the
23 Nuclear Regulatory Commission that this Board would have
24 discretion to admit the deposition of a non-managing agent,
25 employee of one of the Applicants.

1 CHAIRMAN RIGLER: Thank you.

2 Would you like to recall Mr. Kampmeier?

3 MR. CHARNO: Mr. Kampmeier, will you take
4 the stand, please?

5 Whereupon,

6 ROLAND KAMPMEIER

7 resumed the stand as a witness on behalf of the Department
8 of Justice and, having been previously duly sworn, was
9 examined and testified further as follows:

10 CROSS-EXAMINATION (Continued)

11 BY MR. REYNOLDS:

12 Q Mr. Kampmeier, would you take a look for me at
13 the exhibits that were introduced with your testimony, the
14 National Electric Rate Book for Ohio and Pennsylvania
15 or the excerpts? They were Exhibits 451 and 452 of the
16 Department of Justice.

17 A All right.

18 Q Let me ask you, if you will, to look first at the
19 rate schedules for Ohio. Page 14 is the Ohio Edison
20 industrial rate schedule; is that correct?

21 A There are several there, right.

22 Q And Ohio Edison has several rate -- industrial
23 rate schedules; is that right?

24 A Right.

25 Q And is the one that has the red line beside it

1 the rate schedule that you used in connection with your
2 comparison that is set forth in your direct testimony
3 on page 34?

4 A Yes.

5 Q Would you explain for me the difference between
6 the applicability of the high tension light and power
7 industrial schedule which is paren 116 and appears on the
8 far left-hand column of page 14? And it is immediately
9 above the one red-lined.

10 Could you compare the -- could you explain the
11 difference between the applicability of that and the
12 red-line schedule for high tension industrial service
13 (117)?

14 A There are more similarities than differences
15 as to availability.

16 Q Could you explain the differences?

17 A I was coming to that. The one is applicable
18 apparently to any load over 50 kva.

19 The second, any load over 100 kva.

20 Those are the respective minimum billing demands.
21 At the moment that is the only difference in availability
22 that I note.

23 Q What about the difference in the character of
24 service between the two schedules?

25 A Well, the one is available at voltages below 15,000

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1 volts, 15 kV, and the other above that voltage. This is
2 one reason that I made my -- applied my comparisons
3 to the second, because the municipal contracts I believe also
4 call for the rates being applicable for delivery at above
5 15 kV.

5

6 Q What is the difference in the character of
7 service between Schedule 117, which is red-lined, and
8 the one directly below that, 118, high tension light and
9 power?

10 A The 118 calls for minimum billing demand of 1000
11 kva.

12 Q What is the difference in the character of
13 service?

14 A Well, character of service under 118 says same
15 as 117. Service hereunder is not available from feeders
16 serving a secondary network system.

17 Q What does that mean?

18 A I'm not too sure what it means in this context.
19 Whatever it may mean, I didn't consider it had any bearing
20 because that rate turned out to be a higher rate, and
21 therefore since it was, if anything, more restrictive in its
22 availability, any customer would prefer to be served under
23 117 than 118, and there was nothing to indicate he didn't
24 have that choice.

25 Q Why didn't you compare the municipal customers

1 rate with 113?

2 A Because any industrial customer who they might
3 compare it with apparently has the right to be served
4 under 117, which is a lower rate.

5 Q What is the basis for thinking that there is a
6 choice involved?

7 A Because it doesn't indicate otherwise, and if
8 you publish a rate schedule and it doesn't say that it is
9 not available to such and such people, then it is presumed
10 to be available.

11 Q Which of these industrial customers -- which
12 industrial customers under these schedules would you
13 think that the municipal customers of Ohio Edison may
14 be more likely to serve?

15 MR. CHARNO: I think I'm going to object to
16 that question. I don't understand it.

17 MR. REYNOLDS: Did you understand the question?

18 THE WITNESS: No.

19 BY MR. REYNOLDS:

20 Q Would you expect the wholesale customers of
21 Ohio Edison to serve industrial customers under 15 kva or
22 over 15 kva for the most part?

23 A You are speaking about the retail customers of
24 the municipalities?

25 Q That's right.

1 A Well, like the other utilities in the area, I would
2 assume they would have more under 15 kva than over.

3 Q Then why wouldn't the industrial rate 116 be a
4 more appropriate rate to use for comparison with the
5 wholesale customers rate?

6 A Because I don't know any of these municipalities
7 whose total load is less than 15 kva or in that order.
8 We are comparing the rate to the municipality which has a
9 load of, say, 10, 15, 20,000 kva with the rate to an
10 industry of comparable size.

11 Q In terms of their ability to compete, wouldn't it
12 be more relevant to look at the rate of the industrial
13 customers that the munis are most likely to be serving?

14 MR. CHARNO: For clarification of the record, whose
15 ability to compete?

16 BY MR. REYNOLDS:

17 Q The wholesale customers of Ohio Edison?

18 A No. The point that I assume we are addressing
19 here, certainly that I address my testimony to, was whether
20 the municipalities' ability to compete in any retail
21 business is hampered by their having to pay an unduly high
22 price for the power they buy, and it was a comparison
23 of that power they buy with what would be paid by an
24 industrial user buying a similar amount of power, which is
25 the test I suggested, and which I assume we are

1 discussing, unless you tell me otherwise.

2 Q I thought you just said that most industrial
3 customers of the munis would use rate 116?

4 A I said that. I don't see its relevance to the
5 other question.

6 CHAIRMAN RIGLER: Mr. Reynolds, are you saying
7 that an industrial customer of the municipal would
8 purchase from the municipal at the rate stated under 116?

9 MR. REYNOLDS: I'm saying that the municipal's
10 industrial customers for the most part would be the type
11 of customer that would be purchasing from Ohio Edison under
12 rate 116.

13 CHAIRMAN RIGLER: All right.

14 MR. REYNOLDS: And for comparison purposes,
15 therefore, the rate to the wholesale customers should be
16 compared with the 116 industrial rate, which is the
17 competition that the wholesale customer would have to
18 meet. That is the alleged price squeeze.

19 MR. SMITH: Do you go an additional step and
20 suggest that under the 118 schedule that there is a
21 sufficient spread between that schedule and 116 to permit
22 the municipal to compete for that wholesale load, that
23 industrial load?

24 MR. REYNOLDS: Yes, we will get to that.

25 MR. SMITH: I anticipated you.

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BY MR. REYNOLDS:

Q Do you know what criteria Ohio Edison uses to apply these industrial schedules to their industrial customers?

A No, I do not, aside from what is stated here. There is supposed to be stated here all of the conditions of applicability.

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1 Q Do you know whether the Ohio Edison's municipal
2 load factor is -- for its wholesale customers, is more
3 similar to the load factor that is contemplated for
4 industrials in 116, 117 or 118?

5 A 117.

6 Q And what is the basis for that?

7 A Looking at the figures and the company's report
8 to the Federal Power Commission and its formal report, which
9 shows sales under the several rate schedules and gives
10 kilowatts and kilowatt hours and permits one to make some
11 analysis of typical load factors indicated under the
12 different rate schedules.

13 And the customers served under the 117
14 schedule are more comparable in size and load factor to
15 the municipalities than the customers served under the
16 other rate schedules.

17 Q What is the load factor of the industrials
18 served under 117?

19 A I don't remember the figure.

20 I made that comparison. I would be glad, if
21 you have a copy handy of the reports to FPC, to look up
22 the numbers.

23 Q Do you know what the load factor is for the
24 industrials served under 118?

25 A Same answer.

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1 Q Is your answer the same with respect to the
2 load factors for industrials under 116?

3 A Yes.

4 Q Do you have copies of the studies you made
5 or the analyses you made to determine the load factors
6 with respect to the industrials under each of those three?

7 A They were done in my head.

8 It is a simple matter of looking at the numbers
9 and volume and dividing the kilowatt hours by the kilowatts
10 and numbers of customers and getting average use per
11 customer, and average kilowatt hours per kilowatt, in
12 a range of -- which does not have to be precise numbers,
13 but the approximation tells you quickly which group
14 is more comparable to the municipal group.

15 I can repeat the calculations for you quickly
16 here, if you provide a copy of the reports to the FPC.

17 Q How many industrial customers were there in each
18 class that you analyze?

19 A Here I couldn't trust my memory very far. I
20 believe the number in the 117 groups, which was the most
21 pertinent, was in the general order of 50 to 100 or so
22 industries.

23 There was a considerably larger number under 116.
24 Off-hand I don't remember how many under 118.

25 Q Do you recall roughly what the difference in

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1 load factors was with each of these groups of customers?

2 A No, I do not.

3 Q And the Munys?

4 A No.

5 Q Was it larg or a small difference?

6 ES6 A I can't expand on what I said before about that.

7 S7 Q Let me ask you to look at the National Electric

8 Rate Book excerpt, DJ Exhibit 452, which is the
9 Pennsylvania Industrial Rate Schedule. What is the difference
10 in the character of service between Rate Schedule 50 and
11 51, as shown on page 10?

12 A It is a difference similar to, and I believe,
13 identical with the case you refer to with the Ohio Edison
14 schedules.

15 Schedule 50 is applicable below 15,000 volts and
16 Schedule 51 above 15,000 volts. While we are on that
17 poin t, let me add, and I should have said it before in
18 referring to the earlier questions about which schedule is
19 more comparable, it would obviously not be appropriate, even
20 aside from the reasons I gave to compare a rate schedule,
21 based on delivery at voltage of less than 15,000 volts
22 and, therefore, a higher rate, to the rates to the municipalities
23 who take serve at more than 15,000 volts.

24 MR. SMITH: Before you leave this line of
25 questioning, I have a few questions to ask.

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1 MR. REYNOLDS: I'm not about to leave yet. I'm
2 still on this.

3 Let me have the last answer back.

4 (The reporter read the record as requested.)

5 BY MR. REYNOLDS:

6 QMr. Kampmeier, do any of the municipal customers
7 of Pennsylvania Power have facilities that take power at
8 15,000 volts or above?

9 A That was my recollection.

10 Now, I can cite you specifics in the case of
11 Ohio Edison, because I happen to have a sample with
12 me in my notebook.

13 I don't have the Pennsylvania one.

14 Q If, in fact, no municipal customers of
15 Pennsylvania Power have facilities that can take power at
16 15,000 volts or above, then wouldn't the proper schedule
17 for comparison be 50 rather than 51?

18 A I would have to re-examine that. It
19 might be. I'm not sure.

20 Q Can you tell by a look at those two rate
21 schedules whether rate 50 is higher than rate 51?

22 A Rate 50 is higher than rate 51, yes.

23 I must say it is hard to tell just by looking
24 at them, because of their complexity -- they are unusually
25 and unnecessarily complex.

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But I have made the calculation sufficiently to show for myself that 30 is higher than 51.

Q How did you arrive at the decision to use Schedule 51?

A For the same reasons that I stated in the case of the Ohio Edison comparison between Schedule 117 and 118.

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1 Q Is that because it was your view that the
2 customer had the choice to be on the lower of the two
3 schedules?

4 A That was one element, assuming he is prepared to
5 take at a specified voltage level, yes, he has a choice.

6 The other more crucial elements I mentioned were
7 comparing the size of the municipal load and their load
8 factors with the size and load factors of the industry
9 served under these several rate schedules. And which
10 therefore one should look at if one is talking about
11 sales to municipalities and to a comparable -- and to
12 an industry with comparable loads.

13 Q And why did you not select the 52?

14 A Again for the same reasons I stated. It has a
15 somewhat higher rate level and I think that customers
16 therefore tend to gravitate to 51 rather than 52.

17 At any rate, the ones comparable in size to
18 the municipalities are found under 51.

19 Q Do you know how many industrial customers are
20 served under 51 as opposed to 52?

21 A I don't recall any more.

22 Q You did make that analysis at one point?

23 A Yes.

24 Again, I would be glad, if you want to show me
25 the report to the FPC, to run through it with you.

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1 Q Which had more industrial customers?

2 A I don't remember. There are one or two other
3 differences between these schedules and the schedules of
4 the municipalities.

5 Q There is no question pending.

6 A I was trying to recall whether that was one of
7 the things you asked me about where I may not have completely
8 answered.

9 MR. REYNOLDS: Mr. Smith, do you want to ask
10 questions on the rate schedule?

11 MR. SMITH: I think that I would like to defer
12 if the Department is going to inquire further into this subject
13 matter. Perhaps it will be resolved. If not, I will ask
14 then.

15 Will you be going into this, Mr. Charno?

16 MR. CHARNO: Yes, I will.

17 MR. SMITH: I will be interested in knowing --
18 my questions might center around what effect, if any,
19 industrial rates are influenced by the desire or the
20 efforts on the part of utilities to attract industry into
21 their areas. To what extent this introduces a competitive
22 factor to utilities in other regions of the country, and
23 the extent that the state utilities commission take
24 cognizance of this and the extent to which the state
25 utility commissions taking cognizance of the fact that

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1 the municipalities could use this same concept if they had
2 the rate, necessary rate, correct rates to compete for
3 industry vis-a-vis other parts of the country.

4 Have I muddied that up?

5 MR. CHARNO: I think we will cover that area,
6 yes.

7 BY MR. REYNOLDS:

8 Q Mr. Kampmeier, are you aware of a report issued
9 by the Tennessee Valley Authority that states that the low
10 rates of the Tennessee Valley Authority for industrial
11 customers has not tended to attract industry away from other
12 areas?

13 MR. CHARNO: Could we have a date for that
14 report?

15 MR. REYNOLDS: Late '60s. '68?

16 THE WITNESS: I don't recall one around that time.
17 I recall one quite a few years earlier than that.

18 BY MR. REYNOLDS:

19 Q You say --

20 CHAIRMAN RIGLER: Ask him if TVA ever formed any
21 conclusion with respect to whether low electric rates
22 tended to draw industry from other sections of the country.

23 BY MR. REYNOLDS:

24 Q Can you answer that question, Mr. Kampmeier?

25 A I think so.

1 I think it is necessary in answering that
2 question to make a careful distinction between two different
3 things:

4 One is attracting new industrial plants which are
5 looking around the country for a place to locate, and
6 the other is a question of whether industries close down a
7 plant in one area and move to another area because of low
8 rates.

9 The answers are different. On the first point,
10 the conclusions TVA found was that its rates have encouraged
11 industrial development in the Tennessee Valley with a good
12 many new industrial plants being established there which
13 might presumably have been established somewhere else.

8 14 On the question of whether this has led --
15 the low rates have led industries to move to the area from
16 somewhere else, they were able to find on the occasion I
17 recall, which was a number of years ago, two examples, both
18 quite small over a period of 20 years or more.

19 Q What kind of industries generally were attracted
20 by lower rates to locate in the TVA area?

21 A Large electro-process industries, which use
22 large quantities of power, and which therefore have
23 relatively high power costs in relation to other companies.

24 Q Can you give me some order of magnitude as
25 to how large an industrial you are talking about?

1 A Well, it ranges widely. The more typical
2 ones might use from 20,000 kilowatts to 300,000 kilowatts.

3 Q Those are the industrials of the size which
4 the municipalities of TVA would not be expected to serve,
5 but rather TVA would serve directly?

6 A No. Some of them on the lower side of the
7 range are served by the municipalities.

8 Q Would you expect, Mr. Kampmeier, that there
9 would be many industrials of 20,000 kva and above that
10 would locate in an area which was served by a small
11 municipality?

12 A I don't know what you mean by many. There
13 are several dozens of them in the Tennessee Valley.

14 Q What about in Ohio?

15 A I don't see any reason why Ohio wouldn't tend
16 to attract similar kinds of industries. The C&P&O area
17 is a more industrialized area than the Tennessee Valley.

9
18 Q Mr. Kampmeier, did you make any studies to
19 determine what proportion of the fixed costs are included
20 in the demand charge under Ohio Edison's rate schedule for
21 municipal systems compared to Ohio Edison's industrial
22 rate schedule?

23 A No. I think that falls within the answer
24 I gave yesterday that I have not made any detailed cost
25 studies for Ohio Edison.

1 Q Let's assume a municipal system with a peak
2 demand of 10 megawatts; under its purchase power rate, that
3 system would pay to the wholesale supplier for a 10 megawatt
4 demand charge, would it not?

5 THE WITNESS: Would you repeat the question,
6 please?

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

9 THE WITNESS: I don't want to be nit-picking,
10 but the demand charge is based on kva, rather than kilowatts.
11 Of course, I assume when you asked the question the way
12 you did, you are also asking about the demand charge in the
13 particular month in which that peak was established.
14 That would necessarily be the demand charge of another
15 month.

16 BY MR. REYNOLDS:

17 Q Say 10,100 kva demand. Assume that system
18 adds an industrial customer with a peak demand of 10,000
19 kva. It would charge that customer under its rate
20 schedule for 10,000 kva, wouldn't it?

21 A Presumably, yes.

22 Q Now assume that that 10,000 kva industrial
23 customer has a peak demand of 10,000 kva, but only 8000
24 kva of that demand occurs at the time of the municipality's
25 peak demand, thereby raising the municipality's peak from

1 10,000 kva to 18,000 kva?

2 A Yes.

3 Q The municipal must now pay its wholesale
4 supplier the demand charge for 18,000 kva, isn't that right?

5 A Right.

6 Q Now under the assumptions that we have just
7 discussed, is it not true that the municipal would charge
8 its industrial customer its rate for 10,000 kva while
9 increasing its payment to the wholesale supplier by a
10 charge for only 8000 additional kva?

11 A That's correct, under the assumptions you stated.
12 Right.

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Q Moreover, the additional -- moreover the additional 8,000 kva of the wholesale customer's demand would be charged at its lowest demand block of the wholesale suppliers rate schedule, while the municipality would charge its industrial customer from its initial highest demand block on the rate schedule; isn't that correct?

A That is correct.

Q And wouldn't it also be true that the energy charge paid by the municipal to its wholesale supplier for the kilowatt hours associated with its sale to the industrial customer would be paid for from the municipality's lowest energy block on the supplier's rate schedule, while the municipality, in turn, would charge the industrial customer at its initial highest energy block?

A That is correct.

Q Doesn't it follow then that a simple comparison of the wholesale supplier's wholesale industrial -- the whole supplier's and industrials rates -- strike that and let me say it again.

Q Doesn't it follow that a simple comparison of a wholesale supplier's wholesale rate and industrial rate does not indicate whether there is a price squeeze?

A No, that does not follow.

Q Why not?

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1 A Let us try to explain. Exactly the same elements,
2 providing some margins for a municipality in serving an
3 industrial load apply to the investor-owned utility, if it
4 is supplying the industrial load.

5 If, however, the investor-owned utility is supplying
6 to the municipality, the power which the municipality is
7 going to resell, and the municipality has to pay significantly
8 more for that power than, in effect, it is costing the
9 investor-owned utility, and it would be justified on a
10 cost-related basis, justified as indicated by the
11 sort of rate comparisons that I have been talking about, then
12 the price squeeze is still there.

13 It doesn't alter the price squeeze at all,
14 where one particular industry served either by the investor-
15 owned utility or the municipality happens to have its
16 peak right on top of the system peak or another one is
17 completely off the system peak.

18 The conditions are the same in terms of the question
19 of the relative cost of the wholesale product that is
20 involved.

21 And if there is a differential there
22 that is unjustified, then you have a price squeeze.

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BY MR. REYNOLDS:

Q Isn't it true that under the conditions you pose that if the wholesale customer -- if the wholesale customer charged its industrial customer exactly the same industrial rate that the wholesale supplier charged its industrial customer, that the -- and the wholesale rate was the same as the industrial rate, then the wholesale supplier would pay its wholesale -- let me start over again.

CHAIRMAN RIGLER: While you are wrestling with your question, let me ask the witness a question or two.

In the example Mr. Reynolds gave, it was indicated that the municipality was making money on the resale of power to its industrial customers.

THE WITNESS: To this particular industrial customer, right.

CHAIRMAN RIGLER: Wouldn't they make more money if the municipality was purchasing at the industrial rate all along?

THE WITNESS: Exactly.

BY MR. REYNOLDS:

Q That would depend on what the industrial rate is, wouldn't it?

A If you were premising a different condition than we have been talking about, one in which the rates to

1 the municipality is lower than the industrial rate,
2 then my answer would be different in that context.

3 MR. REYNOLDS: Why don't we take five minutes?

4 CHAIRMAN RIGLER: All right.

5 (Recess.)

6 BY MR. REYNOLDS:

7 Q Mr. Kampmeier, under the conditions that we
8 discussed regarding the 10,000 kva system and
9 the addition of an industrial customer with a peak demand
10 of 10,000 kva, is it not true that the wholesale municipal
11 customer is paying to its supplier for fewer kva than it is
12 selling to its industrial customer?

13 A That's correct.

14 Q Isn't it impossible, without making a study,
15 to determine solely from the face of a wholesale supplier's
16 wholesale rate and industrial rate, that the wholesale
17 customer could not offer a competitive price to a given
18 industrial customer and still turn a profit?

19 A Would you read that question again?

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

22 THE WITNESS: I will have to ask you to read
23 that one more time.

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

1 THE WITNESS: It depends on the particular
2 customer, particular industrial customer and the nature
3 of his requirements. I think in some cases it would be
4 easy to arrive at a conclusion without a detailed study.
5 In other cases, it would require a detailed study. Detailed
6 meaning running through rate schedules and so on, at least
7 as a first step. That might be sufficient -- 15, 20
8 minutes work might be sufficient to answer the question
9 and it might not. If it is a very close question, then
10 you would have to get into further analysis of cost factors,
11 investment factors in serving the industrial customer.

12 BY MR. REYNOLDS:

13 Q Did you go through that kind of analysis?

14 A No, because it wasn't relevant to what I was
15 testifying to.

16 Q Would you define for me what your understanding
17 is of the term "price squeeze"?

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1 A Yes. In layman's terms, my understanding is that
2 if a company which is serving customers, both at wholesale
3 and at retail, who offers certain prices to his large
4 retail customers, if he then refuses to sell to wholesale
5 customers for resale, at terms which would be reasonably
6 compatible with the terms I just referred to for his sales
7 to the large retail customers, but rather, demands a
8 substantially higher price, thereby hampering the distributor
9 in its ability to compete for such retail customers, that
10 this constitutes a condition of price squeeze.

11 Q I see.

12 And it is your view that in order to form a
13 judgment regarding price squeeze, that a study that would
14 to to whether or not the rate charged to the wholesale
15 customer was such as to hamper its ability to compete and
16 turn a profit, would not be relevant to whether or not
17 there existed a price squeeze?

18 A Well, hampering its ability --

19 CHAIRMAN RIGLER: Mr. Reynolds, I will
20 interrupt you on that, because I don't recall the Witness
21 testifying to that.

22 That is so far from what he said, that I think
23 the question is improper.

24 MR. REYNOLDS: Would you read two questions
25 before and from there right through.

1 (The reporter read the record as requested.)

2 MR. REYNOLDS: Can he finish the answer?

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3 CHAIRMAN RIGLER: No.

4 You may rephrase your question.

5 BY MR. REYNOLDS:

6 Q What was the intention of your testimony as
7 set forth at pages 34 and 34?

8 A Well, specifically, it was to provide answers to
9 the question at the top of page 34, in the CASCO area
10 can small systems buy power at lower prices than systems
11 with similar energy and demand requirements?

12 MR. REYNOLDS: Was that testimony also in
13 your view deemed relevant to Question 61 on page 31?

14 THE WITNESS: Yes.

15 BY MR. REYNOLDS:

16 Q Is it your testimony today that, insofar as
17 you know, there is no price squeeze situation in Ohio
18 Edison's service area?

19 A No, that is not my testimony.

20 Q Is your testimony exactly to the contrary, that
21 it is your judgment that there is a price squeeze situation
22 in the Ohio Edison service territory?

23 A It so appears to me.

24 Q Does it appear to you without having
25 undertaken any study other than the simple comparison of

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1 the wholesale supplier's wholesale rate and industrial
2 rate, with regard to whether or not the wholesale customer
3 could not offer a competitive price to a given industrial
4 customer and still turn a profit?

5 A I believe I should be entitled at this point
6 to explain a little bit.

7 Q Could you answer the question, please.

8 A Would you read the question, please.

9 (The reporter read the pending question.)

10 MR. CHARNO: Objection, asked and answered at
11 least twice.

12 CHAIRMAN RIGLER: The objection is well-founded.
13 I will permit it, nonetheless, this one time.

14 I think you have just about exhausted this
15 area, however.

16 THE WITNESS: There is a double negative in
17 there, and other difficulty in following. I will have to
18 ask you to read it.

19 (The reporter read the pending question.)

20 THE WITNESS: I'm sorry, but I don't think that
21 question quite hangs together.

22 You say, does it appear to me --
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1 BY MR. REYNOLDS:

2 Q It refers to your previous statement concerning
3 price squeeze. You indicated it appears to you there was
4 a price squeeze situation.

5 The question was whether that conclusion was
6 drawn without undertaking the sort of study that I asked
7 in the question.

8 A Well, let me see whether by paraphrasing
9 the question, I can be sure I'm answering the right
10 question.

11 Are you asking me this:

12 Did I conclude without more detailed studies
13 than I have described that a municipality might not be
14 able to serve certain industrial customers at a profit?

15 Q Let me ask you this:

16 Did you make your determination or form your
17 judgment as to the existence of a price squeeze solely on
18 the basis of the studies that you have described in your
19 direct testimony and to the extent that you have discussed
20 it on cross-examination today?

21 A As reinforced by such circumstantial evidence
22 as the various municipalities who have been unable to
23 continue to remain in competition with Ohio Edison.

24 Q And which municipalities are you referring to?

25 A Oh, for example, Norwalk -- I don't have my list

1 divided up by company areas at the moment. I will stop
2 them for the moment.

3 Q What is the competition for industrial customers
4 between Norwalk and Ohio Edison that you have in mind
5 that caused them to go out of business?

6 A They apparently clearly were finding it
7 increasingly difficult to produce power and sell it at
8 rates that would be comparable with Ohio Edison's rates
9 and still stay in the black.

10 Q Do you know when Norwalk was acquired by Ohio
11 Edison?

12 A I did know. I don't have the date in mind.
13 Not terribly long ago.

14 Q And what rates are you referring to that you
15 compared with Norwalk and Ohio Edison in order to draw
16 the conclusion that you just drew?

17 A The comparisons could be deduced from the
18 consultant's reports which I saw, which indicated the
19 revenues received at Norwalk's existing rates and what
20 the corresponding revenues would be for the Ohio Edison
21 rates.

22 Q What report is it that you saw, specifically?

23 A I don't remember the -- either the name of
24 the consulting firm or the name of the report.

25 Q Who showed you that report?

1 A Attorneys for the Department of Justice.

2 Q When did that occur?

3 A Three months or so ago, I suppose.

4 Q And it is your testimony that on the basis of
5 the revenue figures in that report that you concluded
6 there was a price squeeze situation regarding Norwalk
7 which resulted in Norwalk being acquired by Ohio Edison?

8 MR. CHARNO: I object to that question as a mis-
9 characterization.

10 MR. REYNOLDS: I'm asking if that is --

11 MR. CHARNO: The witness did not --

12 MR. REYNOLDS: I'm asking the witness if that
13 is the basis for his conclusion.

14 MR. CHARNO: That is not what you asked.

15 CHAIRMAN RIGLER: Let me hear the question.

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

18 CHAIRMAN RIGLER: You can answer that yes or no.

19 THE WITNESS: I'm not sure I can answer it yes
20 or no.

21 CHAIRMAN RIGLER: He asked if that was your
22 testimony.

23 THE WITNESS: Then the answer is no.

24 BY MR. REYNOLDS:

25 Q Am I correct that the report that the Department

1 showed you regarding Norwalk is the sole basis on which
2 you formed your conclusion that Norwalk was forced out
3 of business as a result of a price squeeze?

4 MR. CHARNO: Objection. I don't believe that
5 is the conclusion the witness testified to. It is a
6 mischaracterization.

7 MR. REYNOLDS: I'm asking if that is his testimony.

8 MR. CHARNO: No, you're not. You're asking if
9 that is the basis for the conclusion he reached, and you
10 misstated the conclusion.

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

13 MR. CHARNO: I repeat my objection.

14 CHAIRMAN RIGLER: I will sustain that.

15 BY MR. REYNOLDS:

16 Q Did you compare any rate schedules with regard
17 to the -- strike that and let me ask it this way:

18 Did you compare the rate schedules for Ohio
19 Edison's wholesale customers and industrial customers
20 for the period preceding and up to the time that
21 Norwalk was purchased by Ohio Edison?

22 A I can only answer that if someone will tell me
23 the date when it was acquired.

24 Q Did you look at any rate schedules other than
25 the rate schedules that have been introduced as exhibits

1 to your -- by the Department of Justice and red-lined,
2 the ones that we referred to earlier?

3 A Yes.

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1 Q Which ones?

2 A Well, it so happened that a few years earlier, I
3 was asked to conduct a rate seminar for a group of
4 municipalities in Ohio, Michigan, Indiana, and among those ---
5 among the participants were some systems served by Ohio
6 Edison.

7 They introduced me at that time to --- that was
8 the first time I was introduced to the Ohio Edison
9 industrial rate schedules, and the question came up in the
10 context of whether these were not unusually and unduly
11 complicated rate schedules. They were.

12 Therefore, the matter stuck in my mind. When
13 I was involved in this, I recalled that. And I found that
14 I had kept the National Electric Rate Book for the period
15 that was -- National Electric Rate Book that was current
16 at the time of that discussion.

17 So I looked up those rates to see whether the
18 basic form had changed any, and essentially, what had been
19 happening to the level of it.

20 And those are the other rates to which I refer of
21 Ohio Edison.

22 Q What was the time period of those rates?

23 A As I recall, it was -- now, it was the late 60s.

24 Q And did you look at the wholesale rates at
25 that time also?

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1 A No, I didn't have those available to me. I looked
2 at them at the time, but I didn't have them in my files
3 and didn't have them available when I looked it back up.

4 Q Do you know now or do you recall now, whether
5 it was your judgment that a price squeeze existed at that
6 time?

7 A I wasn't thinking of it, particularly, in those
8 terms. That is not primarily the terms in which I'm
9 thinking of it now. But I do recall that the rates to the
10 municipalities at that time appeared to be unduly high
11 in relation to the industrial rates.

12 Q I thought you said you didn't look at the
13 wholesale rate schedules at that time?

14 A I'm sorry, if I didn't make it clear.

15 I did look at them at the time.

16 I was not able to refresh my memory about them
17 at the time I look back in my files now. While I kept the
18 National Electric Rate Book, that is the sort of thing that
19 has reference value for various purposes, I had not kept the
20 wholesale rate schedule.

21 CHAIRMAN RIGLER: Mr. Reynolds, let me ask you
22 a question. Is it your thesis in this line of questioning
23 that if a municipal can obtain an industrial
24 customer and make a profit on that customer, then the
25 municipal cannot be the victim of a price squeeze?

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1 MR. REYNOLDS: Of course. Yes, sir.

2 Am I to understand from the question of the
3 Chairman that the Chairman has a different view?

4 CHAIRMAN RIGLER: You are to understand that the
5 Chairman will ask the questions. I'm probing to find
6 out what your concept of the antitrust laws in an inconsistent
7 situation might be.

8 Would it be your position that any degree of
9 profitability would eliminate the possibility of finding
10 a price squeeze contributed to a monopoly situation?

11 MR. REYNOLDS: Could we dismiss the Witness?

12 CHAIRMAN RIGLER: Yes.

13 (The Witness was temporarily
14 excused.)

15 CHAIRMAN RIGLER: Let me restate this.

16 Would it be your contention, as a general
17 matter now and without reference to any particular
18 Applicant company, that if a monopolist allows its
19 customers to make a small profit on resale, that the
20 monopolist thereby cannot be a monopolist?

21 MR. REYNOLDS: The last part of that is,
22 therefore, a monopolist cannot be a monopoly?

23 CHAIRMAN RIGLER: Would not be engaged in
24 anticompetitive acts or could not be found to be engaging
25 in anticompetitive acts.

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1 MR. REYNOLDS: Well, certainly, since the
2 rates are set by regulatory authority, I would have
3 no problem saying, absolutely, yes, to that.

4 CHAIRMAN RIGLER: Some of your questions to the
5 witness were premises on the municipality selling to its
6 industrial customer at a competitive rate or
7 competitive level. Is that the phrase you used?

8 MR. REYNOLDS: At a competitive price.

9 CHAIRMAN RIGLER: Suppose the price could
10 be more competitive. Would that be a factor in assessing
11 whether there could be a situation inconsistent with the
12 antitrust laws?

13 MR. REYNOLDS: You say "suppose" the
14 municipal customers --

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CHAIRMAN RIGLER: Suppose the municipality could buy at a rate that would allow it to offer at an even more competitive price to the industrial customer?

MR. REYNOLDS: The problem I'm having is that the prices are set on the basis of cost of service by the regulatory agencies. When you say a more competitive price, I don't understand what you mean.

CHAIRMAN RIGLER: We have been in this area for over an hour now. The witness has testified if the municipalities had an industrial rate that they would have a greater margin of profit.

It seems to me logical that they could then go to their industrial customers and perhaps negotiate with them for an even lower rate and introduce a new element of competition so that the investor-owned utilities might consider whether they wanted to lower their rate schedule to compete for those industrial customers.

There would be a brand new element of competition.

MR. REYNOLDS: Are you suggesting isolated lowering of rates? Rates are uniform. By regulation they have to be uniform rates unless we manipulate rates and then you discriminate against different customers and you run into another antitrust problem.

CHAIRMAN RIGLER: You might have to lower the rate schedule as a whole, then, would you not, in order to

1 introduce the new element of competition?

2 MR. REYNOLDS: And that would depend on the
3 cost of service, which is what the whole regulatory
4 scheme is about. Otherwise you then run into discrimina-
5 tion against other classes of customers, like a residential,
6 let's say.

7 CHAIRMAN RIGLER: All right. Let's recall the
8 witness.

9 MR. REYNOLDS: Mr. Chairman, I think the witness
10 has already stated that it would be inappropriate to lower
11 the rate of a wholesale customer simply to make him
12 competitive for the industrial load where cost of service
13 is reflected in the rate.

14 That was his testimony.

15 MR. CHARNO: That is not quite his testimony.
16 You are close.

17 (Whereupon, the witness resumed the stand.)

18 MR. REYNOLDS: I would like to request from
19 the Department of Justice a copy of the report that it
20 showed the witness which the witness has indicated at least
21 had some bearing on his determination that there was a
22 price squeeze situation in connection with Norwalk.

23 MR. CHARNO: I can say I haven't the slightest
24 idea what the witness was referring to, but I can guarantee
25 that it was produced on discovery by the Applicant. The

1 material that the witness was shown was that produced
2 on discovery by the Applicants; it would be more readily
3 available to Ohio Edison than us, probably.

4 MR. REYNOLDS: If the Department will
5 designate which document it was that was produced on
6 discovery, but I would like to have the identity of the
7 document that apparently was produced on discovery that
8 Mr. Kampmeier was referring to.

9 MR. CHARNO: If Mr. Berger is sure he has no
10 idea what that document is and can't ascertain it --

11 MR. STEVEN BERGER: I don't. I wasn't privy to
12 your conversations with the witness.

13 MR. CHARNO: There is only one such document.
14 Let's proceed on that basis.

15 BY MR. REYNOLDS: Is that the study you are talk-
16 ing about? The only one I know of is the one that was
17 marked --

18 MR. STEVEN BERGER: No.

19 MR. REYNOLDS: I don't know which study it is.

20 MR. CHARNO: We will attempt to establish
21 which study it is and inform the Applicants.

22 BY MR. REYNOLDS:

23 Q Mr. Kampmeier, do you know of any industrial
24 customer that Norwalk desired to compete for, but was unable
25 to do so because of the rates charged to Norwalk by Ohio

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1 Edison?

2 A I don't have any such customer in mind, no.

3 Q Let me ask you this:

4 Mr. Kampmeier, can you tell us at what
5 period of time Norwalk was a wholesale customer of Ohio
6 Edison, if ever?

7 A No, I'm not sure I can say that. Norwalk was
8 basically a generating system for an extended period, and
9 was looking for alternatives and the question of
10 wholesale power supply as an alternative was one of the
11 questions that was examined, at least to some degree.
12 I don't recall whether it was implemented for any length
13 of time. I don't recall relative -- the details on the
14 relative alternatives at this stage.

15 Q Wouldn't that have a bearing on whether or not
16 a price squeeze situation could possibly have existed
17 with regard to the City of Norwalk?

18 A It may have a bearing, I think. The key
19 question there would have been whether the wholesale
20 service was available on term, which would have allowed
21 Norwalk to continue to be competitive, even though
22 apparently it could not be as a generating system.

23 Q Is it your testimony that a price squeeze could
24 exist even if Norwalk were not a wholesale customer?

25 A If it had any desire to be a wholesale customer,

1 if there was any opportunity for it to be, but the terms
2 on which it could be would have hampered it in its
3 ability to compete and I would say yes, you would
4 have further evidence -- which is why I referred to this whole
5 business of Norwalk -- further evidence of price squeeze
6 conditions.

7 Q Do you have in mind any other specific examples
8 of municipalities in the CCCT area which were desirous of
9 competing for industrial customers, but were unable to
10 because of the rates that that municipality was being
11 charged by the wholesale supplier?

12 A Yes. I looked at some others. My recollections
13 are even less precise about the others at this point
14 than about Norwalk. Therefore, I'm sure I could not
15 undertake to talk specifics without stretching my memory
16 past the breaking point.

17 Q Well, I wouldn't want to do that, Mr. Kampmeier.

18 A No.

19 Q Mr. Kampmeier, isn't it true that the
20 cost of new generation and transmission capacity that is
21 installed today would exceed the average cost of all genera-
22 tion and transmission capacity already in place on the
23 Ohio system or on the -- on the Ohio Edison system, or
24 on the system of any other CAPCO member?

25 A I think that is almost certainly true.

1 Q And is it not also true that rates are established
2 on the basis of average imbedded costs?

3 A By and large, yes.

4 Q And if rates are established on the basis of
5 average imbedded costs and the costs of new generation
6 and transmission capacity exceeds average imbedded costs,
7 is it not true that the addition of new customers, industrial
8 or otherwise, requiring additional generation and
9 transmission capacity, would involve Ohio Edison or any of
10 the other Applicants in providing service to such customers
11 at a rate which reflects costs below the cost of the
12 additional capacity needed to provide the service?

13 MR. CHARNO: Could I have that one back,
14 please?

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

17 MR. CHARNO: I object to that unless the
18 witness understood it. If he feels he can answer it,
19 I won't object to it. I don't understand it, myself.

20 THE WITNESS: Well, I think I understand the
21 purport of it. I could answer it, I think, only this way,
22 that it is quite possible that this would be -- that
23 would be the way it would work, but not necessarily.

24 BY MR. REYNOLDS:

25 Q Why did you say it would not necessarily follow?

1 A Because it depends on the particular circum-
2 stances. If one picked a nice favorable case like the one
3 you were giving me a while ago of a 20 percent diversity
4 between the industrial load and the peak load, then that
5 would start you off with a 20 percent differential. There
6 is presumably some additional differential in the
7 industrial rates for more typical cases than that.

8 It would be a question of whether the costs, the
9 additional costs that were being faced were up so much as
10 to outweigh those sort of differentials.

11 Q Let me ask you this:

12 How much above average imbedded costs do you
13 think incremental costs for new capacity is at the present
14 time for the CAPCO companies?

15 A You are talking solely about investment now
16 and no other elements of cost; is that right?

17 Q All right, for generation?

18 A They are probably up 50 percent. How much more,
19 I don't know.

20 Q If the cost of new capacity exceeds the
21 average imbedded cost of the existing capacity, would it
22 not be the case that the revenues received by Ohio Edison
23 or the other CAPCO members would not be sufficient to cover
24 the cost of additional capacity requirements on every
25 addition to load requiring the installation of new

1 capacity?

2 A You mean unless they had a surge in rate increases?

3 Q That's right.

4 A I think that is true. I hope it is true.

5 Otherwise, I don't know why they would have had their

6 surge in rate increases.

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1 Q Let's assume that a wholesale customer of Ohio
2 Edison adds an industrial customer. Would it not be true
3 that the rate to that wholesale customer charged by
4 Ohio Edison for the resulting additional load of the
5 wholesale customer would be based on average embedded
6 costs?

7 A Largely.

8 Q Isn't that the way the FPC establishes rates?

9 A Largely, yes.

10 Q Now, where the cost of new capacity exceeds
11 average embedded costs, if the wholesale customer adds
12 an industrial load which results in increasing its
13 capacity purchases from Ohio Edison, thereby requiring Ohio
14 Edison to install additional generating capacity, would
15 not Ohio Edison be selling that additional capacity to the
16 wholesale customer at a rate based on average embedded
17 costs which would be below the incremental cost of installing
18 the additional generating capacity required?

19 A May I suggest added at the end of your question,
20 unless there were a series of increases in the wholesale
21 rate.

22 Q All right.

23 A Without such increases, the answer would be,
24 yes, they would be.

25 With the increases, I presume that point is taken

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1 care of.

2 Q If Ohio Edison sells power to its wholesale
3 customer at a rate based on average embedded costs, which
4 the wholesale customer, in turn, sells to its industrial
5 retail customer, is it not then true that Ohio Edison,
6 assuming it had to install additional capacity at
7 a cost in excess of average embedded costs, in order to
8 provide that service, would receive revenues below its
9 incremental costs, and thereby suffer a price squeeze,
10 as the result of the sale?

11 MR. CHARNO: Could we run that by once,
12 slowly?

13 (The reporter read the pending question.)

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1 THE WITNESS: No, it would not thereby
2 suffer a price squeeze as a result of the sale.

3 BY MR. REYNOLDS:

4 Q Why is that?

5 A Because the same cost circumstances would apply
6 to Ohio Edison if it were serving the industry, directly,
7 as if they were selling the power to the municipality for
8 serving the industry. And the problem of upward trend in
9 costs is being dealt with by a series of rate increases.
10 Presumably that series of rate increases is taking place
11 both in the retail rates of Ohio Edison and in the wholesale
12 rates of Ohio Edison and incidentally also in the retail
13 rates of the municipalities.

14 The only way in which it would be a financial
15 detriment to Ohio Edison would be if it were being allowed
16 to increase its rates to industries without being allowed
17 to increase its rates to its wholesale customers.

18 Q But until it gets the rate increase, Ohio
19 Edison is going to suffer the same, whether it sells
20 directly to the industrial or it sells indirectly through a
21 wholesale customer providing the service to the industrial?

22 A Well, the impact of cost increases is the same.
23 It probably will not suffer the same overall financial
24 effect because it will have somewhat higher margins in one
25 rate than the other. Under the circumstances we have been

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1 looking at where the rates to the wholesale customers
2 are higher than the rates to industry, then presumably Ohio
3 Edison would be better off financially if it sold the
4 power to the wholesale customer than if it sold it directly
5 to the industry.

6 CHAIRMAN RIGLER: Let's take a short five-
7 minute break.

8 (Recess.)

9 BY MR. REYNOLDS:

10 Q Mr. Kampmeier, you have indicated, I believe,
11 that an increase in Ohio Edison's rates would be a way
12 in which to cure the revenue losses that Ohio Edison
13 would experience as a result of the rising costs that we
14 have been discussing.

15 Would it not therefore be more accurate if one
16 is to assess a price squeeze to examine rate schedules
17 over a period of time rather than to pick one isolated
18 rate schedule at a single point in time and compare that?

19 A That would be somewhat preferable, as I tried
20 to indicate yesterday. More extensive study over a
21 period of time would produce some additional information,
22 right.

23 Q Do you know whether or not it is the
24 case that the City of Bowling Green is paying a rate
25 determined not by the cost of serving Bowling Green, but

1 by the average cost of serving all municipal customers
2 of Toledo Edison, including Bowling Green?

3 A May I have that question read, please?

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

6 MR. CHARNO: Can I inquire as to whether
7 that is the time the witness testified concerning or
8 whether it is at the present time?

9 MR. REYNOLDS: At the time he wrote his
10 testimony.

11 MR. CHARNO: I'm sorry, you are asking as of
12 September of last year whether that was the case. Or in 1973,
13 as being the period he testified concerning.

14 BY MR. REYNOLDS:

15 Q Let's take it by the times or either time.

16 A Well, I think the answer either time is no, I
17 don't know.

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1 Q Do you know whether the FPC sets rates on the
2 basis of average costs of serving all municipal customers
3 of Toledo Edison?

4 A Normally, the normal practice of the FPC, as
5 I said before, is not so much to set the rate, as to approve
6 rates requested, but those rates normally are geared to
7 looking at all the customers in a class and taking account
8 in the form of the rate in effect of size of customer on
9 how the rate should vary with size or other characterizations.

10 Q Assume that the rates are based on average costs
11 and Bowling Green's particular costs are below the
12 average, would you advocate reducing the rates to the City
13 of Bowling Green and raising the rates to the remaining
14 municipal customers for whom the cost of service is higher
15 than averaging out the cost and having a uniform rate?

16 MR. CHARNO: For clarification of the record,
17 do you mean cost of serving Bowling Green or Bowling Green's
18 cost of service?

19 BY MR. REYNOLDS:

20 Q The cost of serving Bowling Green.

21 CHAIRMAN RIGLER: Could you give us a lead-in
22 on the direct, as to where we are? It might be helpful to
23 the Board.

24 MR. REYNOLDS: It is question 65 on page 35,
25 Mr. Chairman.

1 CHAIRMAN RIGLER: Thank you.

2 THE WITNESS: The rate schedule should not be,
3 in any usual situation, a singling out of a particular
4 customer in a class to be given a different rate schedule.

5 If a customer is of sufficiently different
6 size, so that this affects level of costs, then either the
7 rate schedule should be so structured as to take that into
8 account, which would be the preferable approach, or there
9 should be a second rate schedule for the larger customers.

10 BY MR. REYNOLDS:

11 Q If Bowling Green were to provide less revenue,
12 wouldn't the other municipalities have to provide more
13 revenue, in order to keep revenues constant?

14 MR. CHARNO: Is this wholesale revenues, or
15 overall revenues?

16 BY MR. REYNOLDS:

17 Q Wholesale revenues.

18 A If the sole objective is to keep wholesale
19 revenues constant, yes, certainly, that would have to be
20 done.

21 Q Well, if the Federal Power Commission has
22 determined what the revenues should be, wouldn't that
23 indicate that the revenue be kept constant?

24 A I don't think that normally the Federal Power
25 Commission narrows down the question of required revenues

1 to that fine a point, frankly.

2 Q What is the basis for that conclusion?

3 A The review of the findings of the Federal
4 Power Commission in quite a lot of different cases.

5 CHAIRMAN RIGLER: Mr. Reynolds, I'm a little
6 puzzled by this myself.

7 Are you saying that the Federal Power
8 Commission determines an overall level of revenues to be
9 obtained by Toledo Edison for serving municipalities
10 in its area?

11 MR. REYNOLDS: That is right, for a class of
12 customers.

13 CHAIRMAN RIGLER: If customers are subtracted
14 from that total, in order to maintain that level of
15 revenues, other customers must thereby pay more; is that
16 right?

17 MR. REYNOLDS: If the same facilities are
18 used, then the answer would be, yes, depending on cost of
19 service.

20 CHAIRMAN RIGLER: What do you mean by, if the same
21 facilities are used?

22 I'm not trying to question you now. I'm
23 trying to get a fix on where you are going and what your
24 basic premise is.

25 So, if you can fill me in a little bit, it would

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1 be helpful.

2 MR. REYNOLDS: If you build a generation
3 and transmission facility to serve ten municipalities,
4 and one of those municipalities leaves, then the costs
5 are going to be picked up by the nine customers of that
6 facility -- nine remaining customers of those facilities
7 that remain.

8 You still have the same cost, and you have to --
9 somebody has to pick up that cost and that cost would
10 be picked up in your hypothetical by the remaining
11 customers.

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1 CHAIRMAN RIGLER: That was the hypothetical
2 you put to the witness two or three questions ago.

3 MR. REYNOLDS: No, no. I asked the witness
4 about the question of reducing the rate to one of the
5 customers which has a cost below the average cost for
6 the class, whether that would necessitate raising the rates
7 for the other customers in the class to maintain constant
8 revenues.

9 CHAIRMAN RIGLER: Is it a premise in this
10 line of questioning that there is a facility the purpose
11 of which is to serve this class of customers?

12 MR. REYNOLDS: There are a group of facilities.
13 I was trying to give you a conceptual example to answer
14 your question. There are a group of facilities in order
15 to serve.

16 CHAIRMAN RIGLER: In fact, when Toledo Edison
17 builds a generating plant, it doesn't assign a portion
18 of that plant to municipal customers. It looks at them
19 as part of the overall load.

20 MR. REYNOLDS: But the Federal Power Commission
21 will assign them a particular part to determine the rate.

22 CHAIRMAN RIGLER: On a plant-by-plant basis?

23 MR. REYNOLDS: On the basis of total facilities.

24 CHAIRMAN RIGLER: They look at the system as an
25 aggregate, the aggregate generation within the system.

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1 MR. REYNOLDS: Right, and that is the same thing
2 the PUCO does at the retail level.

3 CHAIRMAN RIGLER: All right, now, we are
4 tracking.

5 BY MR. REYNOLDS:

6 Q Have you made any studies, Mr. Kampmeier, to
7 determine what the appropriate relationships would be
8 between the rate of service to the City of Bowling
9 Green and to industries with contract demands larger than
10 30,000 kva?

11 A No, because I didn't think that was relevant to
12 what I was testifying to.

13 Q Are you aware, Mr. Kampmeier, that all of
14 Bowling Green's rates have been lower than the Toledo
15 Edison rates for the past few years?

16 MR. CHARNO: Objection. Unclear.

17 Are we talking about retail or wholesale?

18 BY MR. REYNOLDS:

19 Q Are you aware that all of Bowling Green's
20 rates, for comparable classes of customers, have been
21 lower than the Toledo Edison's rates for those similar
22 classes of customers over the past few years?

23 A I was aware that Bowling Green had relatively low
24 retail rates. I had not made that comparison per se, no.

25 Q Do you know if Toledo Edison serves Bowling

1 Green at multiple delivery points?

2 A No, I don't know that offhand.

3 Q Do you know if Toledo Edison serves industrial
4 customers with over 30,000 kva demand at more than one
5 delivery point?

6 A Normally the service would be at a single delivery
7 point. There may be exceptions.

8 Q Wouldn't the number of delivery points have an
9 effect on the cost of service?

10 A Yes. It would also have an effect on the power
11 bill.

12 Q On page 36, Mr. Kampmeier, you indicate that most
13 large electric systems have their highest loads on summer
14 afternoons within the hours of heavy industrial demands.

15 A Yes.

16 Q Have you made any study of the loads of the
17 CAPCO member systems? Can you tell us when their highest
18 loads occur?

19 A Yes, in fact, I think I answer that in the middle
20 of that page in answer to question 67.

21 Q Were you aware that this past year Ohio Edison
22 had a winter peak rather than a summer peak?

23 A No, but it doesn't particularly surprise me.

24 Q What would that indicate to you about the stability
25 of seasonal load diversity?

1 A It would indicate that the difference in summer
2 and winter peaks on the Ohio Edison system is not so great
3 but that if you have an economic cycle which has an
4 impact difference in one season than the other, or if
5 you have abnormal summer temperatures or abnormal winter
6 temperatures, which you may get some shift in that relation-
7 ship.

8 The projection Ohio Edison made on its load was
9 that it would have a summer peak. The planning was done
10 on the assumption of a summer peak.

11 I think I made the comment earlier that nothing
12 is certain in this business, and you have to look at
13 probabilities.

14 That is the sort of thing I was talking about.

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1 Q Let me read you a statement from the 1970 National
2 Power Survey, Part II, Roman Numeral II-2, Roman Numeral
3 IX, and ask you if you agree with this statement.

4 "An analysis of load characterizations on a
5 daily, monthly and annual basis, shows minimal diversity
6 among the principal power suppliers providing approximately
7 95 percent of all energy requirements in the region."

8 A Which region?

9 Q This is the East -- ECAR region.

10 MR. CHARNO: Could we ascertain whether you are
11 going to be handing out copies today or whether that was
12 yesterday, and if you are not handing out copies, I would
13 like to examine it before the Witness answers the question.
14 And I would like for him to see it in context.

15 BY MR. REYNOLDS:

16 Q "Little if any change in this regard is
17 anticipated in the future. At present both the summer and
18 winter coincident peak demands in the region are very nearly
19 equal. Future seasonal trends in peak demand are difficult
20 to determine in view of the composition and characterizations
21 of the region.

22 "There is some evidence, however, that the
23 historical winter peaking characterization may be tending
24 toward a summer peaking situation."

25 Before you answer, if you want to look at that

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1 paragraph or Mr. Charno wants to look at it, that is fine.
2 I guess Mr. Lessy wants to look at it.

3 CHAIRMAN RIGLER: We are losing five minutes
4 on this.

5 I want to make it clear, in the future, if you
6 are going to read a statement to the Witness, have copies
7 available so that we don't run into these quagmires.

8 MR. REYNOLDS: All right.

9 BY MR. REYNOLDS:

10 Q The question is, do you agree with the
11 statement?

12 A I find nothing in it with which to
13 disagree.

14 Asked whether I would agree, I suppose could
15 imply have I verified all of the facts, and I haven't
16 done that, but I have found nothing in it to disagree
17 with, and nothing in it that gives me trouble.

18 Q If Ohio Edison had a winter peak this past year,
19 is it not true that a winter peak occurring after 6 p.m.,
20 would have occurred when the industrial loads no longer
21 were a significant factor?

22 A I expanded the assumption in the middle of the
23 question. I said if it had a winter peak and then if it
24 had a 6 o'clock peak.

25 Q Let's assume a 6 o'clock peak.

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1 A If it had a 6 o'clock peak, then would that be
2 outside the normal industrial hours of peak industrial
3 loads. If that is it, yes.

4 Q It would occur when the industrial loads were
5 not a particularly significant factor?

6 A In that particular month, right.

7 Of course, it is still a significant factor, but
8 it would not be as controlling a factor, not quite as
9 significant a factor as when the peak is earlier in the
10 afternoon.

11 Q What would be the significant factor in that
12 situation.

13 A With regard to the industrial load?

14 Q With regard to the peak occurring after
15 six o'clock in the winter what would be significant factor?

16 MR. HJELMFELT: Objection. There is not
17 testimony that there is a single significant factor.

18 CHAIRMAN RIGLER: Sustained.

19 BY MR. REYNOLDS:

20 Q Would there be a single significant factor?

21 A I don't think so.

22 Q What would cause the peak to occur after
23 six o'clock in the wintertime as opposed to, let's say, a
24 midday peak in the summertime?

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A. Probably the greater lighting load by that hour in the wintertime, street lighting, industrial lighting, commercial lighting, residential lighting.

Q That would include industrial lighting after 6 p.m., in the winter?

A In all probability.

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Q Do you know if the -- do you know when the municipalities in the CAPCO region peak in the wintertime?

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A Are you asking me whether case by case I know at what hour of the day their monthly peaks in the wintertime occur, and if so the answer is no.

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Q Just as a group, when would the annual peak of the municipalities occur in the wintertime, in the CAPCO area?

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A You contradicted yourself. You mean the annual or winter peak?

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Q The winter peak. I think I said that.

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A The winter peak normally would occur in December or January, maybe February.

14

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Q What time of day, before or after 6:00 o'clock?

A Probably after 6:00 o'clock.

16

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Q Do you know whether the --

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A I do not know that for a fact. I'm assuming you asked for my judgment and opinion. That is what I'm giving you. Unfortunately, the data from the municipalities in most cases does not include hourly data. One can determine something about the months in which peaks occur, but usually not the hour in which they occur.

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Q What is the basis for your answer to question 68, then?

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A You note that the only example in the answer in

1 which I referred to hour of day was the Cleveland Municipal.

2 There I had information as to the hour of day. The others I
3 was referring to time of the year.

4 Had I known more than I did then about hours of
5 the day, I could have made even more of a point of this
6 than I did. All I knew was that many of the systems had had
7 their highest demand for the year in months other than
8 the months of the CAPCO companies' peaks, and I did not know
9 how much further diversity there would be if I had been
10 able to take account of hourly diversity as well as monthly
11 diversity.

12 Q Where did you get the information that the
13 municipalities buying power from the CAPCO companies had
14 their highest demand at the same time as those companies?

15 MR. CHARNO: Could I have that back, please?

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

18 MR. CHARNO: I think that is a direct contra-
19 diction to what the witness testified, but I'm not sure.

20 BY MR. REYNOLDS:

21 Q Do not have their highest demands at the same
22 time as the CAPCO companies?

23 A I said many do not. In the case of those
24 which I was able to say that about, those that I was able
25 to get information for, I got it from two or three

1 different sources. Some of it from reports that
2 municipalities made to the Federal Power Commission in the
3 way of power system statement. Some from a study that
4 R. W. Beck & Associates made for a group of systems served
5 by Ohio Edison, and in certain cases from some of
6 the discovery material that was submitted with regard to
7 certain municipalities. In the aggregate, I was able to
8 determine that there was diversity for at least 15
9 different systems and the diversity typically was at least
10 8 or 10 percent, and probably was more except I didn't know
11 how much more because I did not have the data as to the
12 hour which the municipal's peak occurred, or rather to put
13 it the other way around, I did not have the information as
14 to what the municipalities' demand was at the time
15 when the CAPCO peaks occurred.

16 Q Is your statement on page 36 to the effect
17 that some of the small distribution systems still have evening
18 peaks based on the same source that you just recounted?

19 A Excuse me, let me take a moment to reread
20 my testimony on this.

21 Q It is on the sixth line down, page 36.

22 A That statement is intended to be a generally
23 applicable statement across the country, for the majority
24 of the country and I sought only to verify its
25 appropriateness for this particular area sufficiently to be

1 sure that I should not qualify the statement or eliminate
2 the statement because it would be misleading for this area.

3 Q Do you know whether the City of Cleveland also
4 has a summer peak that is higher than its winter peak?

5 A I'm reasonably sure it does, but I'm not
6 prepared at the moment to guarantee that.

7 Q As a general matter, Mr. Kampmeier, at what
8 time of day do you get a residential peak?

9 A Most commonly around 7:00 o'clock in the
10 evening, but if you happen to have considerable electric
11 heating, then you will probably have your peak in the
12 wintertime around 8:00 o'clock in the morning.

13 Q And at what time generally do you get your
14 industrial peak?

15 A Usually you have a twin peak, morning and
16 afternoon, with the morning peak occurring around 11:00
17 or 12:00, and the afternoon peak around 2:00 or 3:00, and
18 usually those are very nearly the same.

19 Q Generally at what time of day would the
20 peak occur for, let's say, Ohio Edison?

21 A Around 2:00 o'clock in the afternoon.

end 24

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1 Q What about the other CAPCO companies, the same
2 thing?

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3 A In 1973, for example, CBI was between
4 2 and 3 p.m. Duquesne Light's between 1 and 2 p.m.

5 Ohio Edison between 12 and 1 p.m.

6 Pennsylvania Power between 2 and 4 p.m., and
7 Toledo Edison between 1 and 2 p.m.

8 Q When, as a general matter, would a municipal
9 system peak occur?

10 A You can't generalize quite so well about the
11 municipals. There is more variation among them.

12 As far as the CAPCO are is concerned, I have
13 already indicated that I was not able to find the data on
14 hour-of-day peak formore than a very few of the systems.

15 I wouldn't want to try to answer that with
16 regard to the systems in this area. Any more than I have
17 already sought to do.

18 I wish I had the data. It would have shown,
19 I'm sure, significant additional diversity.

20 What I'm uncertain of is how much more,
21 because I couldn't readily find the data.

22 MR. REYNOLDS: I move to strike the last part
23 of that response.

24 CHAIRMAN RIGLER: We will strike the part that
25 followed the phrase "I'm sure."

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1 MR. REYNOLDS: Right.

2 BY MR. REYNOLDS:

3 Q If a municipal system were to add a sizable
4 industrial customer might not alter its system peak?

5 A Yes, it might.

6 MR. REYNOLDS: Can we break here for lunch?
7 It may be that we can trim down the cross-examination and
8 finish up shortly after lunch.

9 CHAIRMAN RIGLER: All right.

10 You are still on target, I take it, then?

11 MR. REYNOLDS: I believe so.

12 CHAIRMAN RIGLER: Do you want an hour?

13 MR. REYNOLDS: Yes, please.

14 CHAIRMAN RIGLER: Mr. Hjelmfelt, will you be
15 with us this afternoon?

16 MR. HJELMFELT: Yes, I will.

17 CHAIRMAN RIGLER: I may want to get you involved
18 in scheduling discussions.

19 (Whereupon at 1:00 p.m., the hearing was
20 recessed, to reconvene at 2:00 p.m., this same day.)

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AFTERNOON SESSION

(2 p.m.)

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2 Whereupon,

3 ROLAND A. KAMPMEIER

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

6 CROSS-EXAMINATION (Cont'd)

7 BY MR. REYNOLDS:

8 Q Mr. Kampmeier, on page 39, you state that it
9 would be in the public interest for a large system to
10 provide wheeling service for small systems. What is
11 the basis for your judgment that it would be in the public
12 interest -- that that result would be in the public
13 interest?

14 A The reasons why it would be in the public
15 interest?

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

17 A You are asking what are my reasons for saying
18 it will be in the public interest. Is that the question
19 or not?

20 Q I'm asking the basis for concluding that that
21 would be in the public interest.

22 A Well, my testimony is that it would be in the
23 public interest for the reasons just mentioned, which are
24 spelled out in the preceding question.

25 CHAIRMAN RICLER: Excuse me Aren't they spelled out

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1 in the answer to Question 76 itself?

2 MR. REYNOLDS: Mr. Chairman, I'm trying to
3 determine the basis for this Witness' testimony as to what
4 is or is not in the public interest, with regard to this
5 matter.

6 CHAIRMAN RIGLER: Yes, I understand. I just
7 think there is confusion on the record. I'm not trying
8 to cut off the line.

9 He indicated he answered that by reference to his
10 previous question. It looks to me he answered it by
11 reference to the ongoing question.

12 I'm trying to eliminate the confusion.

13 THE WITNESS: Both would be right.

14 CHAIRMAN RIGLER: If I throw you off, I
15 apologize.

16 MR. REYNOLDS: As I understand his answer
17 indicates he had determined it to be in the public interest
18 for reasons mentioned in the prior answer.

19 CHAIRMAN RIGLER: That was my point of confusion.

20 MR. REYNOLDS: I was asking the basis for his
21 reaching that determination.

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1 THE WITNESS: To repeat, I testified it
2 was for the reasons mentioned, which was in the preceding
3 question.

4 I then expand on some of those reasons to some
5 degree in the rest of the answer to 7b.

6 BY MR. REYNOLDS:

7 Q What are you basing that judgment on?

8 A The proposition that duplication of facilities,
9 for example, in a capital-intensive industry like this,
10 unnecessary duplication is not in the public interest. This
11 is one of the most basic premises in public utility law
12 and ratemaking and regulation.

13 Q Do you know that that issue is now presently
14 being litigated before the FPC?

15 A Yes. Questions like this need to be examined
16 in more detail from time to time. I think that is a
17 case in point. I don't think at all there is the basic
18 premise here.

19 Q Do you know that the specific issue of whether
20 wheeling is in the public interest is presently being
21 litigated before the FPC?

22 A That is what I understand. I'm not familiar
23 with that in detail.

24 Q And how do you go about determining what is
25 in the public interest, you personally?

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1 A Well, sir, my duties in the last 15 years in
2 particular, and for some period before that, have largely
3 involved advising people who were making policy decisions
4 for electric systems and I found it very necessary and
5 important that they try to gear those decisions to the
6 national public power policies as expressed in
7 legislation and executive orders, and so on.

8 Therefore, the question of what is and what is
9 not in the public interest and what should an electric
10 utility do to recognize both the public interest and
11 its own more narrow interests is a question which has
12 arisen innumerable times in the course of my work over
13 these years.

14 It is a cumulative experience derived from that
15 that I base my judgment on.

16 MR. REYNOLDS: I move to strike the entire
17 answer to 76 as being outside the expertise of this
18 witness. It is not a matter he is in any position to
19 testify to. It goes on to speculate as to what the long-
20 term interests are of private utilities.

21 It talks about a boomerang effect on the basis
22 of some speculative state action regarding eminent domain.

23 It then talks about, as I understand it, some legal
24 conclusions that all parties have an obligation of some
25 sort to hold costs down by coordinating power supply develop-

1 ment and operations, and I just think that it is a matter
2 that is entitled to so little weight that it should be
3 struck.

4 MR. CHARNO: Mr. Chairman, obviously I take
5 issue with that. The witness has set forth a number of
6 what I until this moment believed were generally recognized
7 public policies, for example, that duplicative -- unnecessary
8 duplicative transmission facilities should not be constructed.

9 A public utility has an obligation to serve on
10 fair and nondiscriminatory terms. Counsel mentioned that.
11 He set forth his basis for his answer.

12 CHAIRMAN RIGLER: Are we here to examine
13 public policies generally or policies which would maintain
14 a situation inconsistent with the antitrust laws?

15 MR. CHARNO: Public policies as they focus
16 upon the efficient practice of public utilities
17 has a great deal to do with anticompetitive action in the
18 public utility industry. The portion of his testimony
19 on page 40 where he goes into albeit a general statement,
20 but a statement nonetheless of the options open to a
21 community, and I will quote:

22 "Some may elect to buy power, either at
23 wholesale or at retail, from the large supplier who owns
24 the transmission system. That will often be their
25 cheapest option. Some may elect to buy from other

1 suppliers."

2 He sets forth the different bulk power
3 supply options that are open. I don't see that it is
4 beyond his competence. It seems to be the focal point of
5 his competence.

6 The judgmental statements, it seems to me, for
7 example, "Nor should it charge a discriminatory price
8 for transmission service," are in line with the generally
9 recognized public utility regulatory principles that
10 he sets forth at an earlier point in the same answer.

11 I think --

12 CHAIRMAN RIGLER: Go ahead. Excuse me.

13 MR. CHARNO: To the extent that the
14 witness is indicating general industry practice or
15 approved industry practice and showing a deviation from it,
16 that is anticompetitive, I think this goes to the heart of
17 his testimony.

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1 CHAIRMAN RIGLER: He is not discussing and
2 industry practice in this answer.

3 MR. REYNOLDS: Or any deviation.

4 MR. CHARNO: When he is setting forth options
5 and what would be in accord with general public utility
6 policies.

7 CHAIRMAN RIGLER: There, again, there is a gulf
8 between general policies and those policies which
9 might reasonably be related to a situation inconsistent with
10 the antitrust laws.

11 I'm going to deny the motion, but at the same
12 time, I think we should take recognition of the
13 rather severe limitations which the Board would put on any
14 weight to be given this testimony.

15 to the extent that the Witness is getting
16 into the area of general public policy relating to
17 wheeling, this would not be the appropriate agency to
18 consider or make such judgments.

19 To the extent that the Witness is testifying
20 albeit with reference to a long career in the
21 power industry, what he considers desirable in a general
22 sense, we would disregard that testimony.

23 We would give it little, if any, weight.
24 Only in the most marginal sense does this answer
25 contribute to the resolution of any question relating to the

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1 issues in controversy in this proceeding.

2 Although we deny the motion to strike, I think
3 we have indicated that there will be rather strong
4 limitations on any weight the Board would give to it.

5 The reason that we don't deny it in toto is
6 because there are parts of the answer which may touch
7 tangentially on issues which are relevant to our
8 consideration.

9 The point about the duplication of transmission
10 facilities being one where there are economic costs
11 associated with that duplication. On the other hand,
12 we have had testimony to that effect from Witness Mozer,
13 among others. I don't think this particularly adds to
14 the present state of the record.

15 BY MR. REYNOLDS:

16 Q Mr. Kampmeier, on page 41, in answer to question 77,
17 would you explain what you mean when you state that the
18 small system is at the mercy of a monopolist?

19 I'm sorry, is largely at the mercy of
20 a monopolist.

21 A Yes.

22 If the small system, for the reasons that I have
23 been discussing in answer to a number of your questions,
24 is finding that it cannot remain financially viable with
25 its own generation, then it has to look for power from

1 other sources and if the only system which it is connected
2 with and probably the only one which it can vary easily
3 and inexpensively be connected with, is unable to provide
4 transmission service to permit this system to get power from
5 third parties, then it is left at the situation of having
6 to deal with this single system, whether it likes it or
7 not.

8 Q Would that be true of all of the wholesale
9 customers of TVA?

10 A I think so, if one ignores the nature of
11 the relationship between TVA and the distributors.

12 Q What relationship is that that you are referring
13 to?

14 A Well, the relationship of rates and terms of
15 service, and so on, being established by mutual agreement
16 and pursuant to expressed Congressional policies.

17 Q In making this statement, did you take into account
18 the jurisdiction of the Federal Power Commission over the
19 relationship --

20 MR. CHARNO: In making which statement, Counsel?

21 MR. REYNOLDS: In making the statement that
22 the small system is largely at the mercy of the monopolist.

23 THE WITNESS: Yes, I think that is why the FPC
24 has the jurisdiction it does, because these are monopolist.

1 Q So they are regulated monopolists; is that
2 what you are saying?

3 A Yes.

4 Q That is not the situation with regard to TVA?

5 A TVA is not regulated by the Federal Power
6 Commission, no.

7 Q Is it a regulated monopoly?

8 A No.

9 Q Is it a monopoly?

10 A Frankly, I don't know whether it is or not. I'm
11 not sure how the definitions would apply in a situation
12 like that.

13 Q What is your understanding of what a monopoly
14 is?

15 A In trying to put it in lay terms, I think a supplier
16 of a service or product which is in a position to control
17 the certain aspects of the situation more commonly for
18 the market or sale of that product or service.

19 Q And in your view that definition doesn't fit
20 TVA?

21 A I think the definition pretty well -- that
22 definition pretty well fits TVA.

23 I'm not sure tht I would want to
24 rest solely on that definition.

25 Now we are getting into questions of legal
definition, that is totally beyond my competence.

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1 Q It is your term and I'm trying to understand
2 how you used it.

3 Whichever definition you want to pick is fine,
4 but I'm trying to understand what you meant by your
5 testimony.

6 A What I meant by my testimony is a situation
7 in which the small system has no voice in the terms at
8 which it can obtain power from the other system and has
9 no alternatives to turn to. I will stop there.

10 Q Does not the Federal Power Commission give them a
11 place to turn?

12 A No, not an alternative to turn to. The Federal
13 Power Commission gives them a place to air their
14 complaints if they have some.

15 Q Would you be able to make the same statement
16 if instead of using the word "monopolies," we used a
17 "large electric utility"?

18 A A large electric utility in the determination
19 of whose service policies it had no voice, then I would
20 accept that.

21 Q If a large system, as you have indicated
22 earlier in your testimony, transmits to a smaller system
23 its economies of scale and economies of coordination by
24 virtue of regulated wholesale rates, what further
25 advantage is to be gained by that small system by a

1 wheeling arrangement?

2 MR. CHARNO: Could I have the question back?

3 (Whereupon, the reporter read the

4 pending question, as requested.)

5 MR. CHARNO: Could you give the reference to
6 his earlier testimony?

7 MR. REYNOLDS: I don't have the specific page.
8 Do you quarrel with that?

9 MR. CHARNO: I'm not sure I can recall him testify-
10 ing to that. That is why I asked.

11 MR. REYNOLDS: Do you have any quarrel with
12 my characterization of your earlier testimony?

13 THE WITNESS: I better hear the question
14 again, thank you.

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

17 THE WITNESS: In answer to your specific last
18 question, yes, I do object to that as being a characteriza-
19 tion of my testimony.

20 If you want to leave out the reference as to
21 as I testified before and leave the question the way
22 it is without that, I would be glad to answer it.

23 BY MR. REYNOLDS:

24 Q Okay, let's do that first.

25 A Okay. There are a couple of reasons why it

1 would be better for the small system to have the
2 wheeling available to it.

3 One is the general proposition of freedom of
4 choice, which I have talked about several times before.

5 The small system should have an opportunity
6 to consider other sources of power which it might like better
7 not just because of price differences, but because of
8 differences in length of commitment and for other reasons;
9 and then secondly, if we are talking about a system which
10 has any generation of its own, then the system has the
11 problem of how to coordinate that generation with other
12 sources of supply, how to dispose of a surplus from
13 that generation at times when its loads are low and its
14 equipment is all available.

15 A wheeling arrangement lets it on the one
16 hand have a way to dispose of its surplus and on the other
17 hand to obtain complementary or supplementary sources.

18 Again in each case, without having to be
19 restricted to a single other system.

20 MR. REYNOLDS: I move to strike that part of
21 his answer that follows the statement "if a system
22 provides its own generation" as being unresponsive to
23 the question.

24 MR. CHARNO: Mr. Chairman, I would disagree.
25 They did not indicate full or partial sales. They said

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1 buys power at wholesale, as I recall the question. Many
2 systems who buy power at wholesale, that doesn't mean it is
3 their sole source of power.

4 CHAIRMAN RIGLER: Denied.

5 BY MR. REYNOLDS:

6 Q Mr. Kampmeier, have you made any studies to
7 determine what difference it might make to the cost of
8 power to small systems if there were an arrangement to
9 wheel power to the small systems in the State of Ohio?

10 A Not in any depth. We have looked at it enough
11 to see that there are differences in rate levels in various
12 parts of Ohio, in both wholesale and other. And that some
13 of these differences are in the direction of lower prices
14 in areas outside the CAPCO area, for example, which I
15 assume even though your question didn't refer to specifically,
16 you are most interested in.

17 Therefore, opportunities for obtaining power
18 elsewhere are indicated as potentially existing.

19 In addition to that question, you have all of
20 the other questions about wheeling for economy purchases
21 and so on.

22 Q I take it your answer to my question is no?

23 A You better read the question.

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

1 THE WITNESS: Because of the word, what difference
2 does it make, I think the answer is. I assume that implies
3 a degree of specificity which I don't claim.

4 MR. REYNOLDS: I didn't catch the last part.
5 Will you read it?

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

8 BY MR. REYNOLDS:

9 Q Mr. Kampmeier, are you aware of anything which
10 a wholesale customer could ask its wholesale supplier to
11 do for it which if the wholesale supplier refused, that
12 customer could not go to the FPC and complain about it?

13 A If there is anything it couldn't complain about --
14 I think there are a number of things which the FPC would
15 say was not in their jurisdiction.

16 Q What would those things be, in your view?

17 A For example, requests for a share in a nuclear
18 power plant.

19 Q Anything else?

20 A There is being litigated the question of
21 whether the FPC would take any responsibility in the case
22 of a complaint that the wholesale rate was inequitable
23 in relation to industrial rates.

24 Q That issue has already been decided in the
25 Court of Appeals, hasn't it?

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A I wasn't aware that the appeal process was
completed and the case is considered finally adjudicated.
If it is, I am interested to know it.

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1 Q Your reference is to the Conway decision, is
2 it not?

3 A I think that is what it is called.

4 Q When did you first become aware of that
5 decision?

6 A Well, when it was made.

7 Q Pardon me?

8 A When it was made.

9 Q On page 31 of your testimony you indicate that
10 where the small system obtain most of the benefits of
11 interconnection, then one might reasonably expect the large
12 system in such a case to request the small system to bear
13 most of the interconnection costs.

14 A Near the top of the page?

15 Q Yes.

16 Have you made any studies to determine whether that
17 is true in the case of the City of Cleveland, and is it
18 the reason why the City is obliged to pay the full cost
19 of interconnection with CEI, as you indicate on page 45
20 of your testimony?

21 MR. CHARNO: Could I have the first page
22 reference?

23 MR. REYNOLDS: 31.

24 THE WITNESS: Yes, I'm familiar with the elements
25 in that situation. The interconnection for which CEI -- which
the City is being obliged to pay the sole costs are not

1 the kind of a situation described on page 31, which involved
2 tapping an EHD line or extending normally lines and that,
3 and only that, the facilities -- I would have to recheck
4 the specifics of what is involved in the interconnection,
5 and how the agreement describes it before I go on to testify
6 more specifically to that.

7 I don't remember the details, as well as I thought
8 I did, when I started to answer the question.

9 BY MR. REYNOLDS:

10 Q Isn't it correct that the FPC ordered Clevelan
11 to pay for the full cost of the interconnection?

12 A Yes, I think they did.

13 Q In referring, Mr. Kampmeier, to the Painesville and
14 City of Cleveland agreements with CEI, you state that the
15 several years of negotiations preceding those
16 agreements seem unduly long. Do you know how long those
17 negotiations took?

18 A I asked some questions about that, and I looked
19 through the material that was put in the record in that
20 regard.

21 I gather that they had been going on intermittently
22 for quite awhile.

23 But I don't have a specific recollection as
24 to the precise length of time.

25 Q Do you know how long it took to negotiate the

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1 coordination arrangement between TVA and the Association
2 of Private Electric Utilities, known as the South Central
3 Electric Utility Companies?

4 A The first one I was directly involved in, and
5 my recollection is that it took about three months.

6 Q When was that first agreement signed?

7 A Oh, my goodness, about 1950, give or take
8 five years.

9 Q Is it not true that Mississippi Power and Light,
10 representing the South Central Electric Companies, stated
11 negotiations in 1959, based on that first contract with
12 TVA and that a coordination agreement was not signed
13 until 1965 for seasonal diversity exchange of 1500 megawatts
14 byt 1968?

15 A That is quite possible. I was not so directly
16 involved in those negotiations, but if I may -- if you are
17 interested in having enlightenment on the circumstances, I
18 would be glad to give it to you.

19 CHAIRMAN RIGLER: No, let's just respond to the
20 question.

21 MR. CHARNO: Can I have the question and
22 answer back, the question, then.

23 (The reporter read the record as requested.)

24 MR. CHARNO: I think the record is unclear as to
25 what was answered there. The question is unclear. I

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1 would point that out in case someone wants to
2 straighten it out.

3 BY MR. REYNOLDS:

4 Q Mr. Kampmeier, would you not consider it
5 reasonable for two or more parties to bargain in good
6 faith over the terms and arrangements of a coordination
7 agreement for a considerable period of time, if there were
8 complexities involved of the sort that are inherent in that
9 kind of an arrangement?

10 MR. CHARNO: Has the Witness previously testified
11 to the inherent complexities or did you want to ask him
12 that, as a foundation question?

13 BY MR. REYNOLDS:

14 Q Would you consider that a coordination arrangement
15 would be sufficiently complex that it would be reasonable
16 for parties to bargain for some period of time in good
17 faith before arriving at an agreement?

18 MR. CHARNO: What kind of coordination agreement?

19 BY MR. REYNOLDS:

20 Q A complete coordination agreement.

21 MR. CHARNO: As he has defined complete
22 coordination?

23 MR. REYNOLDS: That is right.

24 MR. CHARNO: Fine.

25 THE WITNESS: The first such agreement

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1 entered into in a given region involving the major
2 participants, I would expect, would take quite awhile.
3 Subsequent ones ought to go a lot faster.

4 BY MR. REYNOLDS:

5 Q Mr. Kampmier, let me ask you if you agree with
6 this statement. One unique feature --

7 MR. LESSY: Could Counsel identify the source
8 of what he is reading?

9 MR. REYNOLDS: NO, I'm asking if he agrees
10 with the statement I'm about to make to him.

11 BY MR. REYNOLDS:

12 Q One unique feature of the CAPCO pool relates
13 to the installed research requirements of each
14 member. Minimum reserves and percent of peak hour load
15 are not established nor are such reserves equalized.

16 A computer program is utilized to allocate
17 the amount of new generation to be owned by each member,
18 so that the dependence on the power pool, as measured by
19 loss of load probability studies, is the same for all
20 members.

21 The reserve requirement of each member is
22 related to the size and performance of its capacity resources
23 and load characteristics. Do you agree with that
24 statement, or do you have any reason to disagree with that
25 statement?

MR. CHARNO: I have a double objection.

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First, I think it is a complex statement.

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1 It is a description and not something that can
2 be agreed with without knowing what the referent is.
3 It is misleading in that context. The witness could be
4 directed to the statement in print and allow him to go through
5 the description and see if it is or is not or whether
6 he can tell if it is an accurate description of what it is
7 describing, which isn't set forth in the statement as read.

8 MR. REYNOLDS: Mr. Chairman, I think that if we
9 want, I can go through it again slowly, but I'm entitled
10 to ask the witness or give the witness a description and
11 ask him if he has any agreement or disagreement with it
12 without regard to whether it comes from my own head or some
13 other source.

14 MR. CHARNO: The problem is what it is a descrip-
15 tion of. You are asking does he agree with a description.
16 In the abstract. It is, but do I agree with that? How do
17 I know until you show me what it is? It is an impossible
18 question to answer.

19 MR. REYNOLDS: The witness has testified
20 as to his familiarity with regard to reserve requirements
21 of the CAPCO pool both in response to Mr. Lessy's questions
22 and in response to my questions.

23 The statement I read to him or made to him
24 refers to one unique feature of the CAPCO pool relating to
25 installed reserve requirements of each member.

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1 The witness, before he feels comfortable
2 answering as to his agreement or disagreement, if he would
3 like me to read it again slowly or have the reporter
4 read it slowly, I would be happy to do it.

5 MR. CHARNO: I withdraw the objection, as long
6 as we know what it is describing.

7 MR. REYNOLDS: Would you like to hear it again?

8 MR. CHARNO: Would it be more helpful to have
9 it in writing in front of you?

10 THE WITNESS: It certainly would.

11 MR. CHARNO: Do you have objection to placing
12 the statement in writing in front of the witness so that he
13 can read it?

14 MR. REYNOLDS: Why don't you read it back and
15 if he has problems after that, we can put a copy in front
16 of him.

17 MR. LESSY: The witness testified it would be to
18 his advantage to see it in writing. I think this kind of
19 cross-examination where you don't give it to him in
20 writing, when it is a technical statement he would like to
21 see in writing, it is not fair to the witness or this type
22 of procedure.

23 I would be glad to give the witness a copy.
24 I have been furnished with it. Why can't the witness have a
25 copy? I would like the witness to be furnished with a

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1 copy.

2 CHAIRMAN RIGLER: I'm prepared to overrule
3 the objection and permit the witness to answer the
4 question.

5 However, it is so long and so complex that I
6 do agree it is unfair.

7 One procedure would be to write out the
8 statement separately. There is a lot of fencing going
9 on here over nothing. Plainly it would be more productive
10 for the witness to read the whole statement on a piece of
11 paper.

12 MR. REYNOLDS: I don't disagree, I think there
13 is unnecessary fencing. I'm trying to expedite this so
14 we can reach the 3:30 schedule, and now it looks like we
15 will miss that.

16 If you want to stop and have us write it out, we
17 will write it out. It's a straightforward statement
18 and I'm entitled to make a statement to the witness and have
19 him, without regard to the source of that statement, give
20 me his response as to whether he agrees or disagrees or
21 whether I'm quoting or not quoting. It is legitimate
22 cross-examination.

23 CHAIRMAN RIGLER: I agreed with you up to that
24 point. The problem is where you have a statement going
25 to three or four sentences it is practically impossible for

1 the witness to deal with it in that fashion.

2 Read it to the witness slowly, and if he wants
3 it in writing, he may have it in writing.

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

6 THE WITNESS: May I assume what you are asking
7 me is whether I agree that this describes adequately
8 in such a way that a utility engineer would see the picture
9 what this unique aspect of the CAPCO arrangements are;
10 and if not, what are you asking me that I agree with?

11 BY MR. REYNOLDS:

12 Q I'm asking you whether that is an adequate
13 description or accurate description of the CAPCO reserve
14 sharing arrangement as you understand it.

15 A No, I don't think it is that.

16 Q Let me put in front of you, in order to
17 expedite matters, and ask you to read a section of page
18 II-2-40 of the 1970 National Power Survey, Part 2,
19 entitled "Generation Reserve Methods," and I have distributed
20 copies of this to the other parties and the Board.

21 I ask you whether -- go ahead and read that.

22 A You want me to read the entire section under
23 that heading?

24 Q Right, "Generation and Reserve Methods."

25 A I have read it.

1 Q Do you have any reason to quarrel with that
2 statement?

3 A A little bit, yes. I think it is a little
4 misleading in one part. There is an implication here
5 that if a system or a pool determines that it needs a
6 certain percentage of peak load as a minimum of reserve
7 capacity, that this determination would not have
8 taken account of probabilities, would be based on a non-
9 probabalistic method.

10 I don't think that is true at all. Most large
11 systems and most pools these days determine their total
12 reserve requirements for the combined system by probabalistic
13 methods.

14 I would rather say probability methods here
15 rather than use a word I find it difficult to pronounce.

16 Then they quite often express it as a percentage
17 in order to use that percentage for purposes of assigning
18 reserve responsibilities to the members of a pool.

19 It would tend to throw a person off the track
20 here. As long as that point is kept in mind, that you can
21 use the probability method for the combined system, and
22 then express the answer as a percentage of peak, then I
23 don't think I have any other problems with the statement,
24 at least in first reading.

25 Q You are not suggesting when it is expressed as a

1 percentage of peak that it is an equal percentage?

2 A It is a single percentage of a single figure
3 which is the combined system peak load so the equal has
4 no applicability.

5 Q What pools do you have in mind where that
6 method is followed?

7 A I think it is done in, I would say, the great
8 majority or at least a majority of cases.

9 The same report from which this is taken
10 indicates at other places that either in so many words or
11 more probably by implication, that most pools express their
12 reserve requirements as a percentage of the total,
13 largely in order to be able to use that as a single method
14 or allocating it.

15 But that doesn't imply or shouldn't be inferred
16 to mean that they got that number by drawing it out of a
17 hat. That number was arrived at by studies of the system
18 and its needs and the type of equipment it had, and
19 involved varying degrees and varying cases of probability
20 analysis and in every case that I'm aware of.

21 I don't know of any large pool which doesn't
22 spend some time and energy and effort in probability
23 analysis.

24 MR. REYNOLDS: Mr. Chairman, I would like to
25 mark for identification this page, II-2-46, from the 1970

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1 National Power Survey Part 2 as Applicant's Exhibit 103, and
2 move it into evidence.

3 MR. LESSY: Staff has no objection, but for its
4 own part, we would reserve the right to -- since this is the
5 first page of a chapter of that report, to move into
6 evidence at another time other portions of that chapter
7 which may be relevant to this subject.

8 CHAIRMAN RIGLER: I hear no objection to the
9 receipt into evidence. But the Board might have a
10 question.

11 Evidence of what? Are you putting it in for the
12 truth of the matter contained therein? Because the witness
13 said he didn't agree with all of it. What do you want the
14 Board to do with it, if you move it into evidence?

15 MR. REYNOLDS: What I'm doing is moving it in as
16 opposed to reading it into the record to give the Board
17 and anyone else who reads the record an understanding of
18 what the witness' testimony is with regard to the matter
19 that is discussed here, his understanding of it.

20 CHAIRMAN RIGLER: For that purpose, it can be
21 received into evidence.

22 Hearing no objection, Applicant's Exhibit No.
23 103 will be admitted at this time.

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1 (The document referred to
2 was marked Applicant's
3 Exhibit 103 for identification,
4 and was received in evidence.)

5 BY MR. REYNOLDS:

6 Q Mr. Kampmeier, I notice on page 45 in response
7 to question 88, you note that under the CBI-Cleveland
8 agreement, if the emergency becomes so severe that
9 the frequency drops 2-1/2 percent, the interconnection
10 would be opened.

11 Are you suggesting that there is something
12 wrong with that provision?

13 A I'm suggesting that that is not standard
14 industry practice. That one of the purposes of
15 interconnections and emergency arrangements is to use them to
16 the fullest possible extent under any and all emergency
17 conditions and the more serious the emergency, the more
18 important to try to use them.

19 And, therefore, to deliberately open an inter-
20 connection under an emergency condition and thereby
21 interrupt the ability to provide emergency assistance is
22 running counter to the basic purpose of the arrangement.

33
23 Let me show you what has been marked as NRC Exhibit
24 235. It is Document No. NRC 235. It is CBI-Cleveland
25 agreement for installation and operation of a 138 kV

1 synchronous interconnection.

2 I ask you if paragraph 1.3.2 is the paragraph
3 that you have reference to in response to question 88.
4 It is on page 5 of the agreement.

5 A Yes, that is what I have reference to.

6 Q The contract provision requires automatic
7 load shedding equipment set to trip 10 percent of the
8 system load at 59.3 hertz; is that not correct?

9 A You want to give it to me again? I will tell
10 you if that is correct. I guess that is what it says. Yes,
11 right.

12 Q Is that not the same as the ECAR standard for
13 emergency procedures during declining system frequency?

14 A I don't know, but I would not be a bit surprised
15 at that part of it, and perhaps the next part of it also is
16 consistent with the ECAR standards.

17 I question the final part about the opening of
18 the tie is in line with ECAR standards.

19 Q Will you read the final portion?

20 A And the CEI and MELP tie at 58.5 hertz.

21 Q Is it not true that the emergency procedures
22 for ECAR during declining system frequency are as false
23 at 58.5 hertz if frequency is declining, take any
24 action that is necessary to arrest frequency decline?
25 This may include additional load shedding, manual or

1 automatic, and coordinated network separations?

2 A It may require. It doesn't say it will require.

3 Q Is network separation the same as opening up a
4 tie?

5 A Usually, yes.

6 Q Let me ask you to assume, Mr. Kampfeier, two
7 systems, one we will call Company X, and the other we
8 will call Company Y.

9 Company X has 1000 megawatt peak load isolated
10 and Company Y has 1000 megawatts peak load isolated at
11 different times.

12 Then assume that these two companies inter-
13 connect, and the combined peak load is 1500 megawatts.
14 With Company X having 1000 megawatts and Company Y 500
15 megawatts at time of system peak.

16 Then assume that at the time Company Y has a
17 1000 megawatt peak, that the load of Company X is 400
18 megawatts.

19 Now under method B, which I believe Mr. Lessy
20 coined as a reference to your -- one of your reserve
21 methods set forth on page 42, the second one, assuming
22 20 percent reserve, Company X would have 200 megawatts
23 reserve obligation, and Company Y would have 100 megawatts,
24 is that correct, under that hypothetical?

25 A I would have to get the figures down. I'm

1 sorry, I didn't realize you were going to ask me that
2 kind of question. I didn't note the figures. I'm afraid
3 you will have to repeat them.

4 MR. REYNOLDS: Do you want to read it?

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

end 33

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1 THE WITNESS: I think that is correct.

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2 BY MR. REYNOLDS:

3 + And the system would have a combined reserve
4 requirement of 300 megawatts?

5 A Yes.

6 Q Now, let's assume that at the time Company "Y"
7 has its peak of 1,000 megawatts, that Company "X" increases
8 its off-peak load by 200 megawatts to 600 megawatts.

9 The combined peak load would then be 1600
10 megawatts; is that not correct?

11 A Yes.

12 Q And, again, under method B, at 20 percent
13 reserves, Company "X" would then have 120 megawatts
14 reserve requirement and Company "Y" would have a 200
15 megawatt reserve requirement?

16 A Yes.

17 Q For a total of 320 megawatts combined reserve
18 requirement?

19 A Yes.

20 Q So under that hypothetical, Company "X", by
21 increasing its off-peak load by 200 megawatts will have reduced
22 its reserve requirement by 40 percent or 80 megawatts,
23 and its total installed capacity requirement from 1200 to
24 1120 megawatts; is that not true?

25 MR. CHARNO: Could I have that question back?

I think you may have misspoken.

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1 (The reporter read the pending question.)

2 MR. CHARNO: You said off-peak load,
3 by increasing its off-peak load.

4 MR. REYNOLDS: That is right.

5 BY MR. REYNOLDS:

6 Q Is that right?

7 A I will accept your figures, yes.

8 Q And at the same time Company "Y" would have
9 doubled its reserve requirement with no change in its
10 peak; isn't that right?

11 A Yes.

12 Q Now, in that situation, would you still conclude
13 that method B is the most fair and logical alternative
14 for computing the reserves of the coordinated system?

15 A No, not necessarily. This is not the example
16 that I was discussing at all of small systems joining
17 a large system.

18 You are talking here about systems of equal
19 size which changes the ground rules quite a bit.

20 CHAIRMAN RIGLER: Wait a minute. Do you want
21 him to continue this answer?

22 MR. REYNOLDS: Yes, that is fine.

23 THE WITNESS: In the first place, it wouldn't
24 necessarily be a bad answer in view of the fact that in one
25 case the peak is determined in very large and overwhelming

bw3 1 degree by one system, and in the other case by the other.

2 But I don't think I would favor this method over
3 Method A.

4 I would probably favor method A in almost any
5 situation where you are combining systems of equal size.

6 Then what you are doing is starting, in effect,
7 in equal terms, and you don't have to take account of the
8 point that -- one of the points I was describing here of the
9 large system as compared to the small system, already
10 having achieved most of the benefits of diversity.

11 Here you are starting with equal opportunity,
12 with equal opportunity for participation, for gain,
13 and in that sort of a situation the question of which one,
14 perhaps, by chance might turn out to be the one whose
15 peak came at the time of the combined peak, would be a coin-
16 tossing sort of a chance-taking that probably there is
17 no particular point in introducing.

18 The situation I was talking about is when you
19 are addressing a small system or group of small systems
20 to a large system, the large system has already achieved
21 the benefits of coordination in large measure, reserve-
22 sharing and it is bound to, 99 percent of the time, at
23 least, to be the system which produces the time of the
24 system peak. And the small system has nothing it can do
25 about shifting the time of that peak.

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1 And what its load is at the time of that
2 peak, and what its capacity contribution is to carrying that
3 combined load, is the thing then that becomes important
4 and you have to focus on.

5 Q Mr. Kampmeier, assume that the equipment of the
6 Municipal Electric Light Plant of the City of Cleveland
7 is in such a condition that its total capacity of over 200
8 megawatts at the present time has a generating capability
9 of 25 megawatts or less.

10 That its peak load is about 100 megawatts, and
11 its minimum load exceeds 25 megawatts. If, in that situation
12 MELP interconnects with CEI, would you expect the combined
13 reserve requirement of the two systems to be higher, lower
14 or the same as the reserve requirement for CEI and MELP
15 prior to the interconnection, assuming that the reliability
16 of the combined system is at least equal to the reliability
17 of CEI system prior to the interconnection.

18 A If we leave out all of the words, except the key
19 words or the specific question, he is asking me to reply
20 to, I guess that is impossible.

21 I will have to ask you to read the whole thing.

22 (The reporter read the record as requested.)

23 THE WITNESS: Before I could answer that, I would
24 have to make some additional assumptions dealing with the
25 question of how MELP carries its load. If you accept the

1 hypothesis you have stated it is necessary for MELP to have
2 arranged for a supply of power in the amount of roughly
3 100 megawatts, possibly more, depending on the nature
4 of the supply, but at least 100 megawatts, in order that
5 it could carry the 100 megawatt load, when it
6 loses the only capacity that you say is usable, 25 megawatts.

7 If the arrangement for the other 100 were such
8 that it could lose more than 25 of that, in one chunk,
9 then it would have to arrange for some larger amount, but it
10 would have to arrange for at least 100.

BY MR. REYNOLDS:

11 Q Let's assume that it gets that amount from its
12 interconnected partner.

13 A Arranges to obtain to obtain 100 megawatts from
14 CEI.

15 Q All right.

16 A Then that 100 megawatts becomes part of CEI load.

17 So, now you have a CEI load of a certain
18 amount of its own load, plus 100 megawatts from MELP and
19 another MELP load of 25.

20 CEI needs a certain amount of reserve for its load
21 of -- its own load, plus the 100. MELP needs a reserve
22 of 25 megawatts for its 25. When you combine that 25
23 with the CEI load of its own load, plus 100, then I think
24 that the combined reserve requirement, probably could go down
25 to the extent of some part of that 25 megawatts.

Q How much did you figure CEI would have to

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1 increase its reserve requirement to pick up the 100 megawatt
2 load of MELP?

3 A Well, I didn't make an assumption, because I made the
4 assumption that that step had been taken, whatever it
5 involved, in order to be able to answer your question.

6 If you want to go back and --
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arl 1 Q That couldn't have been taken prior to the
2 interconnection?

3 A No, but that isn't what you asked me.

4 Q If a system adds load without increasing
5 capacity, doesn't it have to increase reserves?

6 A Yes.

7 Q That would be similar to the situation we just
8 described, wouldn't it?

9 A I answered that too hastily. The system adds load
10 without adding capacity --

11 Q Assuming it wants to maintain the same level of
12 reliability.

13 A It depends on the nature of the load. If it is
14 adding load which adds to its peak load -- if it is off
15 peak, it's another matter -- if it is on peak, then it
16 has to add firm capacity and not just reserve. It has
17 to increase its capacity to carry that increased load.

18 Whether or not it needs more reserves in addition
19 to that increased capacity, chances are it does, but that
20 would depend on the nature of that capacity that it was
21 increasing and what impact it had on the probability
22 analysis.

23 Q You indicated in your earlier testimony on
24 cross-examination that it was your understanding that CAPCO
25 freezes the percentage of ownership in the units.

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1 A I think I said the CAPCO method tends to freeze
2 it. I would have to check, but I think that is what I said.
3 I believe that the contracts actually do repeat the
4 same percentage figures unit after unit, for a series of
5 CAPCO units which I suppose could be interpreted as freezing
6 it.

7 I tended to talk about tendency toward freezing.
8 I'm sure I said that in the early reference to it.
9 Whether I repeated that every time, I'm not sure.

10 Q I will ask you to look at page 5867 of the
11 transcript and read for me the answer you gave at the top of
12 the page there.

13 A Well, that is not my understanding of how
14 CAPCO operates. That is why I criticize CAPCO. CAPCO
15 freezes percentages.

16 I would like to check whether that is the first
17 place at which I made reference to that term. If so, I
18 would have to correct what I just said.

19 My recollection is that I used the
20 qualifier at some stage of the game.

21 Q Maybe I can speed this up a bit.

22 Assuming you did use a qualifier of tends to
23 freeze at some earlier point and you said freezes there in a
24 looser manner than you intended to, what is the basis
25 for your conclusion that it tends to freeze or it freezes

1 percentages of ownership, CAPCO does?

2 A The CAPCO formula for allocated
3 computed total reserve requirement among the systems is
4 geared to what their hypothetical requirements would be
5 if they operated in isolation. That is the part I took
6 exception to as being undesirable.

7 By doing that, the effect is that if in
8 any given unit that is being added, any system takes a
9 rather larger share of that unit than it has been taking of
10 other units; this then enters into this hypothetical
11 calculation of what its capacity situation would be
12 in isolated operation and because of that disproportionately
13 large piece of capacity, the computer comes out with the
14 answer that under isolated operation this system needs
15 more reserve from time to time than other would, or than
16 this one would if a piece of that unit were smaller and
17 as a consequence, the method is used, shifts to that
18 CAPCO company and additional piece of the total requirement
19 and relieves the other companies of pieces that add up to
20 that corresponding shifted amount.

21 In order that that won't happen to any company
22 because no company wants to have its assigned reserve
23 increased any more than necessary, it is obliged to say
24 well, never mind this idea I had of wanting a bigger
25 piece of that unit.

1 If that is what it is going to do to the
2 reserves you are going to assign me, let's go back to
3 the same percentage we used the last time and the time
4 before and the time before, and this becomes in effect a
5 somewhat frozen set of percentages.

6 Now -- I guess I better stop there. I'm not
7 sure how much further I should pursue it.

8 Q Is it not a fact that the ownership shares
9 of the CAPCO companies in the various CAPCO units are not
10 identical for all units?

11 A The first Davis-Besse unit, for instance, is
12 different. But my recollection is that for those after
13 that, the figures or the series of units and up to and
14 including the last unit that has been projected remain uni-
15 form. I would be glad to stand corrected on that if you show
16 me an indication to the contrary.

17 Q Is that the basis for your conclusion that
18 the percentages are frozen, or tend to be frozen?

19 A That is the evidence that they tend to be. The
20 basis for the conclusion is that that is the way the unique
21 CAPCO reserve sharing method works out, that is the
22 pressure that it puts on the members.

23 Q Is it not a fact that the ownership shares of
24 each of the CAPCO members at the present time have no
25 impact on that member's capacity responsibility?

1 A Would you repeat that, please?

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

4 THE WITNESS: At the present time, you mean before
5 these joint units are added to the system, I take it?

6 BY MR. REYNOLDS:

7 Q No, I mean including the joint units.

8 A In other words, not at the present time, but
9 looking ahead.

10 Q At the present time and looking ahead.

11 A Do I understand your question to be this:

12 Do I not know that the amounts of capacity,
13 reserve capacity assigned to the different systems
14 looking ahead to a point in time after, say, the
15 Perry Units come in, is the same under the CAPCO method
16 as it would be if Perry 1, say, were owned entirely by
17 one company?

18 If so, then my answer is no, that is not my
19 understanding of how it works.

20 Q Let me ask you this in the context of complete
21 coordination with planning on a one-system basis, would
22 you not agree that the participants would need to agree
23 on a reliability standard for the pool and also would
24 have to accept an individual reserve responsibility in
25 order to maintain that level of pool reliability?

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1 A That's correct. The point of difference
2 comes in how they do the second part in that.

3 Q All right.

4 And I believe you indicated yesterday, another
5 topic of conversation, that it was your view that a five-year
6 commitment by wholesale customers to take power would be
7 an appropriate term in order to make possible high debt
8 ratio financing.

9 Am I paraphrasing you?

10 A No, I don't think I said that.

11 Q Will you correct me then?

12 A I think that if you are going to have high
13 debt ratio financing of a generating transmission system,
14 with that high debt ratio of financing made possible by
15 take or pay for contracts that would assure the
16 pay-out of investment then those contracts would have to be
17 for a period as long as the period covered by the bond
18 issue.

19 If you sold 30-year bonds that would be a 30-
20 year contract. Five-year references is in a totally
21 different context referring actually to industrial
22 contracts of a size that would be pretty modest compared
23 to a sort of general operating plant of this size.

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

25 CHAIRMAN RIGLER: All right. We will take a

1 break.

2 (Recess.)

3 REDIRECT EXAMINATION

4 BY MR. CHARNO:

5 Q Mr. Kampmeier, you previously testified
6 that TVA distribution utilities or rate committee who
7 represent TVA distribution utilities and TVA agreed that
8 TVA was to serve what ultimately became approximately
9 what was 50 industrial customers.

10 Are you aware of any benefits that might flow to
11 those distribution utilities by virtue of making that
12 agreement?

13 A Yes. The arrangement between TVA and the
14 whole 150-distribution systems is designed to effectuate
15 the Congressional policy that the power projects that TVA
16 builds are to be available for all the people in the
17 region, particularly the domestic rural consumers, and
18 and the sale of power to industries should be a secondary
19 purpose and so on, so by TVA serving those particular
20 loads and having some margin above costs in serving
21 them, this helps to effectuate a policy of keeping the
22 wholesale rate to all 150 systems at as low a level as
23 possible.

24 MR. REYNOLDS: I didn't hear the last part of
25 your answer.

1 THE WITNESS: Keep the wholesale rate to all
2 150 distribution systems as low as possible.

3 BY MR. CHARNO:

4 Q You also testified, sir, as to the establish-
5 ment of a series of retail rate schedules by TVA and
6 the municipal utility rate committee.

7 Can you tell us what motivated the establish-
8 ment of such a series of rate schedules?

9 A The same Congressional directive of making
10 power available at the lowest feasible rates. Each
11 distribution system agrees to operate on a nonprofit
12 basis with the amount of money that is made available
13 to the general fund limited to reasonable percentage of
14 revenue.

15 Therefore, in order to be able to have the
16 lowest feasible rate in each area, it took a series of
17 different rate levels to make that possible.

18 Q Was there any specific reason that TVA sought
19 this lowest possible rate?

20 A Well, the Congressional directive to do just
21 that is required by the TVA Act, plus the fact that that
22 is consistent with TVA's whole reason for being.
23 Its reason for being is the economic development of the region
24 with one of the major tools being the availability of low-
25 cost power.

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1 Q Sir, yesterday you testified concerning the
2 Central Power Electric Cooperative, and the Central Power
3 Association. And then Counsel for the Applicants asked
4 you a number of questions that used these terms interchangeably.
5 Can you tell us whether there is any relationship between
6 the Central Power Electric Cooperative and the Central
7 Power Association?

8 A No, none whatever. Central Power Electric
9 Cooperative is in South Dakota and Central Power Electric
10 Association is in South Carolina.

11 Q In your testimony, would you have referred to
12 Central Power Electric Cooperative in the context of the
13 South Carolina Public Service Authority or the Southeastern
14 Public Service Administration?

15 A No, I think I would not have. I intended not
16 to, and I think I kept my references straight.

17 Q Yesterday, or previously, you testified that
18 you thought the physical consolidation of service areas
19 that occurred subsequent to World War I was, in your opinion,
20 desirable.

21 Would you also view as equally desirable, the
22 consolidation of ownership that took place subsequent
23 to World War I?

24 A Not as equally desirable. There were many desirable
25 aspects to the consolidation of ownership. Much gain by

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1 many consolidations of ownership. They went too far up to
2 the point of enactment of the Holding Company Act.

3 Q Sir, yesterday, you were questioned on your
4 direct testimony that the generating capacity owned by
5 industrial concerns today comprised about 100 percent of
6 the country's total generating capacity; is that correct?

7 A Yes.

8 Q Were you able to subsequently recall the
9 source of that information?

10 A Yes. When I was testifying, I said first I
11 thought it was the National Power Survey. Then I said
12 on second thought maybe it was the Electrical World, and
13 it was the Electrical World, in their 100 Anniversary
14 Issue.

15 MR. CHARNO: I would like to have marked for
16 identification as DJ-453, a two-page document titled on the
17 first page, "The Utility Industry," and indicates in
18 the lower right-hand corner "Electrical World, June 1,
19 1974.

20 (The document referred to was
21 marked DJ Exhibit 453 for
22 identification.)

23 THE WITNESS: The reference to the statement is
24 on the second page at the end of the second full paragraph.

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1 BY MR. CHARNO:

2 Q This is the source material to which you
3 referred, sir?

4 A Right.

5 MR. CHARNO: We would move DJ-453 into evidence.

6 MR. REYNOLDS: Wait just a minute.

7 No objection.

8 CHAIRMAN RIGLER: Department of Justice 453 will
9 be received into evidence at this time.

10 (The document heretofore
11 marked Exhibit DJ-453 for
12 identification, was received
13 in evidence.)

14 BY MR. CHARNO:

15 Q Mr. Kampmeier, you testified at some length
16 concerning a hypothetical posed to you by the Counsel
17 for the Applicants.

18 The testimony appeared between pages 5886 and
19 5907 and then 5912 and 5929, and in that hypothetical you
20 compared a small coal-burning plant with a large nuclear
21 unit.

22 I would like to ask you, whether when you
23 described the coal-burning plant as opposed to the nuclear
24 unit, or when you were working with that, did you make any
25 assumption concerning the geographical location of that

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1 small coal-burning plant?

2 A No, I think no such assumptions was specified,
3 and I didn't make one.

4 Q With respect again to the small coal-burning plant,
5 when you gave the cost of fuel, did you assume that that fuel
6 would be locally available or transported from a distance?

7 A Well, available in the general vicinity.

8 There, I think by this time, I think there was
9 some reference to coal cost in the State of Ohio.

10 And I think that my estimate of about one
11 cent for the cost of coal made the assumption that we
12 were talking about a plant in THE CAPCO area burning Ohio
13 coal.

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1 Q If that coal were transported from the western
2 portion of the United States, would the coal costs be
3 higher than the one cent that you assumed in your hypothetical
4 answer?

5 A Yes, it would; probably considerably higher.

6 Q Did you make --

7 MR. REYNOLDS: I'm sorry, Steve. I'm missing
8 the last parts of your answers. What did you add?

9 THE WITNESS: I said yes, it would be higher;
10 probably considerably higher.

11 BY MR. CHARNO:

12 Q In establishing the capital costs of that small
13 fossil plant, did you make any assumption with regard
14 to environmental standards?

15 A Well, the first question asked by the
16 hypothetical of the small coal-burning plant was the question
17 of capital costs.

18 I think I indicated that I was gearing my
19 figures to the sort of plant that has been built in the
20 last couple of years, plus some more or less average allowance
21 for escalation.

22 That would mean that insofar as I made allowance
23 for the effect of the environmental requirements, I was
24 gearing that assumption to average circumstances surrounding
25 average small coal-burning plants put in service during the

1 last couple of years.

2 Q If that hypothetical, small coal-fired plant
3 were built in Northeastern Ohio at some point in the
4 future, would the environmental standards and resulting
5 capacity costs be higher than those that you assumed
6 in your answer to the hypothetical?

7 MR. REYNOLDS: Could I have that question
8 back, please?

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

11 THE WITNESS: Almost certainly yes.

12 BY MR. CHARNO:

13 Q Sir, I would like you to read a statement and
14 ask you if you can agree with it in the context of
15 your last answer.

16 "In view of current requirements for effluent
17 controls at fossil fuel plants, the high capital costs
18 for nuclear power plants is not significantly greater
19 than coal-fired plants. Nuclear fuel presently provides
20 the least costly energy source for large base-load generating
21 plants."

22 A Yes, I would agree with that. I assume in saying
23 so, that the first sentence implies nuclear and coal-
24 burning plants of approximately the same -- approximately
25 equal size. If sizes were different, then I would want to

1 qualify my answer.

2 I mention that because the hypothetical was
3 given to me and the sizes were different. If the coal-
4 burning plant is smaller, it then runs the cost up more
5 than if that were the same size.

6 Q Let me read the second sentence.

7 "Nuclear fuel presently provides the least
8 costly energy source for large base-load generating
9 plants."

10 A Yes, assuming that that carries implication
11 that the entire quotation were for large plants, that takes
12 care of it. I agree with the entire statement.

13 Q Would it surprise you that that statement
14 was made about plants to be constructed in Ohio in the
15 future?

16 A No, it would seem to be very appropriate
17 for plants to be built in Ohio in the future.

18 MR. CHARNO: I would like to mark for identifica-
19 tion a three-page document from the 1964 National Power
20 Survey, Volume I, pages 272 and 273. This is the extract
21 upon which the witness was questioned yesterday by the
22 Applicants, and which they have made available to the
23 department.

24

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1 (DJ Exhibit No. 454
2 was marked for identifica-
3 tion.)

4 BY MR. CHARNO:

5 Q I would like to direct your attention to the
6 second full paragraph on page 273.

7 A Yes, I have a copy here.

8 Q And ask you whether you agree with the statement
9 contained in that paragraph?

10 A The one that begins "Continued reliance on
11 small isolated generating plants," and so on?

12 Q Yes, sir.

13 A Yes, I think that is a good statement.

14 MR. CHARNO: We would have DJ 454 into
15 evidence.

16 MR. REYNOLDS: No objection.

17 CHAIRMAN RIGLER: Department Exhibit 454
18 will be received into evidence.

19 (The document previously
20 marked DJ Exhibit 454 for
21 identification, was received
22 in evidence.)

23 BY MR. CHARNO:

24 Q Sir, over the last three days, you have been
25 questioned repeatedly concerning cost of service, and

1 your experience with cost of service.

2 Have you ever been employed by a regulatory
3 agency to advise that agency?

4 A Yes. Most recent such consulting assignment
5 has been with the Ontario Energy Board, which is
6 Ontario's agency in lieu of a utilities commission.

7 This will be the third consecutive year that
8 I have -- will have served as an advisor to that board.

9 Q Was it also brought out that you have served
10 as a consultant to the Public Service Commission of the
11 State of New York?

12 A That was already mentioned.

13 Q Have you ever served as a consultant to the Federal
14 Power Commission?

15 A Yes, I served as a consultant to the Federal
16 Power Commission over a period of a year or two, 10 or 12
17 years ago.

18 Q What was the nature of your work at that time,
19 and what were the results?

20 A At that time the Federal Power Commission was
21 being reorganized under a new chairman. And was -- I was
22 asked to assist in exploration of how the Commission
23 might more effectively implement national power policies
24 as expressed in the Federal Power Act and other
25 Congressional acts and executive orders, and I did so.

1 One result that came from those explorations
2 in which I assisted was a determination by the Federal
3 Power Commission to embark on the national power survey,
4 the published results of which have been referred to here
5 on several occasions, including the exhibit just filed.

6 Another result was the determination of a
7 commission to intensify its interest in wholesale rate
8 regulation and to expand its electric rate regulation
9 staff.

10 I'm choosing my words here, because they tie
11 directly into one of the statements that was read from
12 this exhibit yesterday. That objective unfortunately was
13 only partially realized.

14 Q Are you the author of any publications
15 in the field of electric rates?

16 A Yes. Among them is a manual on ratemaking
17 which I prepared for the American Public Power Association
18 and which is now in its third edition.

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1 Q Does that deal at all with methods of allocating
2 costs as a basis for establishing rates?

3 A Yes, it does.

4 Q In your experience with rate-making over the
5 years, have you found that there is a single accepted
6 method or a variety of methods for allocating costs?

7 A A wide variety of methods that get widely
8 ranging results.

9 Q Do other authors in the field of electric rates
10 agree with that statement?

11 A Yes, there have been many books written on
12 rate-making and cost allocations, and the prevailing view,
13 I guess, I could say, the view practically without
14 exception is consistent with what I just stated.

15 Among other examples, a fairly recent one is a
16 book, volume, published a couple years ago by NARUC,
17 National Associations of Regulatory Utility Commissioners,
18 which is devoted in its entirety to cost allocation methods
19 in use in the industry.

20 Q Are you aware of whether electric utility managers
21 also recognize that cost allocation and rate-making are
22 not exact sciences?

23 A Yes. There has been frequent evidence of that.
24 One that I recall specifically is a report in the
25 Electrical World a couple of years ago, on a conference

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1 of electric utility executives which dealt with a
2 number of subjects, including that subject.

3 Q Do you recall whether those electric power
4 executives were executives of publicly-owned, investor-
5 owned or other privately-owned utility systems?

6 A Investor-owned systems, I believe.

7 MR. CHARNO: I offer for identification a
8 three-page document which contains in the upper right-
9 hand corner the word "management," and which states in
10 the lower left-hand corner, "Electrical World, January 15,
11 1974."

12 (The document referred to was
13 marked DJ Exhibit 455 for
14 identification.)

15 THE WITNESS: This was a report I was recalling,
16 and I will refer you to not only the first couple of
17 paragraphs to indicate participants and so on, but the
18 section beginning on the second page, a third of the way
19 down the first column, under the heading "measure." It
20 starts "The fourth need is to develop a uniform method
21 for measuring cost of service." I believe that paragraph
22 and the next and the third are -- and the fourth are
23 all pertinent to this point.

24 In fact, all of them right down to the heading
25 "Conflict," and then even some of that. The third paragraph

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1 under that, it says, "So the fifth planning need is to
2 make use of the benefits" and so on.

3 I think that is also pertinent; the paragraph
4 that follows that is quite pertinent.

5 "Typical cost of service studied today," and
6 so on.

7 I think those are the key points.

8 Q Sir, are you aware of any regulatory commission,
9 either state or federal which has ever prescribed a single
10 method of cost allocation which can't be deviated from?

11 A I don't recall any such instance. The practice,
12 normally, is not only to allow some wide freedom of choice, as
13 to method used, but also for the subjective interpretation
14 of that method with the assumptions that have to be made
15 to implement it.

16 Q Sir, I notice that 455 makes reference to
17 situations where two individuals can be doing the same
18 cost of service study and come out with two different
19 results.

20 Are you aware of such an instance
21 every occurring?

22 A I would put it a little stronger. I have never
23 known two studies to be made that come out with the same
24 result.

25 MR. CHARNO: We would move DJ-455 into evidence.

1 MR. REYNOLDS: Will you wait just a minute?

2 Mr. Chairman, May I ask, maybe I missed it,
3 I don't understand what this is. Did the witness indicate
4 what this statement was that we are looking and, if not, can
5 we ask him, so I can get clarification.

6 I don't understand what the document is.

7 THE WITNESS: I did indicate what it was and,
8 rather than to hunt back the answer I would be glad to
9 repeat it.

10 I indicated in response to a question about whether
11 there is recognition among utility managers of the
12 fact that rate-making is not an exact science, that I have
13 seen that illustrated a number of times. One illustration
14 that I recalled was a report in Electrical World magazine,
15 a trade journal of the electric industry, of a utility
16 conference which discussed this point among others, and this
17 is that report.

18 That reference to that report.

19 MR. REYNOLDS: Did you say you had attended this
20 conference?

21 THE WITNESS: No, I did not.

22 MR. REYNOLDS: May I ask the Department what
23 the purpose is for moving it into evidence?

24 MR. CHARNO: The witness, as an expert, maintains
25 an awareness of what is going on in the electric utility
industry. His awareness of the fact, as I understand his

1 testimony, that utility managers, in this case
2 investor-owned utility managers are aware of the inexact,
3 not only aware, but set it out in some detail in the
4 course of a meeting, is based on the report of a conference
5 published in the investor-owned utility trad magazine
6 and we are submitting it for that conference, that it
7 took place and those were the conclusions reached.

8 We are not aware of any errata that were published
9 or requested.

10 MR. REYNOLDS: I see. I have no objection.

11 CHAIRMAN RIGLER: Department Exhibit 455
12 will be received into evidence.

13 (The document heretofore marked
14 Exhibit DJ-455 for identification,
15 was received in evidence.

16 BY MR. CHARNO:

17 Q Mr. Kampmeier, yesterday you testified that you
18 had been instructed by the Department of Justice to
19 target your inquiries at 1973. Were you given any reason
20 for that instruction?

21 A Yes. The point was that anything later than that
22 would raise problems of availability of data for the sorts
23 of analyses I was contemplating and in regards to which I
24 was asking about the availability of data.

1 Actually, it turned out that that created
2 even a little bit of a problem, because the Federal Power
3 Commission, which is one of the more official sources
4 of data is pretty slow about getting out some of its
5 reports.

6 Q Sir, do municipal wholesale customers
7 of TVA at this time pay more or less for comparable
8 quantities of power than their FPC-protected neighboring
9 wholesale customers?

10 A Less.

11 MR. REYNOLDS: Could I have the question back?

12 (The reporter read the record as requested.)

13 MR. REYNOLDS: I object to the
14 question on the ground that it seems to have no relevance
15 to the Ohio situation or the matters we are looking at
16 in this case relating to Ohio.

17 MR. CHARNO: We had two days of cross-
18 examination on that point.

19 I would be inclined to agree it has no relevance.
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1 CHAIRMAN RIGLER: But it is a subject which
2 was first brought up in cross-examination.

3 MR. CHARNO: It certainly was.

4 CHAIRMAN RIGLER: Overruled.

5 BY MR. CHARNO:

6 Q Sir, did you conduct calculated comparisons
7 of the wholesale and industrial retail rates of Ohio
8 Edison and Pennsylvania Power and Toledo Edison Company?

9 A Yes.

10 Q And those involved calculations on paper?

11 A Yes.

12 Q And were those calculations turned over to
13 the Applicants?

14 A Yes.

15 Q Are the industrial rates offered by utilities
16 influenced in any manner by the desire of utilities to
17 attract industrial customers?

18 MR. SMITH: Mr. Charno, if you are doing that
19 for my benefit, I appreciate it, but I'm happy with the
20 record the way it is now.

21 I don't see a need for it.

22 MR. CHARNO: I will withdraw the question.

23 BY MR. CHARNO:

24 Q Mr. Kampmeier, I ask you to assume as a
25 hypothetical that you were hired as a consultant for an

1 isolated generating municipal system. If you investigated
2 the availability of bulk power at wholesale from a
3 surrounding utility, would the existence of a potential
4 price squeeze, coupled with the inability of the system
5 to operate competitively in isolation, be sufficient to
6 cause you to recommend that that utility go out of the
7 distribution business entirely and to allow its customers
8 to become retail customers of the surrounding utility?

9 MR. REYNOLDS: You want to read that back?

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

12 MR. REYNOLDS: Could I have some clarifica-
13 tion as to what counsel means by the existence of a
14 potential price squeeze?

15 MR. CHARNO: I will withdraw the question and
16 start over.

17 BY MR. CHARNO:

18 Q Let us assume that you are hired by an
19 isolated generating municipal system, and you are hired
20 to explore bulk power supply alternatives.

21 If you determined, number one, that that system
22 could not be competitive with the surrounding bulk power
23 supplier by remaining isolated and depending upon its
24 own generation and you determined, number two, that if
25 that system were to become a wholesale purchaser from the

1 surrounding utility, that it would be subjected to what
2 you had previously described in your testimony as a
3 price squeeze; would this combination of factors cause
4 you to recommend to that system that rather than remaining
5 isolated or purchasing bulk power at wholesale, it should
6 sell its system to the surrounding utility and allow its
7 customers to be served at retail by the surrounding
8 utility?

9 MR. REYNOLDS: Could I get a clarification
10 by counsel, when he says "remain competitive," competitive
11 as to whom? And also when you say "potential price
12 squeeze," price squeeze as to which customers?

13 CHAIRMAN RIGLER: While Justice is reflecting
14 on that, let's not waste time. Isn't the answer going
15 to depend on the severity of the price squeeze, no matter
16 to whom it is applied, and also the compensation for the
17 system, so there is no answer?

18 THE WITNESS: I would say like a lot of
19 hypothetical questions I have been asked, I would need
20 to make some more assumptions.

21 BY MR. CHARNO:

22 Q Is it possible to be subject to a rate
23 squeeze and still sell power to an industrial customer at a
24 lower price than your supplier can sell power to that
25 industrial customer?

1 MR. REYNOLDS: I thought he said rate squeeze.
2 I don't know what he means by rate squeeze.

3 MR. CHARNO: I think the witness testified
4 as to what he meant by rate squeeze, and that is
5 what I'm referring to.

6 CHAIRMAN RIGLER: Rate squeeze or price squeeze?

7 MR. CHARNO: They're identical.

8 THE WITNESS: It may not be likely, but it is a
9 possibility. If you have got an efficient, exceptionally
10 well managed distribution system, and your distribution
11 costs are favorable, then it is possible, and I know of
12 more than one instance where it has happened, that the
13 distribution system pays an unduly high rate which
14 represents a price squeeze, and still undersells the system
15 from whom it is buying power.

16 BY MR. CHARNO:

17 Q Is that in the CAPCO area?

18 A Well, let's see if I -- I was thinking of other
19 situations. Let me think about the CAPCO area a minute.

20 Yes, I think companies can be found in
21 the CAPCO area, probably, too. I would have to examine
22 the operating records over a longer period of time than
23 I have to satisfy myself that this is a sustainable
24 situation.

25 MR. REYNOLDS: I move to strike the answer

1 to the extent it made reference to the possibility
2 it could exist in the CAPCO area based on the following
3 portion of his response.

4 MR. CHARNO: Maybe I can ask a few clarifying
5 questions and refresh the witness' recollection.

6 MR. REYNOLDS: I have no problem with that, but
7 I still move to strike that answer to the extent it relates
8 to the CAPCO area.

9 CHAIRMAN RIGLER: I will strike it and you can
10 rephrase it.

11 BY MR. CHARNO:

12 Q Sir, do you recall being given a copy of the
13 testimony of the manager of utilities of Ellwood City,
14 Pennsylvania?

15 A Yes.

16 Q In that testimony do you recall any statement
17 of the relationship between the rates paid by Ellwood
18 City and the rates that utilities -- industrials that
19 purchase their power from Ellwood City's supplier paid?

20 A Yes, I remember the circumstances quite well
21 and the situation is one which fits the sort of case you were
22 asking about.

23 MR. STEVEN BERGER: Could I ask whether or not
24 Mr. Charno is referring to the testimony of Mr. Urjan,
25 and if he is, I would like a page reference.

1 MR. CHARNO: We will supply that, and I'm
2 referring to Mr. Urian's testimony.

3 MR. STEVEN BERGER: Are you stating now as the
4 basis for asking this question that Mr. Urian testified
5 to a price squeeze?

6 MR. CHARNO: I'm stating that he testified to a
7 relationship between rates which, if I can remember the
8 witness' definition, I think would be a price squeeze.

9 MR. STEVEN BERGER: I recall Mr. Urian
10 testifying as to a relationship between rates. I don't
11 recall Mr. Urian testifying to a price squeeze.

12 MR. CHARNO: If you are asking me did he use
13 that term, no, I don't believe he used that term.

14 MR. REYNOLDS: Go ahead.

15 MR. CHARNO: Then I have no problem with that.

16 BY MR. CHARNO:

17 Q Did you testify that the system peaks of the
18 individual CAPCO member companies are closely parallel
19 or comparable to the peaks of industrial companies within
20 those systems -- industrial customers within those
21 systems?

22 A In terms of time of day?

23 Q Yes, sir.

24 A Yes, I testified that by and large the peaks on
25 each of the CAPCO companies occurs during hours when

1 industrial loads are likely to be high.

2 Q Are municipal loads in the CAPCO area
3 less likely to coincide with the system peaks of
4 individual CAPCO companies than the industrial customers
5 those companies serve?

6 A Yes, they are.

7 Q Does this have any influence relative to the
8 cost of serving industrial customers as opposed to
9 municipal customers?

10 A Yes, it means that this is a factor which lowers
11 the cost of serving the municipal customers compared to the
12 cost of serving industrial customers.

13 Q What was the basis for your statement today
14 that the question of whether the issue of wheeling is in
15 the public interest was being litigated?

16 A I was recalling the Otter Tail case
17 which went through a series of steps. The last I recall was
18 that the case was settled on appeal except for one
19 point which was referred back and to the best of my
20 recollection, as far as I can recall, that point had not
21 been disposed of.

22 Q Sir, would you characterize the agreements
23 between CEI and Painesville and between CEI
24 and the City of Cleveland as "complete coordination"
25 agreements as you have used that term in your testimony

1 today?

2 A No, they would be far from that.

3 Q Do these two agreements contain unique and
4 complex items that were hammered out for the first
5 time in the CAPCO area in the context of those agreements?

6 A No, I think not.

7 Q Earlier today you testified with respect to a
8 description of CAPCO and you indicated that this was not
9 an adequate description of the reserve sharing principles
10 of the pool.

11 I would like to give you that description
12 again and ask you why not. It is the bracketed portion
13 on that page.

14 A Yes, this was the one that was read to me a
15 couple of times. The key reason I consider it inadequate
16 is that it does not call attention or note at all --

17 MR. REYNOLDS: I can't hear what you are saying.

18 THE WITNESS: I'm sorry. I backed up from
19 the mike. I'm sorry.

20 It does not call attention to or in fact
21 mention at all the one thing about that reserve sharing
22 arrangement which really makes it unique and that is that
23 the total requirements, reserve requirement for the pool,
24 are allocated on a basis which gives considerable weight to
25 what the participant's situation would be individually

1 if operated in isolation which I have mentioned, I think,
2 is beside the point, and which is not normally done,
3 and which unless mentioned, I think, leaves the reader less
4 than adequately informed as to the nature of these
5 reserve sharing arrangements.

6 BY MR. CHARNO:

7 Q Sir, at one point you testified that there
8 were additional differences between the rate schedules
9 which apply to industries and the rate schedules which
10 apply to municipal wholesale customers that you had
11 examined.

12 Could you tell us what those additional differences
13 were?

14 A Yes, I think, very quickly.

15 The -- I was referring particularly to the
16 rates of Ohio Edison and Pennsylvania Power, and they
17 provide in the -- well, first in the rates to municipalities,
18 that the demand charge is based upon the highest demand
19 during any 30-minute period of the month.

20 The industrial rate, however, provides that
21 the billing demand is based not on the demand during the
22 30 minutes of highest demand but the average of the highest
23 and the second highest 30-minute demands.

24 This gives a rather significant, in many cases
25 fairly substantial discount in effect to the industrial

1 customers.

2 Secondly, in the same section dealing with
3 billing demand, in the case of a demand which was
4 established after certain hours, 8:30 p.m. in the summertime
5 in the case of Pennsylvania Power, and 9:00 p.m. summer or
6 winter in the case of Ohio Edison, these are treated --
7 this provision in the industrial rate which is not in
8 the wholesale rate and this provides that such a demand,
9 after that hour or before a specified hour in the
10 morning in effect is treated as an off-peak demand and that
11 off-peak demand could be up to twice as high as the demand
12 during other hours without increasing the demand charge.

13 If, for example, a system like the
14 municipal system of Cleveland which had its peak 1973 at
15 10:00 o'clock in the evening could buy power under
16 that sort of schedule, it would obviously be a considerable
17 advantage to it.

18 So this sort of a sp concession in the
19 industrial rate that doesn't appear in the wholesale rate
20 is an important difference.

end

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21 Q Mr. Kampmeier, you testified on cross-
22 examination that you had made yourself familiar with the
23 Applicant's proposed license conditions and Exhibit 44.

24 A Yes.

25 Q Did you reach any opinion as to the desirability

1 of those conditions?

2 A I did.

3 Q Can you tell us what conclusions you reached?

4 A I consider them quite unacceptable to the
5 small system.

6 Q Can you tell us why?

7 A I will try to make this reasonably precise.

8 There are quite a number of points I would like
9 to make.

10 First, the provisions do not include any
11 wheeling except for the very limited purpose of delivering
12 to the small system the power that it purchases from the
13 nuclear unit or power for replacement thereof. It makes
14 no provision, in other words, for wheeling in any other
15 power or wheeling out any of that power which -- power from
16 the nuclear unit which might temporarily be a surplus
17 to the system.

18 Secondly, without such a provision, and no
19 provision for the small system to be able to share in other
20 CAPCO units other than the nuclear units, the small system
21 would be unable to put together as the large systems do,
22 an appropriate combination of base load nuclear power,
23 intermediate load power from large coal-burning plants,
24 and peaking power from other sources.

25 Another point is that there is a lot of long

1 language in here which I believe would need to be
2 tightened up very considerably before the small system
3 could be at all sure that it might not be interpreted in
4 ways that the small system might have assumed it was
5 not intended, because there is a lot of room for ambiguity,
6 plus room for doubt as to who does the interpreting, who
7 makes the determination when parties fail to agree, and so
8 on.

9 This leads me to the point in regard to the
10 matter of reserves. I can illustrate what I have been
11 saying by leading into the discussion on reserves by
12 quoting this sentence:

13 "The company and each participating entity
14 shall enter into an arrangement for reserves which shall
15 jointly establish the minimum reserve requirement to be
16 installed and/or provided under contractual arrangements
17 as necessary to maintain for each party," and let me under-
18 score "to maintain for each party a reserve margin insufficient
19 to provide adequate reliability of power supply."

20 Now I think it is totally unclear, subject to a
21 lot of room for argument as to what that means. To maintain
22 for each party a reserve margin insufficient to provide
23 for adequate power supply under what conditions? Under
24 isolated conditions?

25 If so, there is no reserve sharing. You are

1 back where you started; there is no indication it doesn't
2 mean that.

3 There is no indication what it means instead
4 of that. If it means that something other than
5 under isolated conditions, then you run into another
6 whole flock of questions about the reserve language. It
7 provides that if no agreement can be reached on the criteria
8 for determination of reserves and the participating
9 entities' minimal reserve requirements shall be determined
10 on the basis of two possibilities:

11 One, on the basis of the smallest reserve
12 requirement which company has agreed to under other
13 similar reserve arrangements, then in effect.

14 But in no event shall the participating
15 entities' minimum reserve be less than its largest
16 single block of nuclear capacity, and so on.

17 Now this last point, not less than its
18 largest single block of nuclear capacity, the undesirability
19 of that has been commented on by other witnesses. I don't
20 need to belabor the point further.

21 MR. REYNOLDS: I move to strike that portion
22 of his answer.

23 THE WITNESS: In that case, let me explain why
24 I think --

25 CHAIRMAN RIGLER: Wait a minute. What other

1 witnesses?

2 THE WITNESS: Mr. Hughes and Mr. Moser, among
3 others.

4 CHAIRMAN RIGLER: Are you adopting their
5 testimony?

6 THE WITNESS: On this particular point, yes.

7 CHAIRMAN RIGLER: Objection overruled.

8 THE WITNESS: As undesirable as that
9 language is, and if it were not so late, I would have
10 preferred to spell out my own language and objections
11 to it -- I'm trying to save time by adopting other
12 testimony -- bad as that last provision is, it is not as
13 bad as the one before which says in the event agreement
14 can't be reached, that the reserve requirement shall be
15 determined on the basis of the smallest reserve requirement
16 which company has agreed to under similar reserve
17 arrangements then in effect.

18 Now how is that to be read? There are two
19 ways I can think of to read it.

20 One would be to say that that means the CAPCO
21 reserve sharing arrangement. I have expressed my opinions
22 as to why that would be unfair to the small system.

23 The other possibility is particularly if the
24 small system were to say, "I can't accept that, that is
25 not fair, you couldn't have meant that," then another

1 possible interpretation of what this means is that you,
2 Pitcairn or Cleveland or Oberlin or whoever, will be
3 obliged to provide reserve requirements equal to Toledo
4 Edison's because that is the smallest reserve requirement
5 which has been agreed to under similar reserve arrangements
6 in effect.

7 Obviously this whole section on reserve
8 arrangement in my opinion is totally unacceptable to any
9 small system.

10 Now I could go on. But I think maybe that is
11 about enough. I would certainly want to add this: We
12 have been talking quite a little about complete coordination
13 arrangements.

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1 Mr. Reynolds has been cross-examining me
2 on a lot of questions on the assumption of complete
3 coordination arrangements. I think complete coordination
4 arrangements are what should be striven for, but these
5 license conditions wouldn't come anywhere near providing for
6 complete coordination arrangement.

7 MR. CHARNO: The Department has no further
8 redirect.

9 MR. REYNOLDS: I object to further questions by
10 the Staff.

11 CHAIRMAN RIGLER: Overruled.

12 RECROSS EXAMINATION

13 BY MR. LESSY:

14 Q Mr. Kampmaier, you have agreed that rates
15 are established on the basis of average embedded costs, and
16 that the costs of new generation and transmission would
17 exceed average embedded cost. With continued inflation, what
18 is the direct effect of new generation and transmission
19 construction on a utility's rates?

20 MR. REYNOLDS: I object to that
21 question as beyond the scope of redirect.

22 MR. LESSY: There is an exhibit that goes to the
23 cost of service and its relation to construction.
24 There are other questions.

25 MR. REYNOLDS: What exhibit?

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1 MR. LESSY: DJ-455. It directs the question
2 of cost of service in certain construction
3 projects and that relationship.

4 The fact that this question is related to
5 cross-examination by the Applicants does not also mean that
6 it is not related to the redirect by the Department.

7 MR. REYNOLDS: Exhibit 455 has no mention that
8 I can see to the situation regarding embedded average
9 costs and incremental costs, which is the area that I believe
10 Mr. Lessy's question addressed.

11 I would also remind the Board that this
12 exhibit was not introduced for the purpose of addressing
13 that area.

14 We made a request specifically as to the purpose
15 for this exhibit.

16 I don't see how the question relates at all to
17 the redirect by Mr. Charno.

18 MR. LESSY: The question was the effect of
19 costs on rates, and that is certainly within the scope
20 of the redirect.

21 This just goes to the point of --

22 CHAIRMAN RIGLER: To be fair, it relates more
23 directly to a point that was raised in cross-examination
24 by the Applicants and I'm going to permit the
25 question.

1 THE WITNESS: Would you restate it?

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2 MR. REYNOLDS: I would like to note an exception.

3 CHAIRMAN RIGLER: We have debated before
4 whether there can be cross on cross.

5 The Board thus far has allowed all parties
6 a turn to interrogate on new matters raised in cross
7 or matters which they did not have a chance to address in
8 their original cross which came up as the result of another
9 party's cross-examination.

10 MR. LESSY: I will start again.

11 BY MR. LESSY:

12 Q You have agreed that rates are established on
13 the basis of average embedded costs, and that the cost of
14 new generation and transmission would exceed average
15 embedded costs.

16 Now, with continued inflation, what is the
17 direct effect of newly-constructed generation and trans-
18 mission on the utility's rates?

19 A It leads to increases in the rates.

20 Q Could a full requirements wholesale customer
21 by acquiring an ownership interest in a nuclear plant be
22 able to protect itself against such rises in rates in
23 the future?

24 A Yes, it could, to that extent.

25 Q Could a full requirements wholesale customer

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1 also protect itself against such such rise in rates in
2 the future by having the option of seeking alternative
3 sources of bulk power supply through wheeling?

4 A It would certainly help to protect himself,
5 yes.

6 Q Did you say a full requirements whole sale
7 customer with no options of either wheeling or reasonable
8 ownership in large units have any rate protection against
9 either poor planning, excessively high construction costs or
10 excessively high construction costs by his wholesale
11 supplier?

12 A No, not really.

13 Q Finally, the last question, you testified
14 that rates take account of all customers in a particular
15 class.

16 Who determines the class of customers?

17 A The utility who is establishing the rates.

18 MR. LESSY: That concludes Staff's
19 examination.

20 MR. HJELMFELT: I have no questions.

21 MR. REYNOLDS: Can we take a ten minute
22 break?

23 CHAIRMAN RIGLER: Can you make it five?

24 (Recess.)
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1 BY MR. REYNOLDS:

2 Q Mr. Kampmeier, where did you say that the Central
3 Electric Power Cooperative, Inc., was located.

4 A North Dakota. Minot, North Dakota.

5 Q Did you know why it is that the annual
6 statistical report for the rural electric borrowers of 1974
7 indicates that that entity is located in South Carolina and
8 is system lease-operated by the South-Carolina Public
9 Service Authority?

10 A You are sure you are not looking at Central
11 Power Association?

12 Q Let me show what I'm referring to and see
13 whether maybe we are talking about two different things?

14 A Well, excuse me, in the first place the
15 name of the one in North Dakota is Central Power Electric
16 Cooperative.

17 I probably didn't listen that closely enough.
18 I have been using that name so often I assumed that is what
19 you were referring to. North Dakota Central Power Electric
20 Cooperative, you will find the one I'm talking about. It
21 seems like a backward way to sign the sequence of words in the
22 name, but that is what they chose to do.

23 Q That one indicates that the one we are talking
24 about is located in South Carolina; is that correct?

25 A This one is located in South Carolina, and it is

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1 referred to in its own contracts as Central Power
2 Association. But Central Electric Power Cooperative, I
3 will accept. It is not Central Power Electric Cooperative,
4 though, which is in North Dakota.

5 Q That indicates that the Cooperative there is lease-
6 operated by the South Carolina Power Authority; does it
7 not?

8 A No, that is not correct. The only thing
9 lease-operated by the SC Public Service Authority is the
10 generating plant of this Cooperative.

11 None of the rest of it -- I shouldn't say none.
12 Generating plant and certain lines. The marketing operation
13 and much of the, certain of the other facilities are not
14 lease-operated.

15 Q Will you read the footnote there for me?

16 A The footnote says system lease-operated by
17 SC Public Service Authority.

18 I'm telling you that is not correct.

19 Q I see.

20 Let me show you a copy of the transcript of
21 Mr. Urian's testimony which was referred to and ask
22 you if page 4973 is the portion you were referring to, when
23 you indicated that some testimony on Ellwood City related
24 to a relationship between industrial rates and wholesale
25 rates?

A Not just this one page. There is some reference

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1 as to the sort of revenue margins that Ellwood City
2 has, and so on.

3 Those were all part of what I was referring to.

4 MR. REYNOLDS: Mr. Charno, you want to indicate
5 to me what page you showed him?

6 MR. CHARNO: I didn't indicate any pages.

7 MR. REYNOLDS: You reviewed the whole transcript
8 and reviewed portions of it?

9 THE WITNESS: I don't think I read the whole
10 transcript. I read enough it to get a picture.

11 BY MR. REYNOLDS:

12 Q Is the picture you got from that testimony
13 a price squeeze situation in the City of Ellwood?

14 A In the terms which I was describing, namely,
15 of the City being obliged to pay Pennsylvania Power
16 more for power than if it were able to buy power at
17 Pennsylvania Power's industrial rate.

18 Q That came solely from Mr. Urion's testimony?

19 A No, I can't say whether it came solely
20 from that or not. We have had a lot of discussions with
21 Counsel and some of the other people, and I don't recall.

22 I have looked at a lot of statistics. Ellwood
23 City filed a form one or form twelve report or both, I have
24 forgotten which, with FPC, as I recall, which I looked
25 at, and I can't sort out any more which piece of the

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1 background I got from which source.

2 Q This is the same municipality you indicated
3 contributed more to its general fund than any other than
4 the CAPCO area; is that right?

5 A Yes.

6 Q Is it your testimony, Mr. Kampmeier, that it is
7 the utility that establishes the class of customers?

8 A That was my testimony. I don't know if that
9 needed minor qualifications, but by and large that is the
10 way it works, yes.

11 Q Doesn't the Federal Power Commission and the State
12 Commission of each state have the responsibility of
13 determining that the class is appropriate?

14 A They review and approve the rates, but it
15 is a rare occasion and I'm not sure I can remember anywhere
16 the Commission has said to a utility that you have to either
17 combine certain classes or break up certain classes.

18 This is -- no reason my elaborating, but I
19 would be glad to, if you want me to.

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1 Q Are you aware of any litigation where a customer
2 has challenged its particular classification by the
3 utility either before the FPC or a state regulatory
4 commission?

5 A Yes. I'm not familiar with any in the CAPCO
6 area, but I'm familiar with some in some other places.

7 Q All right.

8 If MELP or any other municipality in the CCCT
9 area were to buy a share of ownership in the Perry Unit,
10 how is MELP or how are those municipalities going to be
11 protected against the poor planning or the high construc-
12 tion costs of the utility responsible for the design,
13 construction, and operation of that unit?

14 A They are not going to be very well protected
15 unless they have some voice in the process of coordinated
16 planning and development and can assure themselves that
17 only proper steps are being taken to assure good, efficient,
18 engineering design and construction, and so on.

19 If they can't so satisfy themselves, then
20 they probably wouldn't want to be involved.

21 Q If a wholesale customer buys a piece of capacity
22 and then as its load grows, it continues to buy
23 participation in new capacity to meet that load growth
24 and assume that marginal costs continue to increase and
25 continue to remain above average costs, wouldn't the resulting

1 costs always be above the average system costs to the
2 wholesale customer had they remained as a wholesale
3 customer?

4 A I would have to make a number of assumptions
5 to answer that. I will stop there for the moment.

6 Q What other assumptions would you have to make?

7 A Well, I would have to make some assumptions
8 as to the conditions were going to determine the price
9 it would pay for wholesale power, for full requirements
10 customer, how well that reflected the regulatory process.

11 I would have to make some assumptions as to
12 whether the purchasing system, like the wholesaling
13 system, starts off with some capacity of its own or some
14 source of power of its own with low imbedded costs, to
15 which the first purchase of nuclear capacity is an
16 addition and so on.

17 Q Let's try it this way: Let's make two
18 assumptions:

19 The one assumption is that the wholesale
20 customer buys capacity to meet its load growth at
21 the incremental cost of new capacity. And assume that
22 on the other alternate, the wholesale customer buys
23 his wholesale power at the average imbedded costs and
24 then assume that marginal costs continue to increase and
25 remain above average costs.

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1 Now, on that basis, wouldn't it always be the
2 case that the wholesale purchase of power would result
3 in a lower cost than the cost of ownership?

4 MR. CHARMO: I object to that question
5 because, at least two more parameters being specified on
6 the ground it is unclear.

7 One, the available or lack of available, both
8 to the supplier and wholesale customers of alternative
9 power sources and two, whether the wholesale customer
10 and supplier have identical rates of growth and
11 therefore will have identical incremental acquisitions
12 of generation.

13 The question is meaningless without those two
14 parameters.

15 MR. REYNOLDS: I don't think you need either
16 one of those for the purposes of answering the question,
17 but if you feel otherwise, let's say the rates of
18 growth are identical and that there are no other
19 alternative sources of power.

20 THE WITNESS: I was going to ask about two more
21 assumptions. How do you start in the case of buying these
22 blocks of capacity? Are you starting with a system
23 that is generating its own power at this point, and
24 therefore has enough generating capacity to meet its load
25 until it takes care of an increment of that growth with

1 this first purchase of a block of nuclear.

2 MR. REYNOLDS: Start from the situation where
3 you are a wholesale customer and the purchases of the
4 blocks of power are additions to where you are at the
5 particular time you start to make the purchases.

6 THE WITNESS: In either case you are buying
7 all of your requirement to begin with. In the one case
8 you continue to buy your growing requirements.

9 In the other case, you get your growing
10 requirement out of unit purchases of capacity.

11 BY MR. REYNOLDS:

12 Q That's right.

13 A Now the second assumption, I take it you
14 said, I'm sure, but I want to be sure this is what you
15 meant, that the assumption is that the price for
16 wholesale power will be no more than enough to cover original
17 imbedded costs. There is no profit in the sale of
18 wholesale power.

19 Q That's right.

20 A In that case, the answer is -- I have forgotten
21 whether it is yes or no -- but the answer is that
22 the costs will be less if you buy additional wholesale
23 power than if you buy successive blocks of capacity.
24 With one further proviso: I keep thinking of things --
25 that is still not necessarily accurate. It still leaves

1 the question about differences in fixed charges.

2 The municipal system presumably is the
3 beneficiary of a long established policy that it can
4 finance with bonds that are -- in which the interest is
5 not subject to income taxes. This effect could be
6 sufficient to outweigh the other effects.

7 Unfortunately these kinds of questions take a
8 lot of elaboration and assumptions.

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

10 MR. CHARNO: No redirect.

11 CHAIRMAN RIGLER: All right. Thank you very
12 much, Mr. Kampmeier.

13 (Witness excused.)

14 CHAIRMAN RIGLER: Mr. Hjelmfelt, have you
15 reviewed the depositions with the Department of Justice,
16 and does the five-inch pile I have represent a consolidated
17 pile?

18 MR. HJELMFELT: With the exception of about
19 three depositions that the Department of Justice did not
20 want to introduce, and I may or may not seek to introduce.

21 CHAIRMAN RIGLER: If you do, you would not
22 introduce the entire deposition?

23 MR. HJELMFELT: That's correct.

24 CHAIRMAN RIGLER: But a select number of pages?

25 MR. HJELMFELT: That's correct.

1 CHAIRMAN RIGLER: You are talking about less
2 than half an inch, I suppose?

3 MR. HJELMFELT: Possibly, yes. I would
4 want to review it again.

5 CHAIRMAN RIGLER: All right, thank you.

6 We will begin at 9:30 tomorrow, and I think
7 maybe we will break about 1:00 o'clock for the day for
8 those of you who want to make transportation plans.

9 (Whereupon, at 6:10 p.m., the hearing
10 was adjourned, to reconvene at 9:30 a.m.,
11 Friday, March 5, 1976.)

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