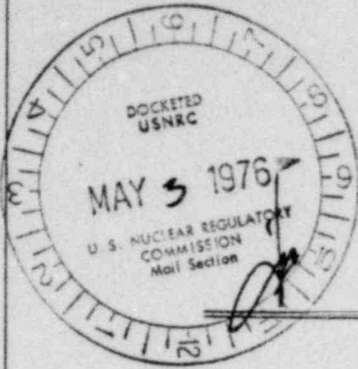


Regulatory Docket File



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

Docket Nos.

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

ED-346A

ED-500A

ED-501A

and

CLEVELAND ELECTRIC ILLUMINATING CO.,  
et al.

ED-440A

ED-441A

(Perry Nuclear Power Plant,  
Units 1 and 2)

Place Silver Spring, Maryland

Date Thursday, 29 April 1976

Pages 33-8527

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

-----X

First Floor Hearing Room  
7915 Eastern Avenue  
Silver Spring, Maryland

Thursday, 29 April 1976

Hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:40 a.m.,

BEFORE:

DOUGLAS RIGLER, Chairman;

JOHN FRYSIK, Member;

IVAN SMITH, Member.

APPEARANCES:

(As heretofore noted.)



C O N T E N T S1  
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<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
John W. Arthur	8345	8348	8400	
William F. Gilfillan, Jr.	8408	8443	8524	

<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Applicants' 113 (DL) (Ltr, Merriman to McCabe, 11/24/67.)	8410	8414
Applicants' 114 (DL) (McCabe ltr to Merriman, 1/23/68.)	8410	8414
Applicants' 115 (DL) (McCabe ltr to Duquesne Light Co., REFI: John Merriman, 2/29/68.)	8411	8414
NRC Staff 211 (Rate M)	8418	8420
NRC Staff 212 (Dempler memo, 11/24/70.)	8457	8458

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P R O C E E D I N G S

CUSTOMER SERVICE: Please come to order.

Mr. Reynolds?

MR. REYNOLDS: Mr. Bigler, at the outset, if I could, before we start the Duquesne Light case, I would like to just make a brief comment. It relates back to the closing colloquy that we had at our last session a week ago Wednesday with myself and you and Mr. Smith, at which point Mr. Smith posed a question to me as to what would be the status of the Applicants' Exhibit 44 -- that's their proposed terms of access to these nuclear facilities -- in the event that this Board should conclude that Applicants' general dismissal motion is well taken.

And you may recall that my response at that time was to the effect that, while Exhibit 44 reflected the policy commitments of each of the Applicants, the prospect of this Commission issuing anything under than an unconditioned license in the event that the Board should believe it appropriate on the present record to dismiss the charges is a disturbing thought.

While I think that my academic instinct still would lead me to conclude that such a result is at least theoretical, troublesome, I recognized last week, and I continue to recognize now, that Mr. Smith's question really does go to the heart of this proceeding and deserves more than peripheral

Dlt 2

1 consideration. And because of that during the ensuing few  
2 weeks -- few days -- of recess, I specifically went back to  
3 each of the Applicants and I posed Mr. Smith's question to  
4 each of them directly.

5 And, as a result, I am prepared and able to come in  
6 here and advise the Board this morning that, should the  
7 Board's view be that Applicants should prevail on their  
8 general dismissal motion, each of the Applicants is prepared  
9 to accept as an aspect of the dismissal order the attachment  
10 to the nuclear licenses of conditions in the form of  
11 Applicants' Exhibit 44, notwithstanding the fact that there  
12 would be no finding of any inconsistency with the antitrust  
13 laws.

14 The only qualification that I would add to that  
15 position concerns the reference in 44 to the advance notice  
16 of an intent to participate in the designated nuclear facili-  
17 ties. And, because Applicants' 44 was prepared in March of  
18 '75, there would need to be some updating with respect to  
19 the advance notice provision. And also there should have to  
20 be a specific time frame put in for the Davis-Besse 2 and 3  
21 nuclear facilities, but Applicants would certainly undertake  
22 to furnish that updating information to the Board very  
23 promptly.

24 While I'm on this general subject, I would also like  
25 to make one final observation, which is to your reference,

bit 3

1 Mr. Chairman, last Wednesday to the testimony of Mr. Lyren in  
2 this proceeding, and you suggested, I believe, that it might  
3 support the assertion that Ohio Edison employs restrictions  
4 on the resale of nuclear power by municipalities. That was  
5 transcript page 8324 when we had that brief discussion.

6 I've gone back to Mr. Lyren's testimony, and I  
7 assume what you had in mind was the testimony appearing at  
8 pages 2030 and 2031 of the transcript; and at this time I  
9 would simply like to direct the Board's attention to the  
10 cross-examination of Mr. Lyren which appears at transcript  
11 pages 2244 and 2245, where he indicated that his earlier  
12 testimony on resale restrictions was premised on his erroneous  
13 impression that a previously cancelled contractual provision  
14 was still in effect. And he reaffirmed this mistaken im-  
15 pression in a later colloquy with you, Mr. Chairman, at  
16 transcript page 2337.

17 In addition, in response to questions by Mr. Smith  
18 seeking further clarification in this area, I believe Mr.  
19 Lyren corrected any lingering misimpressions, stating that he  
20 had not intended to suggest that Ohio Edison imposed on the  
21 City of Wadsworth or any other municipalities in the Ohio  
22 Edison service area restrictions in the projection of their  
23 normal load growth patterns, including power to be provided  
24 for new customers or in providing for such needs. And that  
25 would be at the transcript pages 2351 and -52.

DLE 4

1 I might just note parenthetically that similar  
2 testimony by Mr. Lyren was also included at pages 2341 and  
3 2343 and -44 of the transcript.

4 I think that if Mr. Lyren's testimony is all that  
5 stands in the way of granting Applicants' general dismissal  
6 motion -- and we don't have any reason to believe otherwise --  
7 that it presents no obstacle whatsoever.

8 CHAIRMAN RICLER: I was not meaning to suggest that  
9 it was the only obstacle. That was a possible example that  
10 came readily to mind as we explored the legal criteria to  
11 be employed, and that was the only significance in our selec-  
12 tion of the Lyren testimony.

13 MR. REYNOLDS: Well, I guess at the time I was not  
14 entirely responsive to your selection, and I did want to  
15 indicate we had gone back through.

16 I think even apart from whatever credibility prob-  
17 lems there are with Mr. Lyren, and the Board itself noted  
18 that there may be some serious doubts in that regard, I would  
19 just refer you to transcript page 2392. And, even apart  
20 from that, Mr. Lyren made it plain on his cross-examination  
21 and his redirect examination that Ohio Edison was willing to  
22 provide the City of Madisworth and other municipalities in  
23 this area with sufficient nuclear power for resale to serve  
24 its existing customers and also to projected new customers  
25 without limitation.



p. 5

1                   And I think that it certainly is Applicants' view  
2 on the basis of the existing record that the dismissal motion  
3 is well taken and should be granted. And, in the event that  
4 this Board should agree with that, I do want the record to  
5 clearly reflect that Applicants are prepared to accept the  
6 set of conditions attached to their nuclear license that  
7 would be in the form of Applicants' Exhibit 44, notwithstanding  
8 the absence of any finding as to an inconsistency or an  
9 inconsistent antitrust situation.

10                   CHAIRMAN RIGLER: Mr. Olds?

11                   MR. OLDS: Good morning. May it please the Board,  
12 my name is David Olds. I'm a partner in the firm of Feed,  
13 Smith, Shaw and McCloy. We're General Counsel for Duquesne  
14 Light Company and have been for many years.

15                   I know that Mr. Lerach of our firm some time ago  
16 gave an opening statement to you. It was comprehensive in  
17 breadth. I wish to make only two points as we begin the  
18 presentation of our direct testimony.

19                   The first is --

20                   MR. LUSBY: I would object to any reopening state-  
21 ment given at this time by individual counsel on the grounds  
22 that the time for that has passed, that it's now time to go  
23 on to direct cases.

24                   CHAIRMAN RIGLER: That may be a premature objection.  
25 Let's see what Mr. Olds has to say.

lit 6

1           MR. OLDS: I wish only to make the point that we  
2 do have a motion pending to dismiss certain allegations, and  
3 it is my understanding of the rules of law generally that  
4 if you make such a motion and then go ahead and offer testi-  
5 mony you may be presumed to have waived your motion. I  
6 want to make clear that we do not waive our position under  
7 the motion by offering the testimony.

8           Secondly, I want to explain that we are going to  
9 try to make our testimony very specific to those matters which  
10 we believe deserve our response, so to speak, on the basis  
11 of what has gone on so far.

12           We would like to call as our first witness Mr.  
13 John M. Arthur, who is Chairman of the Board of Duquesne  
14 Light Company.

15           MR. MELVIN BERGER: Mr. Chairman, the Department  
16 would like to make a motion under Rule 615 of the Federal  
17 Rules of Evidence that all prospective witnesses of the  
18 Applicant should be sequestered during the testimony of  
19 witnesses who appear prior to the appearance of any other  
20 witness.

21           We believe that this motion -- that this rule spe-  
22 cifically relates to that, and we would request that this  
23 be made general to all Applicants' fact witnesses who have  
24 not appeared.

25           MR. SMITH: Is that regardless of their rank?

Dlt 7

1 MR. MELVIN BERGER: Yes.

2 MR. OLDS: Excuse me, Mr. Smith. I could not hear  
3 your comment. I beg your pardon.

4 MR. SMITH: I asked him if his request was regard-  
5 less of the rank of the Applicants' employee or witness.

6 MR. OLDS: May I inquire if the Government wishes  
7 to state a reason for the motion?

8 MR. MELVIN BERGER: The reason would be that we  
9 would want to avoid any unintentional or intentional influenc-  
10 ing of the testimony of witnesses who would appear later on.

11 MR. OLDS: Mr. Rigler, I hope that the Board will  
12 be somewhat tolerant of the fact that I have not been present  
13 through much of these hearings and I may not understand some  
14 of the conventions that have understandably grown up in the  
15 handling of these problems.

16 I guess that our position is that we understand  
17 these hearings to be in the general public unless there is good  
18 cause for there to be otherwise, and it was on that basis that  
19 I made the modest request that the Government speak to the  
20 reason for making this motion.

21 I agree that the rule does so provide, Rule 615.  
22 It has always been my understanding that it was usual for  
23 the court to require counsel making the motion to state more  
24 than a formalistic reason. It is obvious that at any time  
25 one witness hears another there may be an unintentional

bit 0

1 influencing, but I wonder what specifically it is that  
2 concerns the Government, that is so crucial that they believe  
3 there would be some influencing of importance.

4 I was not aware that there was this kind of an  
5 issue.

6 We, of course, are offering here only this morning  
7 officers of the company, and I think it unreasonable to be-  
8 lieve they would not be generally aware of what each other  
9 has to say about the matter.

10 CHAIRMAN WIGLER: Well, not trying to guess in  
11 advance what their testimony might be, it may be that one  
12 would stimulate the memory of another on a point to be tested,  
13 let's say, with subsequent witnesses.

14 The Board's inclination is going to be to grant the  
15 motion. It is something that we have discussed, I believe,  
16 back in the discovery phase of the case. And the exception  
17 to the rule, of course, comes under the parenthetical comment  
18 2. We have allowed other Applicants to designate a particular  
19 corporate official to be the ongoing representative of the  
20 corporation. I believe, for example, that the Cleveland  
21 Electric Illuminating Company has designated one of its  
22 corporate attorneys to sit in; and, if Duquesne wished to  
23 choose a particular official to be its corporate presence or  
24 to represent a corporate presence at these hearings, we  
25 probably would allow them to do that, provided he did not then

bit 2

1 discuss one witness' testimony with a forthcoming witness.  
2 other than that, our inclination is going to be to grant the  
3 motion.

4 MR. OLDS: Mr. Rigler, may I have the privilege of  
5 one minute's conference with the officers of my client to  
6 discuss the matter?

7 MR. RIGLER: All right.

8 (Discussion off the record.)

9 MR. OLDS: Mr. Chairman, we will designate Thomas  
10 J. Wunsch, Jr., Esquire, who is the General Attorney and  
11 principal house counsel of Duquesne Light to be its corporate  
12 representative for these hearings, and I will ask Mr.  
13 Gilfillan, who is our only other witness, to withdraw from  
14 the room at the present time.

15 I seriously hope that this motion by the Government  
16 does not suggest some feeling that there is some special  
17 situation here and indicating that Duquesne Light is less  
18 worthy of credence than any other company in its testimony,  
19 since the few brief times I have been here I've noticed that  
20 there have been many witnesses sitting through the testimony  
21 of other witnesses. I have not been aware that this is a  
22 normal practice.

23 MR. STEVEN BEEGER: It does not mean to suggest  
24 that we feel Duquesne Light is untrustworthy.

25 MR. REYNOLDS: On behalf of all the other



bit 10

1 Applicants, I would like to note for the record an objection  
2 to any sequestration rule. I would also echo that the  
3 Government and the Staff and I believe the City have had  
4 witnesses sitting in the room while other witnesses have  
5 testified; and it seems to me that we have a public hearing,  
6 and to make the kind of assertion that we need to exclude  
7 witnesses without at the moment having any reference to any  
8 testimony or any line of testimony is, I think, unwarranted  
9 and it is highly objectionable.

10 And, to the extent that it may be setting a preced-  
11 ent for all of the Applicants, I would object and strenuously  
12 object. It's out of order and an inappropriate way to handle  
13 a hearing, especially a public hearing.

14 CHAIRMAN RIGLER: I think the intent is prophylactic  
15 and certainly not directed to Duquesne. The Board knows of  
16 no reason, and Justice has reiterated there is no reason,  
17 for singling them out.

18 Mr. Arthur.

19 Whereupon,

20 JOHN M. ARTHUR

21 was called as a witness on behalf of the Applicant, Duquesne  
22 Light Company, and, having been first duly sworn, was  
23 examined and testified as follows:

Bit 11  
XXXXXX

## DIRECT EXAMINATION

BY MR. OLDS:

Q Mr. Arthur, would you state for the record your full name, your residence, and your position with Duquesne Light Company?

A My name is John M. Arthur. I reside at 1401 Coraopolis Heights Road, Coraopolis, Pa. I'm Chairman of the Board and Chief Executive Officer of Duquesne Light Company, located at 435 Sixth Avenue, Pittsburgh, Pa.

Q And how long have you held that position?

A I've held the position of Chairman of the Board and Chief Executive Officer since July of 1968.

Q Very briefly, what is your professional background and training?

A I was granted a degree in Electrical Engineering from the University of Pittsburgh in 1944 and a master's degree in Electrical Engineering from the University of Pittsburgh in 1947. My background is in general an engineer.

Q Has your entire business career been with the Duquesne Light Company?

A Yes.

Q Mr. Arthur, there is in this record at the present time a document which is Department of Justice Exhibit 105.

For the convenience of all the parties and the Board, I will indicate that it is a letter dated December 10,

Wlt 12

1 1973, addressed to the Honorable Ralph Park, Mayor of the  
2 City of Cleveland.

3 I ask you, Mr. Arthur, whether you wrote that  
4 letter?

5 A. Yes, I wrote the letter.

6 MR. SELVIN BERGER: Can we go off the record a  
7 second?

8 (Discussion off the record.)

9 MR. OLDS: May I state, Mr. Chairman, on the  
10 record that counsel for the Staff and for the Government  
11 advised that this same letter also is in the record at  
12 Exhibit No. DJ-187.

13 BY MR. OLDS:

14 Q. Mr. Arthur, what was the occasion for your writing  
15 that letter?

16 A. The letter was written in response to a written  
17 request by the City of Cleveland. The City had requested  
18 admission to the CAPCO pool, and this was the response of  
19 Duquesne Light Company.

20 Q. Did you write that letter in accordance with any  
21 agreement or understanding with any other member of the CAPCO  
22 group?

23 A. No.

24 Q. Did you ever receive any answer to that letter,  
25 orally or in writing, from the City of Cleveland?

b1t 13

1 A. No.

2 Q. Did you ever have any further communication from  
3 the City of Cleveland on the subject of that letter?

4 A. No.

5 Q. Did you intend this letter to be a final, definitive  
6 refusal of Cleveland's request for membership in the CAPCO  
7 pool?

8 MR. LESSY: Objection. It calls for a conclusion  
9 on the part of the witness. The letter speaks for itself.

10 MR. OLDS: I fail to see how that objection, Mr.  
11 Chairman, goes to my question, which asks the witness' intent.

12 CHAIRMAN RIGLER: Overruled.

13 BY MR. OLDS:

14 Q. You may answer, Mr. Arthur.

15 A. My answer is no.

End 1

1 BY MR. OLDS:

2 Q What was your intent in writing the letter?

3 A My intent in writing the letter was to inform  
4 the City of Cleveland that from the standpoint of  
5 Duquesne Light, there appeared to be no advantages and  
6 in fact, certain disadvantages, to the City of Cleveland  
7 becoming a member of the CAPCO pool.

8 MR. OLDS: Cross examine.

9 MR. LESSY: Inasmuch as the testimony goes to  
10 the City of Cleveland, Staff will yield to Mr. Hjelmfelt  
11 at this time.

XXXX

12 CROSS-EXAMINATION

13 BY MR. HJELMFELT:

14 Q Mr. Arthur, do you recall the date of the City's  
15 request for membership in CAPCO?

16 A As I recall the letter from Cleveland, the City  
17 of Cleveland, making such a request, it was written in  
18 August of 1973.

19 Q And the date of your response, as I recall, if  
20 I am correct, was December 10, 1973?

21 A That is correct.

22 Q During the period between August 3 and December 10,  
23 did you have occasion to discuss this request with any other  
24 members of CAPCO?

25 A The request was discussed with other members of



EAK2

1 CAPCO in a very general way between those two dates.

2 A And on what was the occasion of this discussion  
3 with the other CAPCO members?

4 A As I recall the occasion was a regular CAPCO  
5 meeting.

6 MR. OLDS: Excuse me, Mr. Chairman. May I comment  
7 that there seems to be a great deal of talking in the room  
8 immediately to my right. The level of talking is high.  
9 I am having trouble hearing everything that is said, so  
10 I would appreciate counsel speaking up as loudly as  
11 possible.

12 CHAIRMAN RIGLER: Off the record.

13 (Discussion off the record.)

14 BY MR. HJELMFELT:

15 Q Isn't it true, Mr. Arthur, that Cleveland's  
16 request to join CAPCO was discussed at a special meeting --  
17 of the CAPCO Executive Committee in December of 1973?

18 A As I recall, the matter was discussed at a  
19 December meeting of the CAPCO Executives in 1973.

20 Q Prior to making your response to Cleveland's  
21 request, did Duquesne make any studies with respect  
22 to the effect of the City of Cleveland as a member of  
23 CAPCO on the other CAPCO members?

24 A Not to my knowledge.

25 MR. CHARNO: Could I have the last question and

EAK3

1 answer read?

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

4 MR. HJELMFELT: I have no further questions.

5 BY MR. CHARNO:

6 Q Mr. Arthur, I am Steve Charno of the Department  
7 of Justice. We haven't met yet. You indicated on your  
8 direct testimony that the letter which has been designated  
9 as DJ-105 and DJ-187 was written in a certain manner.

10 Did you write all of the drafts of that letter  
11 or was it drafted by someone else and revised by you?

12 A As I recall --

13 MR. OLDS: Excuse me before you answer. To protect  
14 my record, I must object to the form of that question.  
15 I do not recall that the witness testified that the letter  
16 was written in a particular manner and the implication  
17 of the question, I think, should not be allowed to go  
18 unchallenged.

19 CHAIRMAN RIGLER: Will you rephrase your question.

20 MR. CHARNO: Certainly.

21 BY MR. CHARNO:

22 Q Mr. Arthur, you indicated in response to  
23 a question that the letter was written. The question asked  
24 you whether you had written the letter and now, I am  
25 trying to clarify as to whether you had written the letter or

EAK4

1 exactly what part you did play in the language that is  
2 contained in the letter?

3 A As I recall, the letter was written by me with  
4 assistance from counsel.

5 Q Would counsel in this case be Mr. Munsch?

6 A Mr. Munsch, yes, and Mr. Olds, yes.

7 Q You further testified on your direct testimony  
8 that this letter was not written in accordance with any  
9 agreement or understanding with other members of CAPCO,  
10 is that correct?

11 A That is correct.

12 Q Do you recall any agreement being reached with  
13 respect to responding to the City of Cleveland's request  
14 at the December 7, 1973 meeting of the executives of  
15 CAPCO?

16 A I specifically recall that no agreement was  
17 reached on how this matter should be handled at the December  
18 7 meeting.

19 Q Sir, do you recall testifying on deposition on  
20 July 3, 1975, that to the best of your knowledge, the  
21 City of Cleveland's entry into the CAPCO pool had not come  
22 up at a meeting of the chief executives of CAPCO.

23 MR. OLDS: If the Board please, I believe  
24 that is technically not a fair question. If Mr. Charno  
25 wishes to call the witness' attention to a specific statement

EAKS

1 made under oath in a prior deposition, I think that is  
2 reasonable. I assume he is not asking for a memory contest  
3 and he wants to know whether the witness affirms having  
4 made any particular statement at a prior time. I would  
5 urge therefore, that his obligation is to call the witness'  
6 attention to the particular statement at a particular  
7 location in the transcript which I have available, if he  
8 would like to use it.

9 CHAIRMAN RIGLER: I think I am going to permit  
10 him to pose the question as phrased initially.

11 MR. REYNOLDS: I request that the reference be  
12 made to the part of the transcript he is talking to so that  
13 in responding, Mr. Arthur can look at his prior statement.

14 MR. CHARNO: That would be pages 22 and 23,  
15 beginning with line 24 on page 22 and continuing over to  
16 line 2 of page 23.

17 CHAIRMAN RIGLER: Since the Board does not have  
18 that available, why don't you read that into the record.

19 MR. CHARNO: Certainly. The question reads: Has  
20 the question of the City of Cleveland's entry into the  
21 CAPCO power pool come up at meetings of the chief executives,  
22 Mr. Arthur.

23 Answer: Not to my knowledge.

24 MR. REYNOLDS: Now I would like to request either--  
25 in light of that, either Mr. Charno rephrase his original

eak6 1 question or maybe he would like to have it read back first.  
2 In light of what he read there, the original question should  
3 be altered somewhat.

4 MR. CHARNO: I think I can simplify it by asking  
5 a question with respect to the passage I just read.

6 BY MR. CHARNO:

7 Q Do you remember testifying to that effect, sir?

8 A I recall making such a statement. I might  
9 add that I made it because when I heard the question, the  
10 inference I got from it was, is it a matter you have discussed  
11 at many meetings of CAPCO. My answer was no, it was not  
12 discussed at CAPCO meetings. You will notice the word is  
13 plural. The inference to me was, is it a subject you have  
14 continually discussed at a number of CAPCO meetings and my  
15 answer was no, not to my knowledge.

16 Q Sir, do you recall the question of the entry of  
17 Cleveland into the CAPCO pool being raised at any other  
18 meeting of the CAPCO chief executives or the CAPCO Executive  
19 Committee?

20 MR. REYNOLDS: Other than what?

21 MR. CHARNO: Other than the meeting on December 7,  
22 1973?

23 THE WITNESS: My answer would be not to my  
24 knowledge.



EAK6

1 BY MR. CHARNO:

2 Q If I suggested that it was mentioned in a meeting  
3 on April 27, 1973, that took place in Cleveland, Ohio,  
4 would that refresh your recollection?

5 A No.

6 MR. REYNOLDS: Can I ask a question. Would  
7 that refresh his recollection as to his response to  
8 your previous question that went to a recollection of the  
9 discussions of this matter; is that what you are asking?  
10 You say it was suggested at some meeting.

11 I wonder what you want to refresh his recollection  
12 on?

13 CHAIRMAN RIGLER: Mr. Olds?

14 MR. OLDS: This is the only copy of the transcript  
15 I have available. That is the only reason I am here.  
16 May I take the copy of the transcript back?

17 MR. CHARNO: Yes.

18 MR. OLDS: Thank you.

19 MR. REYNOLDS: I was just asking for a clarifica-  
20 tion as to the prior question. The prior question went  
21 to a discussion and now we ask if his recollection was re-  
22 freshed by a suggestion at a meeting. I didn't know which  
23 way Mr. Charno intended it to go.

24 MR. CHARNO: Would you read back the question,  
25 two questions and the intervening answer. Maybe it will

eak7 1 become clear.

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

4 THE WITNESS: The meeting date does not refresh  
5 my recollection.

6 MR. SMITH: Is there anything about Mr. Charno's  
7 question that refreshed your recollection?

8 THE WITNESS: No, sir.

9 BY MR. CHARNO:

10 Q Mr. Arthur, do you recall this subject being  
11 mentioned prior to the signing of the memorandum of  
12 understanding for the CAPCO group?

13 A Mr. Charno, I was not involved in the memorandum  
14 of understanding. At that time, I was, as I remember it,  
15 not a member of Duquesne Light's management.

16 Q Could you tell us when you became a member of  
17 Duquesne Light's management? Was that upon your ascension  
18 to the presidency?

19 A Yes, and that would have been in 1967.

20 Q Would that have been the first occasion that  
21 you became familiar with the workings of the CAPCO pool?

22 A As I have testified previously, I actually  
23 became familiar with the workings of the CAPCO pool in 1968  
24 after I became Chairman of the Board and Chief Executive  
25 officer.

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CHAIRMAN RIGLER: What was your position immediately prior to becoming Chief Executive Officer?

THE WITNESS: Just prior to that, I was the President of the company.

CHAIRMAN RIGLER: During what period were you the President of the company?

THE WITNESS: I was the President of Duquesne Light from June 20, 1967, until July 1, 1968.

CHAIRMAN RIGLER: What was your position immediately prior to being the President of Duquesne Light Company?

THE WITNESS: Prior to that, I was Vice President and Assistant to the Chairman of the Board and President of Duquesne Light Company. That assignment, I might mention, started on April 19, 1966.

CHAIRMAN RIGLER: What were your responsibilities during the period you were Vice President and Assistant to the Chairman?

THE WITNESS: During that period, I had special assignments and my main responsibility was one of manpower, determining, for example, that we had the correct number of people managing the various departments and divisions. In other words, I was given by Mr. Phillip Fleger, who was the Chairman of the Board, at that time, very specific assignments.

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1 CHAIRMAN RIGLER: What was your position prior  
2 to April of 1966?

3 THE WITNESS: Prior to April of 1966, I was  
4 General Superintendent of the substations and shops  
5 department.

6 MR. SMITH: Are you a Director, sir?

7 THE WITNESS: Yes, I am.

8 MR. SMITH: How long have you been a Director?

9 THE WITNESS: Since July 1 of 1968.

10 BY MR. CHARNO:

11 Q Mr. Arthur, prior to the time that you  
12 became Chief Executive Officer in July of 1968,  
13 who in Duquesne Light would have occupied a position of  
14 responsibility with respect to the operations, functions  
15 and formation of CAPCO?

16 A The person most responsible at that time would  
17 have been Mr. Phillip Fleger, Chairman of the Board and  
18 President of Duquesne Light.

19 CHAIRMAN RIGLER: During your tenure as  
20 Vice President and Assistant to the Chairman, were any of  
21 your assignments related to CAPCO?

22 THE WITNESS: To the best of my knowledge, not  
23 one of my assignments was in any way related to CAPCO.

24 BY MR. CHARNO:

25 Q Upon becoming Chief Executive, did you familiarize

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1 yourself with the CAPCO memorandum of understanding?

2 A After I became Chairman of the Board, I did  
3 become familiar with the memorandum of understanding. Yes.

4 Q Let me go back to that April 27 meeting of the  
5 executives of CAPCO. Do you recall Mr. Rudolph of  
6 Cleveland Electric Illuminating Company informing you that the  
7 City of Cleveland Division of Light and Power had requested  
8 that they be given access to certain nuclear units and be  
9 admitted to CAPCO at that meeting?

10 A May I ask the date of the meeting, again, please?

11 Q April 27, 1973.

12 CHAIRMAN RIGLER: I think you better rephrase  
13 your question. You ended with the phrase, "at that meeting,"  
14 which suggests that these requests took place at the meeting.  
15 Do you mean Mr. Rudolph conveyed the information at the  
16 meeting or that Cleveland made the request at the meeting.

17 BY MR. CHARNO:

18 Q Do you recall Mr. Rudolph informing you at  
19 the April 27, 1973 meeting that the City of Cleveland had  
20 requested access to nuclear units and requested membership  
21 in the CAPCO pool?

22 A I do not recall such a statement.

23 Q Mr. Arthur, let me refer you back to --

24 MR. REYNOLDS: Could I just because I think it is  
25 nuclear on the record, ask -- Mr. Charno said referring back

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1 to the April 27 meeting. I don't think the record reflects  
2 but I think everybody knows, what he meant by referring back  
3 was his earlier question which began, "If I suggested to you  
4 at a meeting."

5 If that is the case, perhaps we ought to tie up  
6 the April 27, '73 meeting with the "If I suggested to you"  
7 question.

8 Is that correct, Mr. Charno?

9 MR. CHARNO: I am not sure what you are asking.

10 MR. REYNOLDS: You say, "Referring back to  
11 an April 27 meeting" and you had not identified any April  
12 27 meeting prior to the question where you said, "Referring  
13 back."

14 I assume your reference back was to your question  
15 which said, "If I suggested to you at a meeting," is that  
16 correct?

17 MR. CHARNO: That is correct.

18 BY MR. CHARNO:

19 Q Referring back to your December 10, 1973 letter  
20 which is DJ-105 and DJ-137, you testified on direct  
21 testimony that you received no answer. I would like to ask  
22 did you expect to receive an answer to this letter?

23 A I believe it fair to say that we did expect an  
24 answer to our letter.

25 Q Let me direct your attention to the last paragraph

eak12 1 of that letter where you state that or you suggest that the  
2 City of Cleveland should explore alternatives such as an arran  
3 ment with Cleveland Electric Illuminating Company. Is that  
4 a fair statement of your last paragraph?

5 MR. OLDS: Excuse me, Mr. Arthur. Could you please  
6 read Mr. Charno's question back. It was so disjointed  
7 I didn't bear it all in my mind.

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

10 THE WITNESS: The sentence as written is almost  
11 a duplicate of the statement you made. We said we believe  
12 you should fully explore such alternatives as a solution  
13 to whatever problems you have.

14 BY MR. CHARNO:

15 Q And the alternatives you had in mind were,  
16 again, for example, some form of arrangement with the Clevelar  
17 Electric Illuminating Company, is that correct?

18 A I believe that is a correct statement.

19 Q First, Mr. Arthur, if you were suggesting that  
20 they work out an arrangement, that the City work out an  
21 arrangement with another utility, why did you expect a  
22 response to your letter?

23 A Well, in our letter, as you may recall, we pointed  
24 out that there would be no advantages, and in our opinion  
25 certain disadvantages, to the entrance of the City of

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1 Cleveland into CAPCO.

2 In my own opinion, I felt that the City of  
3 Cleveland would respond to that statement.

4 Q What manner of response did you expect, sir?

5 A I don't think it is really fair for me to guess  
6 at the type of response I might have expected.

7 Q I am sorry. You just testified that you felt  
8 that the City would want to respond and I am asking you  
9 what kind of response you felt that they were going to  
10 make.

11 Q I have no idea what type of response I expected  
12 from the City of Cleveland but I certainly felt that they  
13 would respond to such a statement. They might agree with  
14 the statement. They might disagree with the statement.

15 Q Why did you suggest that the City's problems may  
16 be solved by dealing with Cleveland Electric Illuminating  
17 Company as opposed to any other utility, including Duquesne?

18 A The reason I felt that the City of Cleveland  
19 may be able to solve its problems by dealing with CEI is  
20 simply the fact that CEI geographically is located next to  
21 the City of Cleveland.

22 Q Would that be next to or surrounding?

23 A I don't know, frankly.

24 Q What relevance does that have in your mind, sir?

25 A Well, it has relevance because as far as Duquesne



eak14 1 Light is concerned, for example, we are located 130 or 150  
2 miles away from the City of Cleveland.

3 I felt they shouldn't turn to a company like  
4 ours for assistance. They ought to turn, if they needed  
5 to, to the utility closest to the City of Cleveland.

6 Q Is that the course of action that has been pursued  
7 by Duquesne?

8 A I don't really understand your question.

9 Q Let me rephrase the question. When Duquesne  
10 has found itself, trying to use your phrase, in need of  
11 assistance, has it been its practice to turn to the  
12 immediately adjacent electric utilities to secure that  
13 assistance?

14 A In general, my answer would be yes.

15 Q Would the CAPCO pool represent an exception to  
16 that general rule?

17 A No, it would not.

18 Q Would you care to explain your answer?

19 A Well, in my opinion, we are interconnected with  
20 Ohio Edison and Ohio Edison is located next to Duquesne Light.  
21 So, we look to Ohio Edison for an interconnection and assistance.  
22 We have also looked to West Penn Power, to Ohio Power and  
23 to, in effect, all of the utilities that you might say  
24 surround Duquesne Light Company.

25 We are also, as you know, joined on the north by

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Pennsylvania Power, a subsidiary of Ohio Edison. All of these companies have been interconnected -- are interconnected with Duquesne Light and we look to them for assistance and they look to us for assistance.

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Q Well, sir, do you engage in any transactions with any -- pardon me. Do you engage in any transactions designed to increase your reliability or lower your costs with any utilities which aren't immediately adjacent to Duquesne Light's service area?

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CHAIRMAN RIGLER: Mr. Olds?

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MR. OLDS: If the Board please, I have allowed Mr. Charno's questioning, I think, to transgress probably a strict interpretation of the scope of the direct but I believe it is quite clear that he is here launching into a cross-examination that is well beyond the scope of the direct testimony and I do object.

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I don't think this witness has been offered on direct to testify to these matters and I don't think the cross-examination is at all appropriate. I object.

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MR. CHARNO: The Department is not at the beginning of a long line of questioning. I am trying to resolve a point that was raised.

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CHAIRMAN RIGLER: What point is that?

MR. CHARNO: We are talking about the witness' position with respect to why it is appropriate in his view

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1 for the City of Cleveland to turn to the immediately  
2 adjacent utility. I am trying to determine whether, in fact,  
3 this is the course of action that is pursued by Duquesne  
4 Light.

5 I think it has direct relevance to membership  
6 in CAPCO. That is where my latest question was directed.

7 CHAIRMAN RIGLER: You had asked him that question  
8 earlier. Now, what was your latest question.

9 MR. CHARNO: My latest question was whether the  
10 Duquesne Light Company engaged in transactions with non-  
11 adjacent utilities.

12 CHAIRMAN RIGLER: I will permit that.

13 MR. CHARNO: I would like to have the original  
14 question read back for the witness.

15 CHAIRMAN RIGLER: I like it as you phrased  
16 it right there. It is more direct. I was on the verge  
17 of agreeing with Mr. Olds that we were getting fairly far  
18 afield. Now that you have explained it, I will take the  
19 question that you used to explain where you are going.

20 THE WITNESS: May I ask for the question?

21 (Whereupon, the reporter read the record as  
22 requested.)

23 THE WITNESS: To the best of my knowledge, with  
24 the exception of the CAPCO pool, we do not engage in  
25 transactions with utilities other than those adjacent to the

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1 Duquesne Light Company.

2 BY MR. CHARNO:

3 Q Would it be safe, Mr. Arthur, to assume from your  
4 answer, then, that you do engage in such transactions  
5 with other members of the CAPCO pool which are non-adjacent  
6 utilities?

7 MR. OLDS: I have some difficulty with the  
8 words "such transactions," since I do not recall that  
9 in any way defined by the witness' testimony or by the question.

10 MR. CHARNO: I will rephrase it.

11 BY MR. CHARNO:

12 Q Would it be safe to assume from your answer, sir,  
13 that Duquesne Light engages in transactions designed to  
14 increase Duquesne's reliability or reduce its costs with  
15 non-adjacent utilities which are members of the CAPCO pool?

16 MR. REYNOLDS: Objection. I think the question  
17 is outside the scope of the direct.

18 MR. LESSY: Is Mr. Reynolds objecting on behalf  
19 of Applicants other than Duquesne or is Mr. Olds speaking  
20 for Duquesne --

21 MR. REYNOLDS: Mr. Olds is speaking to Duquesne  
22 and I am speaking for other Applicants and I object to the  
23 question as being well outside the scope of direct.

24 THE WITNESS: Would you read the question.

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

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1 THE WITNESS: Well, as you know, we are members  
2 of the CAPCO pool. So naturally, we engage in transactions  
3 involving all members of the CAPCO pool.

4 BY MR. CHARNO:

5 Q Would that constitute a yes or no answer to my  
6 question.

7 A That is up to you to interpret it. But it is  
8 a very accurate answer. You cannot be a member of a pool  
9 and not involve all of the companies of the pool in certain  
10 of your transactions.

11 BY MR. CHARNO:

12 Q Does Duquesne Light engage in transactions with  
13 non-adjacent members of CAPCO?

14 MR. REYNOLDS: I will object as having been asked  
15 ans answered.

16 CHAIRMAN RIGLER: Overruled.

17 THE WITNESS: Well, I am not trying to be  
18 devious but we are members of the KAPCO pool and we are  
19 involved in CAPCO matters, CAPCO transactions and in matters  
20 having to do with operation of that particular pool.

21 BY MR. CHARNO:

22 Q Do any of those transactions occur between  
23 Duquesne and a non-adjacent member of CAPCO?

24 MR. OLDS: If the Board please, I really think  
25 Mr. Charno is pushing to an area of cross-examination that

eak20 1 he is building upon the answers he gets in order to broaden  
2 the scope of the cross-examination and I object.

3 CHAIRMAN RIGLER: The pending question has been  
4 asked and answered. Do you purchase energy from or  
5 sell energy to Cleveland Electric Illuminating Company?

6 THE WITNESS: Ohter than through the CAPCO arrange-  
7 ment, is that your question?

8 CHAIRMAN RIGLER: No, including through the CAPCO  
9 arrangement. Are there ever any bookkeeping transactions  
10 where you reflect the sale of energy to Cleveland  
11 Illuminating or they reflect a sale of energy to Duquesne?

12 THE WITNESS: Not going through the CAPCO program?

13 CHAIRMAN RIGLER: No, going through the CAPCO  
14 program?

15 THE WITNESS: Certainly we are involved in the  
16 exchange of power between all of the CAPCO companies at  
17 one time or another.

18 CHAIRMAN RICLER: But there would be bookkeeping  
19 transactions that reflect either the receipt of or sale of  
20 power between Duquesne and Cleveland Electric Illuminating  
21 Company, is that correct?

22 THE WITNESS: I would have to answer that I  
23 don't know how the bookkeeping is formalized with respect  
24 to, you know, the exchange of power in CAPCO. We have a  
25 banking arrangement where at times, we sell power to

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1 the CAPCO pool and it is distributed and there are times  
2 when we purchase power from the CAPCO pool. The exact  
3 bookkeeping I am not familiar with.

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1 CHAIRMAN RIGLER: Would some of these exchanges  
2 to which you referred reflect the sale of energy generated  
3 in the Duquesne system which may be utilized in the Cleveland  
4 Electric Illuminating Company system?

5 THE WITNESS: I think that might be a fair question,  
6 and the answer would be yes.

7 CHAIRMAN RIGLER: All right.

8 BY MR. CHARNO:

9 Q Mr. Arthur, I believe you testified on direct that  
10 you did not intend the December 10, 1973, letter from you  
11 to the City of Cleveland to be a final refusal to their mem-  
12 bership in the pool; is that correct?

13 A That is correct.

14 Q What did you intend it to be?

15 A I intended it to be a response to the City of  
16 Cleveland -- to the City's request to enter the CAPCO pool  
17 and that it outline the advantages and disadvantages from  
18 Duquesne Light's position to such a request.

19 Q And do you see any advantages to the City of Cleveland  
20 becoming a member of the CAPCO pool?

21 A We see no advantages from the standpoint of Duquesne  
22 Light to the City of Cleveland entering the CAPCO pool.

23 Q Sir, is it necessary under the memorandum of under-  
24 standing to have the members of CAPCO agree unanimously with  
25 respect to the addition of a new member to CAPCO?



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1 A. May I have that question read back, please?

2 (Whereupon, the Reporter read from the record  
3 as requested.)

4 MR. OLDS: Are you asking the witness for a legal  
5 interpretation of a legal document or for his lay understand-  
6 ing of the requirements of that document, Mr. Charno? I'm  
7 unclear as to what your question is directed to.

8 MR. CHARNO: I'm asking for the witness' understand-  
9 ing as the Chief Executive Officer of Duquesne Light.

10 THE WITNESS: Let me answer it in this way: As  
11 you well know, we have to have a unanimous consent of all  
12 utilities in the CAPCO pool in connection with any important  
13 matter that is being undertaken by the pool, and it couldn't  
14 be otherwise.

15 For example, if it were a two-thirds vote or one-  
16 third vote and we had to go before the Public Utility  
17 Commission to get permission to build a new unit, we have to  
18 be able to state to them that we agree that this unit should  
19 be added to the CAPCO pool. In other words, it has to be a  
20 unanimous vote in order for us to operate under the Public  
21 Utility Commission law.

22 CHAIRMAN BIGLER: Mr. Arthur, you're talking now  
23 in terms of coordinated development of CAPCO members, are  
24 you not?  
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1 THE WITNESS: That is correct.

2 CHAIRMAN RICLER: You're not talking in terms of  
3 coordinated operation.

4 Aren't your obligations fixed and sealed under the  
5 transmission agreement or the generating agreements, the  
6 various CAPCO agreements, so that you do not depend upon  
7 voluntary actions by your fellow members? You may require  
8 them to perform certain services on your behalf pursuant to  
9 contract.

10 THE WITNESS: I believe that is a correct statement

11 MR. SMITH: Mr. Arthur, would one of the  
12 important considerations that would require unanimous action  
13 on the part of the members of the CAPCO pool be the admission  
14 or non-admission of Cleveland or any other entity?

15 THE WITNESS: I would assume that that might well  
16 be the situation, but I do want to tell you, as I have, that  
17 the letter Duquesne Light wrote was Duquesne Light's response  
18 and not the response of all the companies, nor did we dis-  
19 cuss the response that the other companies might make to the  
20 Cleveland letter.

21 MR. SMITH: So it was a unilateral action on your  
22 part? You're indicating "yes," sir?

23 THE WITNESS: That is correct.

24 MR. SMITH: Which action, however, bound your com-  
25 panions in the pool.

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1 THE WITNESS: Well, may I again tell you that we  
2 wrote the letter indicating, as you know, that there were in  
3 our opinion no advantages or disadvantages to the City of  
4 Cleveland entering the CAPCO pool.

5 CHAIRMAN RIGLER: Well, that wasn't in answer to  
6 his question.

7 THE WITNESS: It was brought out it was not neces-  
8 sarily our final decision.

9 MR. SMITH: I'm asking now what your view of the  
10 effect of your action was in relation to the finality of  
11 whether Cleveland became a member or not, and you just answered  
12 well, you didn't regard this as final in regard to the  
13 finality as it relates to the other CAPCO members.

14 THE WITNESS: Well, sir, if it didn't -- if our  
15 interpretation of the answer was that it was not an absolute  
16 final answer, then I would have to assume that the same  
17 situation was true with respect to the other CAPCO members.

18 CHAIRMAN RIGLER: Suppose your answer was a final  
19 absolute "no." When it was binding on other CAPCO members,  
20 was it not?

21 MR. OLDS: Do you understand the question, Mr.  
22 Arthur?

23 THE WITNESS: Yes, I understand the question, but  
24 it is a theoretical question, is it not?

25 MR. SMITH: I think it's a very practical question,

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1 and I would appreciate an answer to it.

2 Did you understand when you wrote this letter on  
3 December 10, 1973, that you were foreclosing any affirmative  
4 action at that time by the other CAPCO pool members in relation  
5 to admitting Cleveland to the pool?

6 THE WITNESS: When I wrote the letter, as I brought  
7 out, we were simply pointing out to CAPCO that from the  
8 standpoint of Duquesne Light there were no advantages and  
9 certainly were disadvantages to Cleveland becoming a member  
10 of the CAPCO pool.

11 CHAIRMAN RIGLER: Take my last question to the  
12 witness, please.

13 (Whereupon, the Reporter read from the record  
14 as requested.)

15 THE WITNESS: I'm afraid I really don't know how  
16 to answer your question.

17 CHAIRMAN RIGLER: I would suggest "yes" or "no."

18 THE WITNESS: Well, perhaps the answer is "no,"  
19 simply because, as I recall, CAPCO companies do have the oppor-  
20 tunity to withdraw from the pool any time they wish and there-  
21 fore we have some latitude of freedom.

22 CHAIRMAN RIGLER: Other than that latitude of free-  
23 dom, would your answer be "yes" or "no"?

24 THE WITNESS: My answer would be "no."

25 CHAIRMAN RIGLER: No, your refusal to admit another

bit 6

1 member would not bind the other members of the CAPCO pool,  
2 is that your answer?

3 MR. REYNOLDS: That's a little different question  
4 than the one you asked before, Mr. Chairman.

5 CHAIRMAN RIGLER: I believe it's the same question,  
6 Mr. Reynolds.

7 THE WITNESS: Well, you are posing a theoretical  
8 question. If our answer had been an absolute "no," then you  
9 are saying we would have bound the other companies, and my  
10 position would be that if the other companies had said "yes,"  
11 then we would have the alternative perhaps of agreeing; but  
12 if we had said, "No, we will not agree to the admittance of  
13 the City of Cleveland," then in my opinion we would have had  
14 no alternative but to withdraw from the CAPCO pool.

15 So, on that basis, I'm not certain that we were  
16 binding them to a non-admission of the City of Cleveland.

17 MR. SMITH: You stated in your letter of December  
18 10 that Duquesne Light can answer only for itself and not for  
19 any other CAPCO company, but in relation to the admission or  
20 non-admission of new members that statement is not correct,  
21 is it?

22 THE WITNESS: I believe the statement is correct.

23 CHAIRMAN RIGLER: All right. Then how do you  
24 square that with the other sentence in that same letter,  
25 which reads:

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1 "CAPCO is a voluntary association in which each  
2 member reaches independent decisions and in which any  
3 member can frustrate joint action."

4 THE WITNESS: Well, I was referring to the installa-  
5 tion of new generation, as I attempted to bring out in one  
6 of my previous answers.

7 CHAIRMAN RIGLER: Oh, come, now. Look at the  
8 second paragraph and tell me if you're talking about genera-  
9 tion or membership. Refer to the second paragraph in the  
10 December 10 letter to Mayor Perk, which you signed.

11 MR. OLDS: Mr. Rigler, are you suggesting by your  
12 remarks that you disbelieve the witness?

13 CHAIRMAN RIGLER: I am.

14 MR. OLDS: Well, I'm very troubled by that, Mr.  
15 Rigler.

16 MR. SMITH: And, incidently, I join with him in  
17 that belief.

18 MR. OLDS: I'm very troubled by that. The witness  
19 referred you to that paragraph, and I find --

20 CHAIRMAN RIGLER: The witness did not refer us to  
21 the paragraph. The Board referred the witness to the para-  
22 graph because it had great difficulty squaring what he stated  
23 in that paragraph with his answers to earlier questions.

24 I would say at this point, Mr. Olds, that we are  
25 having considerable difficulty with the credibility of this

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1 witness.

2 MR. OLDS: Well, I am truly sorry you do, because  
3 I understand the witness' answers to refer specifically to  
4 that paragraph when he refers to the matter of the installati-  
5 of generation because that is what is discussed.

6 CHAIRMAN RIGLER: Well, rather than you and I dis-  
7 cussing it, let's ask the witness to answer the question I  
8 just put to him.

9 THE WITNESS: May I have the question again, please?

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

12 THE WITNESS: The second paragraph as written was  
13 intended to refer to the decisions made by CAPCO companies  
14 with respect to new transmission lines, new generation and  
15 so forth and was not intended to have anything to do with  
16 the admittance of another entity to CAPCO.

17 MR. SMITH: But nevertheless your testimony is that  
18 a CAPCO pool member can unilaterally block the admission of  
19 another potential member?

20 THE WITNESS: It was my effort to simply tell you  
21 that I did not believe that that had to be the situation.

22 First of all, I pointed out that if three of the  
23 companies, for example, were in favor of the entry of another  
24 entity into CAPCO, then the company that disagreed had, in  
25 my opinion, has the choice of withdrawing from CAPCO.



51t 2

1 CHAIRMAN RIGLER: That means that the other three  
2 companies which favored membership would have to weigh the  
3 loss of the present member versus the gain of the new appli-  
4 cant? Is that correct?

5 THE WITNESS: That may well be true.

6 CHAIRMAN RIGLER: Let's take a 10-minute break.

7 (Recess.)

8 CHAIRMAN RIGLER: Let's proceed.

9 BY MR. CHARNO:

10 Q Mr. Arthur, just before the break, I believe you  
11 testified that the phrase in your letter which states:

12 "Any member can frustrate joint action."

13 went to the installation of joint generation and transmission  
14 facilities; is that correct?

15 A That is correct.

16 Q Sir, would it be possible to participate in CAPCO  
17 without participating in the joint generation and transmission  
18 facilities?

19 A No.

20 Q Would coordinated operation in CAPCO be possible  
21 without utilization of CAPCO transmission?

22 A Not likely.

23 Q Do you have in mind any circumstances under which  
24 it would be possible?

25 A May I have the question again, please?



blt 10

1                    ("whereupon, the Reporter read from the record  
2                    as requested.)

3                    A.     No.

4                    Q.     Sir, in the last sentence in the second paragraph  
5                    of your December 10 letter, you state that:

6                    "We feel that your electric generating, trans-  
7                    mission and distribution characteristics are so  
8                    dissimilar from ours and the other CAPCO companies  
9                    that you would not be a workable addition to CAPCO."

10                    Can you tell us the generating, transmission and  
11                    distribution characteristics that you had in mind when you  
12                    wrote that?

13                    A.     Yes, I can in a general way.

14                    As you know, based on data sent to us by the City  
15                    of Cleveland, the City of Cleveland has a total generation  
16                    of approximately 120 megawatts. This would represent about  
17                    1 percent of the total capacity of the CAPCO pool.

18                    The generation of the City of Cleveland, based on  
19                    my memory and based on data that were sent to us by the City  
20                    of Cleveland, is made up of a number of very small, very old  
21                    generating units. And, again, based on information that we  
22                    have noted in the newspapers and elsewhere, the generation is  
23                    not very reliable.

24                    Their transmission facilities, as I recall, are  
25                    at the highest level 138 kv, whereas we are interconnected

blt11

1 with CAPCO companies at 345 kv. In our judgment, therefore,  
2 the size of the City of Cleveland's generating units and  
3 type of transmission and distribution would not really lend  
4 itself to the size and type of transmission and generating  
5 facilities in the CAPCO pool.

6 Q Is there CAPCO transmission which is less than  
7 345 kv?

8 A As I recall, the CAPCO transmission is 345 kv, yes,  
9 sir.

10 Q Do the CAPCO agreements -- I use that in the collec-  
11 tive sense -- allow the utilization of non-CAPCO transmission  
12 belonging to CAPCO members for CAPCO purposes?

13 A This may take --

14 MR. OLDS: Mr. Rigler, excuse me. I must again  
15 whether in your judgment this is within the legitimate scope  
16 of the cross-examination related to the direct testimony.

17 CHAIRMAN RIGLER: I think that it may not go to  
18 your questions, but certainly it goes to the content of the  
19 letter, which was really the thrust of your examination of  
20 this witness.

21 Unless I'm mistaken, he's exploring the reasons  
22 and the validity of the considerations advanced in the  
23 letter.

24 Is that correct, Mr. Charno?

25 MR. CHARNO: That is correct, Mr. Chairman.

bJt12

1 CHAIRMAN RIGLER: So I think it's proper.

2 MR. OLDS: Well, I was only concerned, Mr. Rigler,  
3 because I thought the question was rather specific to the  
4 totality of the CAPCO agreements and how they may inter-  
5 relate transmission, and I did not really think that was  
6 necessarily -- but I abide by your ruling under the circum-  
7 stances.

8 THE WITNESS: I'm sorry. May I have the question  
9 again?

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

12 THE WITNESS: We have, as you know, a free flow  
13 power system; therefore, other than CAPCO lines may be uti-  
14 lized in the transfer of power from one point to another.

15 BY MR. CHARNO:

16 Q Are you testifying that it is electrically possible,  
17 that it's permitted under the contracts, or both?

18 A It is electrically possible and permitted under the  
19 contracts, as I interpret them.

20 Q Would the non-CAPCO transmission facilities that  
21 might be so utilized be less than 345 kv?

22 A I think you'll have to understand, as you brought  
23 out earlier, in the transmitting of power from one point to  
24 another you cannot specifically control the flow of power.  
25 Theoretically, that power may flow through some very low power-

blt 13

1 very low voltage lines in getting from Point A, for example,  
2 to Point B. And, as you mentioned, electrically you can't  
3 control that; that's the way it operates. That's the way  
4 an electrical system works.

5 Q Is the answer to my question "yes"?

6 A The answer would be "yes," but I might add, if I  
7 may, that you don't specifically plan it in that manner.  
8 This is the way it occurs by the natural flow of power from  
9 one point to another.

10 Q Why are the CAPCO companies interconnected with  
11 345 kv?

12 A They're interconnected --

13 MR. OLDS: Mr. Rigler, again I ask whether this is  
14 really proper cross-examination. There's nothing in the  
15 letter that addresses itself to this point.

16 CHAIRMAN RIGLER: I think you're beginning to get  
17 a little far afield, Mr. Charno. What is the relationship  
18 between this line of questioning and the direct examination?

19 MR. CHARNO: I'm attempting at this point to deter-  
20 mine the reasons that interconnection at 345 kv is mandatory  
21 to becoming a member of CAPCO.

22 MR. OLDS: I don't believe anybody testified to  
23 that effect.

24 CHAIRMAN RIGLER: I don't believe I'm familiar with  
25 any such testimony, either.

blt 14

1 MR. CHARNO: Well, let me withdraw the question and  
2 ask another.

3 BY MR. CHARNO:

4 Q When you refer in your December 10 letter to the  
5 dissimilarity of transmission characteristics between the  
6 City of Cleveland and Duquesne, did you subsequently testify  
7 that CAPCO was interconnected at 345 kv and the dissimilarity  
8 you were referring to was the fact that the City of Cleveland  
9 did not use 345 kv transmission -- let me rephrase that  
10 question.

11 Is the dissimilarity you were referring to the  
12 fact that the CAPCO members are interconnected at 345 kv and  
13 the City of Cleveland has no 345 transmission capacity?

14 A In general, the answer would be "yes."

15 Q Is it your position that it's necessary to have  
16 345 kv transmission capacity in order to become a member of  
17 CAPCO?

18 A No, I have no opinion on that question. That  
19 would be up to our technical people, our engineers, to make  
20 such a determination.

21 Q Well, then, sir, can you tell me what relevance  
22 the dissimilarity of transmission characteristics has relative  
23 to the question of the City becoming a member of CAPCO?

24 A Well, it's relevant in my opinion because the  
25 CAPCO companies, as I tried to point out, are very large in

Dlt 15

1 relation to the City of Cleveland and our voltage is at 345  
2 for the purposes of interconnecting, and all our systems  
3 are many times larger than the City of Cleveland.

4 The City of Cleveland in a sense is more of a  
5 distribution system and, in my opinion, doesn't lend itself  
6 to the type of arrangement we have in CAPCO, where we transmit  
7 power and receive power and mutually benefit from the CAPCO  
8 pool. In other words, we contribute to the CAPCO pool and  
9 we receive benefits from the CAPCO pool. It's a two-way  
10 street.

11 Q Was it your understanding that the City of Cleveland  
12 proposed to become a joint owner of the 345 kv transmission  
13 facilities owned by CAPCO?

14 A As I recall, I read such a statement, yes.

15 CHAIRMAN RICLER: May I hear that again, please?

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

18 BY MR. CHARNO:

19 Q So that when you refer to the dissimilarity of  
20 transmission characteristics you would be referring solely  
21 to the non-CAPCO transmission located within the City of  
22 Cleveland's system?

23 A That would be correct, yes.

24 Q Would I be correct, then, in assuming -- let me  
25 withdraw that.

blt 16

1           Am I correct that you previously testified that  
2 at the time you wrote this letter -- well, let me ask.

3           At the time that you wrote this letter, you had  
4 no opinion on whether it was necessary to interconnect at  
5 345 kv to become a member of CAPCO?

6           A.    I would say that your answer is correct.

7           Q    Sir, what distribution characteristics did you have  
8 in mind that were dissimilar between Duquesne Light's system  
9 and the City of Cleveland's system?

10          A.    I had in mind the fact that Duquesne Light is in  
11 relation to the City of Cleveland a very large company, and  
12 we have transmission lines 345, 138 kv, 69 kv; and, in my  
13 opinion, the City of Cleveland is more like one of our distri-  
14 bution districts than it is like Duquesne Light's system.

15                And so I was referring in my own mind to the City  
16 of Cleveland being very similar to one of the Duquesne Light  
17 distribution districts.

18          Q    So that would be a similarity rather than a dis-  
19 similarity.

20          A.    I don't understand your question.

21          Q    All right. Let me backtrack for a moment.

22                Your sentence reads:

23                "We feel that your electric generating, trans-  
24 mission and distribution characteristics are so dis-  
25 similar from ours . . . ."



blt 17

1           What I'm asking is are you presently testifying  
2 that the distribution characteristics of the City of Cleve-  
3 land's system are in fact similar to the distribution charac-  
4 teristics of the Duquesne Light system?

5           A.    The distribution facilities may be similar to the  
6 distribution facilities, as I mentioned, of one of the dis-  
7 tricts of Duquesne Light.

8           Q.    Sir, if Duquesne Light did not want to withdraw  
9 from CAPCO and it refused to allow the City of Cleveland to  
10 join, would there be any alternative to the remaining members  
11 of CAPCO but to exclude the City of Cleveland?

12           MR. OLDS: May I have that question back, please?

13           (Whereupon, the Reporter read from the record  
14 as requested.)

15           THE WITNESS: Quite frankly, I thought I had  
16 answered that question as I personally viewed it.

17           CHAIRMAN RIGLER: Well, tell us again what the  
18 answer is, please.

19           THE WITNESS: Well, in my opinion -- and I'm talk-  
20 ing about my own personal opinion -- if the matter -- and you  
21 will agree this is a theoretical question that you have asked  
22 me and I'm responding to it -- but if the matter reached the  
23 point where the decision had to be made by Duquesne Light  
24 whether or not it would agree that the City of Cleveland  
25 should be allowed admittance to CAPCO, then as I view it we



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1 have two alternatives: One would be to concede to agree with  
2 the other three companies in the theoretical answer to a  
3 theoretical question and the City of Cleveland would enter  
4 CAPCO and Duquesne Light would remain a part of CAPCO.

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5 The other alternative as I view it would be that  
6 we would seriously object and withdraw from CAPCO.  
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BY MR. CHARNO:

Q Those are the only two alternatives you know of?

A Those are the only two alternatives that I see, that I view from my personal position.

Q Sir, let's return for a moment to the December 7, 1973 special meeting of CAPCO executives. Could you tell us what you recall of what occurred at that meeting?

A As I recall the situation, we were briefed by Cleveland to the effect that in their opinion, a response was called for with respect to the City's request for admission to CAPCO. And again, I am recalling this from memory. We were told that meetings between the City of Cleveland and CEI were in progress but that no real material progress was being made. Now, this is the way I remember the tone of the meeting.

And that it was in the opinion of the people present that a response should be made to the City of Cleveland but no decision was made on what response should be made or how it should be made or when it should be made.

Q When you say response was called for, do you mean a response by each of the members of CAPCO?

A Well, we concluded from the meeting that in the case of Duquesne Light, we should respond and as brought out in this letter of December 10, we should make a very independent response to the Cleveland, City of Cleveland letter of an

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1 earlier date.

2 Q Well, is it your testimony that it was agreed  
3 that each company should respond?

4 A No, I said it was not agreed that any company  
5 should respond but the general trend was in my opinion, that  
6 the companies should respond to that request.

7 Q Do you recall agreeing to communicate to Cleveland  
8 Electric Illuminating what Duquesne's position would be  
9 with respect to pool membership?

10 A No, I do not remember that statement.

11 Q Do you recall a discussion of the -- either the  
12 legal or the practical considerations involved in allowing  
13 the City of Cleveland into the CAPCO pool?

14 A No, I do not recall such a discussion.

15 Q Earlier you said you were informed of the City  
16 of Cleveland's request. Who informed you at that meeting?

17 A Well, as you know, we had received a copy of  
18 a letter sent to Cleveland from the City of Cleveland making  
19 such a request.

20 Q I am sorry, sir. I asked who informed you at  
21 the meeting, do you recall?

22 A Well, the discussion involved many people but  
23 I would have to say that Karl Rudolph probably commented  
24 on the matter more than anyone else.

25 Q Sir, do you recall the executives authorizing Mr.

eak3 1 Rudolph or Cleveland Electric Illuminating Company to make  
2 a proposal to the City of Cleveland?

3 MR. OLDS: At which meeting.

4 MR. CHARNO: At the December 7, 1973 meeting?

5 THE WITNESS: No, I do not remember such an  
6 agreement.

7 BY MR. CHARNO:

8 Q Sir, I would like to show you a document that  
9 has been entered into evidence as Exhibit C-65 and ask you  
10 whether you recall seeing a copy of this document?

11 MR. OLDS: May I see it first.

12 CHAIRMAN RIGLER: Before you do that, I would  
13 like to ask the witness a question which is what documents  
14 if any, other than his December 10 letter, did he review in  
15 connection with his testimony here today?

16 THE WITNESS: I reviewed the City of Cleveland's  
17 letter of August 3, as I remember the date. I reviewed  
18 my own deposition taken some weeks ago. Those are the only  
19 materials I reviewed in connection with today's hearing.

20 CHAIRMAN RIGLER: Other than your deposition  
21 you reviewed the City of Cleveland letter and the  
22 response letter about which you have been testifying?

23 THE WITNESS: Correct.

24 CHAIRMAN RIGLER: Those are the only documents  
25 which you have examined or discussed with counsel in

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1 preparation for this testimony?

2 THE WITNESS: Correct.

3 CHAIRMAN RIGLER: Mr. Charno, you are about to show  
4 him a document designated what?

5 MR. CHARNO: C-65, City of Cleveland Exhibit 65.

6 CHAIRMAN RIGLER: Let me see that. I may have that  
7 under another number here.

8 MR. OLDS: Just a moment, please. I would like to  
9 look at this also, first, in my capacity as counsel for  
10 Duquesne.

11 MR. CHARNO: Could I ask the reporter to read  
12 back the last question?

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

15 THE WITNESS: You want me to read this letter?

16 MR. CHARNO: If necessary to answer the question,  
17 yes.

18 THE WITNESS: What was the question.

19 BY MR. CHARNO:

20 Q Let me restate it. Do you recall seeing a copy  
21 of that document?

22 A I never saw this letter before.

23 Q Let me direct your attention to the upper righthand  
24 corner. Do you recognize the initials that appear there?

25 A Yes, I do.

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1 Q Whose initials are they?

2 A Mr. Shaffer, the President of Duquesne Light.

3 MR. CHARNO: Thank you. No further cross-  
4 examination.

5 CHAIRMAN RIGLER: Mr. Lessy?

6 MR. LESSY: No questions.

7 MR. OLDS: Do I understand, Mr. Rigler, that the  
8 cross-examination has concluded at this point?

9 CHAIRMAN RIGLER: The Board, I believe, has  
10 a few questions for the witness.

11 (The Board conferring.)

12 CHAIRMAN RIGLER: Referring your attention to  
13 the December 7, 1973 meeting of CAPCO executives where  
14 the subject of the Cleveland request for participation in  
15 CAPCO came up, did you or any other representative of  
16 Duquesne have a draft response at that meeting?

17 THE WITNESS: Not to my knowledge.

18 CHAIRMAN RIGLER: Did you or any other  
19 representative of Duquesne indicate the probable position  
20 Duquesne would take in filing or sending a reply to the  
21 City of Cleveland?

22 THE WITNESS: Not to my knowledge.

23 CHAIRMAN RIGLER: Did any representative of any  
24 other CAPCO company indicate at that meeting what response  
25 that company might make to the request of the City of

eak6 1 Cleveland?

2 THE WITNESS: As I recall, there was the  
3 indication that CEI and perhaps one or more of the other  
4 CAPCO companies indicated that it might attend a meeting or  
5 be present when the City of Cleveland would be at a meeting  
6 and its response would be given verbally at that meeting.  
7 But Duquesne took and always has taken a very independent  
8 position on this matter.

9 And we certainly did not agree to any or respect  
10 in any way, any of the other proposed or implied actions.

11 CHAIRMAN RIGLER: That wasn't my question. My  
12 question was, did you hear or learn anything at that meeting  
13 which indicated what the probable or the anticipated response  
14 of any other CAPCO company might be?

15 THE WITNESS: I don't remember.

16 CHAIRMAN RIGLER: You don't remember one way or  
17 another?

18 THE WITNESS: That is correct. I don't remember  
19 one way or the other.

20 CHAIRMAN RIGLER: Did you circulate a copy of the  
21 Duquesne response to other members of the CAPCO?

22 THE WITNESS: Yes, we did.

23 CHAIRMAN RIGLER: Did you ever have any comment  
24 on Duquesne's December 10 letter which you signed from  
25 any other member of CAPCO?



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1 THE WITNESS: I don't recall seeing any  
2 response to our letter from the other companies.

3 CHAIRMAN RIGLER: Did any other CAPCO company  
4 challenge any of the statements or assertions contained  
5 in your letter relating to the purpose or the operation of  
6 CAPCO?

7 THE WITNESS: Not in my memory.

8 CHAIRMAN RIGLER: I would like to refer your  
9 attention to Department of Justice Exhibit 104 and I do  
10 have enough copies to hand out to the parties so  
11 they can track our questions on this.

12 MR. OLDS: Mr. Rigler, am I correct in believing  
13 that 104 is a copy of the minutes of the CAPCO meeting?

14 CHAIRMAN RIGLER: That is correct.

15 I would like to state for the record and also  
16 for the information of the witness that the heavy lines  
17 in the margin reflect a practice called red lining by counsel  
18 which is to call pertinent portions of the document to the  
19 board's attention. You should disregard those. They may have  
20 been put on by your own counsel. They may have been put  
21 on by opposition counsel.

22 They are not germane to the subject. The  
23 handwritten note is a stipulation entered into by the  
24 parties and that is Mr. Smith's handwriting and you should  
25 disregard that altogether.



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1 MR. OLDS: Did you wish to have the witness  
2 read that?

3 CHAIRMAN RIGLER: I want his to read it and  
4 indicate for the record when he has completed his reading.

5 THE WITNESS: Mr. Rigler, I have read the minutes.

6 CHAIRMAN RIGLER: Do you recall these being the  
7 minutes of the December 7 meeting which we have been  
8 discussing here.

9 THE WITNESS: Yes.

10 CHAIRMAN RIGLER: Do you recall who served as  
11 secretary at this meeting or who prepared these minutes?

12 THE WITNESS: No, I do not know who served as  
13 secretary at the meeting.

14 CHAIRMAN RIGLER: Referring your attention to  
15 the record of attendance, does this comport with your  
16 recollection of the parties present at this meeting?

17 THE WITNESS: Yes.

18 CHAIRMAN RIGLER: Now that you have had an  
19 opportunity to read these minutes this morning, is there  
20 anything in these minutes with which you would take exception  
21 or disagree as a report of what transpired at that December 7,  
22 1973 meeting?

23 THE WITNESS: Yes, I would take exception to  
24 the very last sentence in this report where it states  
25 that Mr. Rudolph in turn agreed to communicate each of these

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1 views to the City at a meeting between CEI and the City  
2 representatives scheduled for December 13, 1973, because  
3 it was my clear understanding that Duquesne wanted  
4 to communicate its own feelings about this matter to the  
5 City of Cleveland.

6 And we did not agree that Mr. Rudolph should  
7 speak for Duquesne Light.

8 CHAIRMAN RIGLER: Are there any other portions  
9 of the minutes with which you take exception or  
10 disagree?

11 THE WITNESS: I believe the remaining sentences  
12 in the letter would in general reflect what took place  
13 at the meeting.

14 CHAIRMAN RIGLER: At least you don't see  
15 anything specific with which you disagree?

16 THE WITNESS: I do not recall Duquesne Light  
17 agreeing to communicate to Mr. Rudolph by December 10,  
18 for example, to him directly our position. But certainly  
19 that could have been inferred since we always communicate  
20 with each other in connection with all matters.

21 CHAIRMAN RIGLER: Anything else?

22 THE WITNESS: No.

23 CHAIRMAN RIGLER: Do you have any recollection  
24 that Duquesne ever contacted the secretary or the  
25 circulating party with respect to any comments or corrections

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1 to these minutes?

2 THE WITNESS: No.

3 CHAIRMAN RIGLER: Did Duquesne by any comments or  
4 participation in the discussion at that meeting create  
5 an impression in the minds of any of the other CAPCO  
6 companies -- I understand you might not know for certain  
7 what impression you created.

8 Let's change the question. Did Duquesne make  
9 any comments which reasonably would have created the  
10 impression in the mind of representatives of the other  
11 companies that the Duquesne response to the City of Cleveland  
12 would be negative?

13 THE WITNESS: As I recall the meeting, Duquesne  
14 Light took a very passive position. In other words, we  
15 largely listened to the facts as presented to us by Mr.  
16 Rudolph and perhaps others.

17 And I may not be absolutely certain of this  
18 statement, but I am almost certain, that we did not in any  
19 way communicate our thoughts about the matter to the  
20 people present on December 7.

21 MR. SMITH: Did you prior to that meeting?

22 MR. OLDS: Mr. Smith, your questions isn't  
23 finished. I assume you mean did you prior to that meeting  
24 convey your thoughts?

25 MR. SMITH: Yes .

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THE WITNESS: That is a broad question and I don't want to mislead you but to the best of my knowledge, we did not, I didn't not talk to the other executives about this matter.

CHAIRMAN RIGLER: Had Duquesne formed its preliminary corporate reaction prior to its appearance at the meeting of December 7, 1973?

THE WITNESS: No, we really had not formed a, you might say, corporate position on this matter as we expressed it later in our December 10 letter.

CHAIRMAN RIGLER: Well, had you formed a corporate position with respect to whether the request should be granted or denied?

THE WITNESS: No, we had not.

CHAIRMAN RIGLER: On a different subject, earlier in your testimony you told me that there are occasions in which electricity generated within the Duquesne system is transmitted for use in the electric system of CEI.

You were not referring merely to the fact that the path of energy cannot be precisely set forth, were you?

Did you mean that this was for the intended benefit of serving the load in the CEI system?

THE WITNESS: Well, I intended to indicate to you that we may deliver power from our system to the CEI system.

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1 CHAIRMAN RIGLER: Thank you.

2 (The Board conferring.)

3 CHAIRMAN RIGLER: Before redirect, may we  
4 ask you to be excused for one minute and Mr. Rieser, can  
5 you accompany him out. Mr. Smith has one question he wants  
6 to put to the parties. We will then recall Mr. Arthur  
7 immediately. It is a point of clarification, that is all.

8 MR. OLDS: I assume, Mr. Rigler, you do not mean  
9 to exclude Mr. Rieser, only you are suggesting that he  
10 accompany the witness? I ask that Mr. Rieser be allowed to  
11 return.

12 CHAIRMAN RIGLER: Yes, indeed. As a matter of  
13 fact, his recollection may be better than anyone else  
14 on this point. I will insist he come back for that reason.

15 (Witness temporarily excused.)

16 MR. SMITH: Somewhere in my somewhat confused  
17 memory of this meeting, there reposes what I recall being  
18 another memorandum of the meeting in which it was suggested  
19 that a draft of the December 10, 1973 letter was circulated  
20 and the draft or a very similar document appears in evidence.

21 Now, am I confusing that with another company  
22 or another situation. If I am, okay, but in all fairness  
23 to Mr. Arthur, if that is in evidence, he should be given  
24 an opportunity to address himself to it.

25 I remember Mr. Lerach insists this document is not

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1 a draft although it seems to be identical.

2 What am I talking about?

3 MR. LESSY: Pitcairn.

4 MR. HJELMFELT: I believe what Mr. Smith  
5 is referring to is the fact that on December 10, Duquesne  
6 had someone read a copy of the December 10 letter over the  
7 phone to Mr. Hauser at CEI and Mr. Hauser then had that  
8 typed in his office by someone at CEI and that that copy  
9 was then delivered to the City at the December 13 meeting.

10 MR. REYNOLDS: It was a different meeting. It  
11 was a December 13 meeting when it was delivered.

12 CHAIRMAN RIGLER: This is the same request  
13 involved?

14 MR. REYNOLDS: It is the same Cleveland request  
15 and it was the December 10 letter mailed out and then  
16 he read it over the telephone to Mr. Hauser and Mr. Hauser  
17 had his secretary take it down and type it up because it  
18 had not been received -- it was put in the mail earlier  
19 and it had not been received yet.

20 What Mr. Smith is referring to is that the  
21 typed version of the letter that had been mailed was handed  
22 out at least according to the testimony, I believe of Mr.  
23 Hart, at the meeting of December 13 in Cleveland.

24 MR. SMITH: Okay. That fits.

25 My concern was that if there was an inconsistency

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1 Mr. Arthur should have opportunity to explain it but I don't  
2 see it.

3 MR. CHARNO: The confusion might have arisen  
4 from comparable circumstances in Pitcairn where there was  
5 a letter that was circulated.

6 CHAIRMAN RIGLER: Let's recall the witness.  
7 Whereupon,

8 JOHN ARTHUR

9 was recalled to the stand and, having been previously duly  
10 sworn, was examined and testified further as follows:

11 CHAIRMAN RIGLER: Is there redirect?

12 MR. OLDS: Yes, there is. Very short, Mr. Rigler.

XXXX

13 REDIRECT EXAMINATION

14 BY MR. OLDS:

15 Q Mr. Arthur, was it your intention in writing  
16 the letter of December 10, to Cleveland, to block an  
17 affirmative response by any other CAPCO member to the City's  
18 request for membership?

19 A No.

20 Q SEcondly, Mr. Rigler asked you whether Duquesne's  
21 answer was circulated to the other CAPCO companies and you  
22 responded it was. But what is not clear in the record  
23 ks when it was circulated. Would you be kind enough to  
24 state that for the record?

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25 A It was circulated after it had been sent to the  
City of Cleveland.



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1 Q Sir, was Duquesne's answer based upon any decision  
2 or discussion at the December 7 CAPCO executives' meeting?

3 A No.

4 Q The last question, was Duquesne's answer influenced  
5 in its character by any discussion at the December 7 meeting?

6 A No.

7 MR. OLDS: I have no other questions.

8 MR. HINNEMBERT: I have no further questions.

9 MR. CHARNO: No further questions from the Depart-  
10 ment.

11 CHAIRMAN RIGLER: Mr. Lessy?

12 MR. LESSY: No recross.

13 CHAIRMAN RIGLER: Thank you, Mr. Arthur.

14 (Witness excused.)

15 MR. OLDS: Mr. Rigler, shall we call our next  
16 witness?

17 CHAIRMAN RIGLER: Yes, please.

18 MR. OLDS: I guess we'll have to send for our next  
19 witness.

20 I assume that any prior suggestion about sequestra-  
21 tion is not applicable to Mr. Arthur at this point since he's  
22 already testified.

23 CHAIRMAN RIGLER: I see the Department nodding  
24 agreement, so Mr. Arthur may remain.

25 MR. OLDS: The next witness we propose to call,



p. 2

1 which I had understood had been stated in writing by Mr.  
2 Reynolds, is Mr. Gilfillan, Vice President of Duquesne Light  
3 Company.

4 MR. HUBBARD: The City would object to Mr.  
5 Gilfillan's testifying at this time. The City was notified  
6 previously that Mr. Schaefer would be testifying today and  
7 received no notification that Mr. Gilfillan would be the  
8 witness today until approximately 4 o'clock yesterday after-  
9 noon, when Mr. Jessy called me about another matter -- or I  
10 guess it's a related matter, but at any rate Mr. Jessy in-  
11 formed me he had learned that Mr. Gilfillan would be testi-  
12 fying today. I later received a call from Mr. Wahler, ap-  
13 proximately 5 o'clock, at which point he confirmed that  
14 indeed Mr. Gilfillan would be the witness today.

15 I think that violates all of the rules we have  
16 had on notification of witnesses.

17 MR. JESSY: In addition to that, there has been  
18 no compliance with the 24-hour rule on documents. The docu-  
19 ments the Staff received today as it entered the hearing  
20 room or as it entered its offices.

21 In addition to that, in a conference call held  
22 on Thursday or Friday of last week -- there were two conferen-  
23 calls about rescheduling for this week. After one of those  
24 conference calls, some of the Duquesne witnesses were in  
25 fact changed in order.

DLE 3

1 Now, the order that was given as of Friday at the  
2 close of business of the week was that Mr. Arthur would be  
3 the first witness, Mr. Schaefer would be the second witness,  
4 and that was today, and next Tuesday Mr. Flager and Mr. Gil-  
5 fillan, the fourth witness, followed by Mr. Dempler and Mr.  
6 Starke.

7 Now, in the context of another conversation with  
8 Mr. Reynolds at the close of business two days ago, or a  
9 day-and-a-half ago, it was indicated, oh, yes, there had  
10 been a change that morning and it was Mr. Gilfillan for the  
11 second witness today, giving us a day-and-a-half's notice.

12 Mr. Gilfillan's intended scope of testimony goes  
13 to Pitcairn, whereas Mr. Schaefer went to CAPCO matters. We  
14 have not had but a day-and-a-half's notice that Mr. Gilfillan  
15 was coming on today.

16 CHAIRMAN RIGLER: Well, doesn't that comply with  
17 the 24-hour rule?

18 MR. LESSY: Twenty-four hours for documents, 10  
19 days for witnesses.

20 And at that time we notified the Department again  
21 that Mr. Gilfillan was scheduled today. Candidly, with the  
22 Consumers argument tomorrow, I had planned to borrow afternoon  
23 and on Saturday morning to prepare for Mr. Gilfillan, assum-  
24 ing he was coming in on Tuesday as the notice was given.

25 We find ourselves in the situation where we haven't

b1t 4

1 had the preparation we would like to have had and we haven't  
2 had the 10-day compliance.

3 CHAIRMAN RIGLER: How many documents are involved?

4 MR. LESSY: Well, the documents aren't segregated  
5 as to which are related to Mr. Gilfillan's testimony.

6 MR. RISER: Five -- two letters plus three other  
7 documents.

8 MR. LESSY: Five documents, which we received this  
9 morning.

10 CHAIRMAN RIGLER: All right.

11 MR. LESSY: I don't know what the Board's pleasure  
12 is going to be.

13 CHAIRMAN RIGLER: Unless Applicants wish to make  
14 a response after you hear our preliminary thoughts, it  
15 appears that there may be a violation of the rules involved  
16 here. On the other hand, I don't see any purpose to be  
17 served in delaying the hearing. My initial inclination is  
18 to go ahead with this witness, particularly if only five or  
19 six documents are involved.

20 If the burden on the parties is so substantial that  
21 they cannot effectively cross-examine on the subject matter  
22 covered, I might be receptive to recall on the basis that  
23 that would constitute good cause.

24 But other than that I think we'll all make more  
25 progress by taking the witness at this time.

bit 5

1                   MR. REYNOLDS: I would like to make a response as  
2 I think some statements have been made that maybe should be  
3 put in perspective.

4                   We have through no fault of anybody's had a  
5 scrambling of schedule.

6                   CHAIRMAN RIGLER: The Board does appreciate that,  
7 Mr. Reynolds.

8                   MR. REYNOLDS: We similarly have had the same kind  
9 of difficulty, although not attributable to a death in the  
10 family, but with respect to Mr. Schaefer. We have notified  
11 all the parties well before the 10 days as to the full list  
12 of witnesses that Duquesne was going to call. The difficulty  
13 has been trying to keep everybody on track with the daily  
14 schedules, and it was impossible. And, as soon as I learned  
15 of the difficulty, I did advise.

16                   I apologize to Mr. Hjelmfelt that I did not get  
17 to him quite as early as I got to the other two people, but  
18 it has been only because of a scheduling difficulty.

19                   CHAIRMAN RIGLER: Which was beyond the control of  
20 anybody at these hearings. We appreciate that.

21                   MR. REYNOLDS: I just wanted to make it clear that  
22 that is why we had a switch between Mr. Schaefer and Mr.  
23 Gilfillan, but we have not added any witness that we did not  
24 indicate would be coming in here to testify on behalf of  
25 Duquesne 10 days ago.

Dlt 6

1 I would also say that I believe the Department  
2 got the word later than the Staff did, but I had asked Mr.  
3 Lessy to help me out on communication and I think there may  
4 be some difficulty with the communication through.

5 But in terms of the list of witnesses, we have  
6 the same individuals and the only reason that we have a dif-  
7 ference in timing is because of the problem with the schedule  
8 change that everybody's had to go through.

9 MR. MELVIN BERGER: For the record, I'd like to  
10 say that we were first informed by Mr. Lessy. We did receive  
11 the documents about 6 o'clock yesterday evening.

12 MR. REYNOLDS: I had requested Mr. Lessy to help  
13 me with the notification. He replied that he would.

14 MR. LESSY: Notwithstanding what we do with Mr.  
15 Gilfillan here, I would appreciate the opportunity to have  
16 him recalled based on exactly what his testimony goes into.

17 We want to make it clear that the 10-day rule  
18 applies and that the 24-hour rule for documents should apply  
19 to Applicants as opposed to us. We were dealing with wit-  
20 nesses who were located all over the states, all over different  
21 cities. We had no control; they were not employees.

22 CHAIRMAN BIGNER: It's not necessary to pursue this  
23 argument, because we agree with you.

24 MR. LESSY: The second thing is I was going to  
25 suggest a procedure here. This witness list has been juggled

blt 7

1 three times. I think it would be helpful if the Board were  
2 provided with a copy of the list so we can see the changes  
3 as they occur. I think it would put everybody in a more open  
4 position to see what the schedule is now and to see how it's  
5 tracked, because I think it's unfair to juggle it so that  
6 the parties really don't have notice of what the changes are  
7 and not to notify everybody at the same time.

8 MR. OLDS: Mr. Rigler, do I understand your ruling  
9 to be that we should call Mr. Gilfillan at this time and go  
10 forward?

11 CHAIRMAN RIGLER: Yes.

12 MR. OLDS: We will.

13 Incidentally, I would like to say for the record Mr.  
14 Schaefer is not here only because he has to be in California  
15 on business, which was very difficult to rearrange, and I  
16 hope it does not cause great concern. I apologize if it  
17 does.

18 MR. LESSY: My point is they went from two to  
19 four, not from two to three. That even creates an additional  
20 burden.

21 CHAIRMAN RIGLER: Call Mr. Gilfillan.

22 Whereupon,

23 WILLIAM F. GILFILLAN, JR.

24 was called as a witness on behalf of the Applicant, Duquesne  
25 Light Company, and, having been first duly sworn, was examined  
and testified as follows:

b1c 3

## DIRECT EXAMINATION

BY MR. OLDS:

Q Mr. Gilfillan, would you please state your name, your residence, and your position with the Duquesne Light Company?

A My name is William F. Gilfillan, Jr. My residence is 3319 Cassidy Drive, Bethel Park, Pennsylvania, and I am Vice President in Marketing and Customer Services of Duquesne Light Company.

Q What is your educational training at the college level or beyond?

A I have a bachelor's degree in Mechanical Engineering from the Carnegie-Mellon University.

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

A Twenty-six years.

Q How long have you held the position that you presently hold?

A Since 1965.

Q Mr. Gilfillan, did you participate in discussions and negotiations with the Borough of Pitcairn in 1967 and shortly thereafter dealing with the problem of Pitcairn's request for emergency power and interconnection and purchase of power?

A Yes.

Dlt 9

1 MR. OLDS: As a prelude to Mr. Gilfillan's testi-  
2 mony, Mr. Rigler, we would like to have him identify some  
3 correspondence which are interrelated to the course of dis-  
4 cussions.

5 I hope you will be tolerant if I'm not quite sure.  
6 Do I have the Reporter mark them as Duquesne exhibits at  
7 this point?

8 CHAIRMAN RIGLER: Have these previously been intro-  
9 duced?

10 MR. RIEGER: No, these are gaps in the correspondence.

11 MR. OLDS: They supply gaps in the correspondence.  
12 These are documents that all have been discovered and they all  
13 have document numbers and everybody has copies of them.

14 CHAIRMAN RIGLER: They should be marked for identi-  
15 fication.

16 MR. OLDS: And the only problem is to put an iden-  
17 tifying exhibit number on them.

18 CHAIRMAN RIGLER: Off the record.

19 (Discussion off the record.)

20 MR. RIEGER: Duquesne has three letters which we  
21 would like to mark for identification. The first letter is  
22 a letter dated November 24, 1967, from John Merriman to  
23 Robert McCabe and it's marked with the document identification  
24 number 3479.

25 Duquesne would request that this be marked for



b1: 10

1 identification as Applicant's Exhibit 113. -- I believe that's the  
2 next number; Is that correct? -- 113 (DL).

3 CHAIRMAN RIGLER: What was the internal number?

4 MR. RIESER: 3479.

XXXXXX

5 (The document referred to was  
6 marked for identification as  
7 Applicants' Exhibit No. 113(DL).)

8 MR. RIESER: The second letter is a letter dated  
9 January 23 from Robert McCabe to John Herriman with the internal  
10 identification number 4212.

11 We would request that this be marked for identifi-  
12 cation as Applicants' Exhibit 114(DL).

13 MR. CHARNO: Counsel, is that January 23, 1968,  
14 for the record?

15 MR. RIESER: Yes. I'm sorry.

XXXXXX

16 (The document referred to was  
17 marked for identification as  
18 Applicants' Exhibit No. 114(DL).)

19 MR. RIESER: The third is a letter from Robert  
20 McCabe to Duquesne Light Company, to the attention of John  
21 Herriman, dated February 29, 1968, with the internal identi-  
22 fication number 3494.

23 We request that this be marked for identification  
24 as Applicants' 115(DL).

bit 11

(The document referred to was  
marked for identification as  
Applicants' Exhibit No. 115(2)).

MR. RINSUR: I would also like to state for the  
record that these letters complete the record of the  
correspondence between Duquesne Light Company and the  
Borough of Pitcairn. They fill in gaps in the correspondence  
as the record now stands.

MR. OLDS: Mr. Ridler, may I state for the record  
that when I reviewed the documents which constituted the  
chain of correspondence between Duquesne Light Company and  
the Borough of Pitcairn, I was struck by the fact that the  
exhibits already offered by either the Staff or the Government  
or the City of Cleveland left certain gaps and made it somewhat  
difficult to follow the whole chain of correspondence.

And while I do not believe that any of these letters  
is in and of itself tremendously important, I think it probably  
will be helpful to the understanding of the Board to have  
the whole picture put before it.

I am not totally familiar with the procedure for  
verification of such papers. This is from the files of  
Duquesne Light Company. If it is the style, I will ask the  
witness whether he is familiar with these letters and  
whether in fact they were either sent or received by Duquesne  
Light Company.

blt 12

1 CHAIRMAN RIGLER: You may ask him those questions  
2 if he has knowledge.

3 BY MR. OLDS:

4 Q May I ask you to Applicants' Exhibits 113, 114  
5 and 115 and state on the record whether you are familiar  
6 with these documents as documents either sent by or received  
7 by Duquesne Light Company?

8 A Yes, I am.

9 MR. OLDS: We offer in evidence these documents.

10 MR. HJELMFELT: Might I inquire as to whether the  
11 offer includes the handwritten notation on the bottom of  
12 Applicants' 113? And, if so, it's illegible on my copy.

13 MR. OLDS: There was no intention to offer the  
14 handwritten annotation at the bottom of Exhibit 113, and  
15 I would, therefore, suggest that the illegibility is un-  
16 important.

17 MR. LESSY: Are you saying that we should dis-  
18 regard it?

19 MR. OLDS: Yes.

20 MR. LESSY: All right.

21 Now, with respect to 113, the sender of that  
22 letter is not Mr. Gilfillan, nor is the addressee of 114 the  
23 witness. In 115 the witness is mentioned in the context of  
24 the letter.

25 I'd like the witness -- I'd like for the witness

blt 13

1 to state how he became familiar with these letters if he is  
2 not the author or the addressee for the appropriateness. If  
3 not, we would ask that they be treated as unsponsored ex-  
4 hibits.

5 MR. OLDS: Mr. Rigler, I have no objection if  
6 these questions appropriately go to the authenticity of the  
7 documents and the witness' being able to so testify.

8 CHAIRMAN RIGLER: You may answer the question,  
9 Mr. Gilfillan.

10 THE WITNESS: Mr. Merriman was an employee in my  
11 division. He is the person who wrote the letter of November  
12 24, which is document 113, and he's the addressee in 114  
13 and also the addressee in 115. These letters were in  
14 Duquesne Light's files.

15 MR. LESSY: If you will, I have one further  
16 question.

17 Are you, Mr. Gilfillan, generally familiar with  
18 the letters sent by Mr. Merriman sent outside and the letters  
19 received by Mr. Merriman inside?

20 THE WITNESS: Not in every case, but I do know  
21 that these were in our files.

22 MR. LESSY: How do you know that they were in  
23 your files?

24 THE WITNESS: I saw them in the files.

25 MR. LESSY: You examined the Pitcairn files?

blt 14

1 THE WITNESS: Yes, sir.

2 MR. LESSY: I have no objection.

3 CHAIRMAN RIGLER: Hearing no objection, we will  
4 receive into evidence Applicants' Exhibits 113 through 115  
5 at this time.

XXXXXX

6 (The documents previously marked  
7 for identification as Applicants'  
8 Exhibits 113(DL) through 115(DL)  
9 were received in evidence.)

10 BY OLDS:

11 Q Mr. Gilfillan, please describe the discussions  
12 and negotiations between Duquesne Light Company and Pitcairn  
13 concerning the matter of emergency power and sale of power  
14 beginning in November 1967.

15 MR. MELVIN BERGER: Objection.

16 MR. HJELMFELT: Objection.

17 I believe in the past the procedure has been --  
18 and it's the one that was insisted upon by Mr. Lerach -- that  
19 the testimony be given in question and answer form rather  
20 than a sustained narrative such as is invited by that ques-  
21 tion.

22 CHAIRMAN RIGLER: How did we rule on Mr. Lerach's  
23 request?

24 MR. HJELMFELT: Mr. Lerach was victorious.

25 CHAIRMAN RIGLER: Let me hear the question.

blt 15

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

3 MR. MELVIN BERGER: I would like a clarification  
4 on whether these are discussions in which Mr. Gilfillan  
5 participated in himself or not.

6 CHAIRMAN RIGLER: We'll take the clarification,  
7 Mr. Olds.

8 MR. OLDS: Well, I intended the witness only to  
9 respond with reference to those that he either participated  
10 in or knew about by virtue of his position with the company.

11 CHAIRMAN RIGLER: Well, there may be a distinction  
12 between the two. Maybe you should narrow your question to  
13 discussions and meetings of which he was a personal partici-  
14 pant. Then, if you wish to go further in subsequent ques-  
15 tions, you may attempt to do that.

16 MR. OLDS: Well, let us start at first things --  
17 first, then, Mr. Rigler. Perhaps Mr. Hjelmfelt, on reflec-  
18 tion and in view of the Chairman's comments, has a point  
19 and I should do it the hard way rather than the easy and  
20 ask more specific questions, and then we'll be certain of  
21 what is being said on the record.

22 BY MR. OLDS:

23 Q Mr. Gilfillan, were you aware of the fact that  
24 Pitcairn requested an emergency interconnection in November  
25 1967?

blt 16

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A. Yes, I was.

Q. How did you become aware of that fact?

A. I was informed of that fact by Mr. O'Nan, who worked for me.

Q. Did you have any meeting with representatives of the Borough of Pitcairn on the subject of an emergency interconnection following that initial inquiry?

A. Well, this exchange of correspondence, which are these exhibits, led to a meeting between Mr. McCabe and I on March 6, 1968.

Q. What was discussed at that meeting?

A. The three points that Mr. McCabe had raised in his letter of January 23, 1968.

Q. And what were those three points, Mr. Gilfillan, for our assistance in understanding?

A. Emergency interconnection on a negotiated basis independent of Schedule M, the possibility of the Borough of Pitcairn purchasing part of its normal load from Duquesne Light Company, and the possibility of an interchange agreement between the Borough of Pitcairn and Duquesne Light Company.

Q. You refer to Schedule M. What was Schedule M?

A. Schedule M was Rate M, which was filed with the Pennsylvania Public Utility Commission.

CHAIRMAN RIGLER: To what was Rate M applicable?

blt 17

1 THE WITNESS: For emergency service to municipali-  
2 ties.

3 BY MR. OLDS:

4 Q You say it was filed with the Pennsylvania Public  
5 Utility Commission. Was it part of Duquesne Light's filed  
6 tariff?

7 A It was part of Duquesne Light's filed tariff.

8 Q And how long had Rate M or a similar provision  
9 been part of Duquesne Light's tariff?

10 A For quite a number of years, going back -- well,  
11 at least into the 1920's.

12 MR. OLDS: If the Board please, we have a copy  
13 of Rate M in the courtroom -- I beg your pardon. I've been  
14 advised I'm making an incorrect statement. We do not have  
15 a copy of Rate M here. I thought we did.

16 MR. LESSY: If the Board please, the Staff has a  
17 copy of Rate M. It is redlined. I would like to make it  
18 available to the Board and the parties at this time as a  
19 Staff exhibit.

20 CHAIRMAN RIGLER: It is or it is not yet in the  
21 record?

22 MR. LESSY: It is not.

23 (Documents distributed.)

24 CHAIRMAN RIGLER: Do you want to designate this  
25 as a Staff exhibit, Mr. Lessy?



blt 18

1 MR. LESSY: Yes, and I don't have the sequential  
2 number right at hand.

3 It bears the markings at the bottom of the first  
4 page 118303, and that continues -- 118304, or -383, -384,  
5 -385, continuously up to 118389. If I could have a minute  
6 I could get the appropriate exhibit number.

7 CHAIRMAN RIGLER: I believe it will be NRC Staff  
8 Exhibit No. 211, unless somebody has some other information.

9 MR. LESSY: That sounds correct.

10 The redlining in Xerox is black, and it appears  
11 on all of page 1, which is the initial page. It appears on  
12 page 118386 at paragraph 16. It appears at page 118387 at  
13 paragraph 27. It appears at page 118388 at paragraphs 31  
14 and 32. It appears on the final page at paragraph 39.

XXXXX

15 (The document referred to was  
16 marked for identification as  
17 NRC Staff Exhibit No. 211.)

End 5

6  
eakl

1 MR. OLDS: If the Board please, as far as we  
2 are concerned, I believe that it might be more helpful  
3 to the Board's understanding of this document if the  
4 whole document were considered rather than only selected  
5 portions.

6 CHAIRMAN RIGLER: We are amenable to the substitu-  
7 tion of the entire document at the option of the parties.  
8 If Duquesne intends to provide the entire document, please  
9 supply a copy to the Staff first, so that they can  
10 duplicate the red lining done here.

11 MR. LESSY: Is this not the entire document?

12 MR. OLDS: This is the entire document I  
13 was attempting to suggest that rather than having the  
14 document confined to the red lined portions, I was urging  
15 that the entire document be treated as if it were red lined.

16 CHAIRMAN RIGLER: I see. All right. I think you  
17 can be a little more selective. Otherwise, I think we distort  
18 the purpose of the red lining rule. As I leaf through  
19 it, now, it appears to me that a lot of this really you  
20 would not want us to consider. We will give you an  
21 opportunity to red line pertinent portions of the document.

22 MR. OLDS: I appreciate that and I assume we  
23 may advise the Board and other parties at a later time  
24 on that subject.

25 MR. LESSY: Does Duquesne Light have any objection

eak2

1 to Staff's moving this into evidence at this time as Rate M?

2 MR. OLDS: I have no objection subject to my  
3 opportunity to supplement by additional red lining.

4 MR. LESSY: Staff would like to move into evidence  
5 NRC-211.

6 MR. REYNOLDS: I will make the continuing objection.

7 CHAIRMAN RIGLER: The continuing objection is over-  
8 ruled. We will receive Staff Exhibit 211 into evidence  
9 at this time.

10 (The document referred to, marked  
11 NRC Staff Exhibit 211, for  
12 identification, was received in  
13 evidence.)

1 XXX

14 BY MR. OLDS:

15 Q Mr. Gilfillan, was a response made by you on behalf  
16 of Duquesne Light Company to Mr. McCabe as to his  
17 three requests which you have described at the meeting of  
18 March 6, 1968?

19 A Yes, I responded by letter to Mr. McCabe on  
20 March 19, 1968.

21 Q I think my question was not understood. Did you  
22 make a response at the meeting of March 6?

23 A Oh, at the meeting, yes.

24 Q You made a response at the meeting?

25 A At the meeting.

eak3

1 Q An oral response?

2 A Yes.

3 Q Was that oral response the same in substance  
4 as the written response that was made under date of  
5 March 19, 1968, which I believe is already an exhibit  
6 in the case, Mr. Rigler. I would like at this point  
7 to put that in the record.

8 MR. LESSY: It is NRC-16, I believe.

9 MR. OLDS: I am informed that would be Staff  
10 Exhibit 16.

11 THE WITNESS: Yes.

12 CHAIRMAN RIGLER: Off the record.

13 (Discussion off the record.)

14 BY MR. OLDS:

15 Q Mr. Gilfillan, in preparing the written response,  
16 Staff Exhibit 16, what actions did you take? What did  
17 you consider?

18 A Well, we considered, of course, the questions  
19 that were asked. We reviewed our response. We reviewed  
20 and consulted with a law firm in New York as to our obliga-  
21 tions to accede to the request.

22 Q With reference specifically to the application  
23 of the Borough to purchase base load electric power, from  
24 Duquesne Light Company for resale, what consideration did  
25 you give to existing rules or policies of the company?

eak4

1           A       The company did not wish to supply electric  
2 power to Pitcairn on a wholesale for resale basis. At that  
3 time, we felt we did not have a legal requirement that  
4 the company supply such service or that the jurisdiction  
5 of the question of the duty to supply such service had been  
6 removed from the State of Pennsylvania or the Commonwealth  
7 of Pennsylvania.

8                   And we believed the Federal Power Commission  
9 ability to require us to supply such service was questionable.

10           CHAIRMAN RIGLER: Was there any aspect of Penn-  
11 sylvania law which prevented Duquesne from selling power for  
12 resale in the event that Duquesne wished to do so?

13           THE WITNESS: We had in our tariff a Rule 18  
14 which prohibited resale. Since it was our position --

15           CHAIRMAN RIGLER: That was a tariff which Duquesne  
16 filed for consideration by the Pennsylvania Public Utilities  
17 Commission, is that correct?

18           THE WITNESS: Well, it was a Commission made  
19 tariff in that sense. It had been through rate cases and had  
20 been specifically approved by the Pennsylvania Public Utility  
21 Commission.

22           CHAIRMAN RIGLER: I think we are sliding by each  
23 other's points. You are telling me one of the tariff pro-  
24 visions prevented Duquesne from entering into sale for resale  
25 transactions. Is that what you were saying?

eak5 1

THE WITNESS: Rule 18 prohibits resale.

2

MR. OLDS: You mean sale for resale.

3

THE WITNESS: Yes, wholesale sales for resale

4

sales.

5

CHAIRMAN RIGLER: But was this a rule invariably

6

insisted upon by the Pennsylvania Public Utilities Commission

7

or was this a part of the proposal which Duquesne submitted

8

to the Public Utilities Commission for review and approval?

9

THE WITNESS: Well, the rule had been as a matter

10

of fact, the subject of adversary proceeding before the

11

Pennsylvania Public Utility Commission, was upheld by the

12

Public Utility Commission and subsequently by the courts of

13

Pennsylvania in 1966 and 1967. Specifically, Rule 18

14

covering wholesale for resale.

15

CHAIRMAN RIGLER: Was there ever any proceeding

16

before the Pennsylvania Utilities Commission where a tariff

17

was filed seeking permission or authority to sell power

18

for resale?

19

MR. OLDS: By Duquesne you mean?

20

CHAIRMAN RIGLER: No, by anyone. I had under-

21

stood now the witness to describe the rule as a generic

22

rule which applied throughout the State of Pennsylvania.

23

Am I mistaken as to that?

24

MR. OLDS: I must confess that my response to

25

your question is somewhat colored by my own personal knowledge,

1 Mr. Rigler.

eak6

2 I did not so understand the answer. I think the  
3 answer of the witness, as I heard it, suggested to you that  
4 it was a rule of the Commission with reference to Duquesne  
5 Light Company forming part of its tariff.

6 I did not myself hear the witness express a  
7 general opinion on the subject. Your present question  
8 is going to that point?

9 CHAIRMAN RIGLER: The Board's area of inquiry  
10 is whether if Duquesne had desired to sell power for  
11 resale, there was any rule of general application of the  
12 Pennsylvania Utilities Commission, which would have  
13 prevented the acceptance of that kind of tariff?

14 MR. ODDS: If that is the question, I don't  
15 know whether the witness can answer it or not but I am  
16 sure that is a question properly addressed to him under  
17 the circumstances.

18 CHAIRMAN RIGLER: If you would care to consult  
19 with Mr. Munsch or anyone else to provide guidance to the  
20 Board, we would be receptive to that. Do you know the  
21 answer to the question?

22 THE WITNESS: I do not know.

23 MR. OLDS: I don't know the answer myself. I  
24 urge upon that point, if the Board considers it important,  
25 that that be established, I would consult with Mr. Munsch,

eak7

1 and we may find it necessary because I am not sure Mr. Munsch  
2 holds himself out to be that much of an expert on everything  
3 that would happen, that we might feel it necessary to try  
4 to call on someone else.

5 CHAIRMAN RIGLER: I would think it is worth  
6 exploring. As I look at NRC Exhibit 16 which is the  
7 letter from Mr. Gilfillan to Mr. McCabe, Mr. Gilfillan  
8 states, apparently on behalf of Duquesne, since he uses  
9 the phrase "we" and says "we are not willing to  
10 sell baseload power to the Borough of Pitcairn for its  
11 resale." Does that represent the policy of the company  
12 at that time?

13 THE WITNESS: Yes, it does.

14 MR. OLDS: I was about to ask the question why  
15 the company had that policy.

16 CHAIRMAN RIGLER: Do you know why the company  
17 had that policy?

18 THE WITNESS: I began to respond to part of that.  
19 We felt there was no legal obligation that the company  
20 supply such service.

21 CHAIRMAN RIGLER: But why did the company not  
22 desire to supply that service?

23 THE WITNESS: Rule 18 prohibited resale.

24 CHAIRMAN RIGLER: We are asking the policy  
25 considerations which caused the company in its discretion,



eak3 1 let's say, not to be willing to sell this power?

2 THE WITNESS: Pardon me.

3 CHAIRMAN RIGLER: What policy considerations  
4 affected the company, putting legal considerations aside,  
5 what was the policy of the company?

6 THE WITNESS: We felt that Rule 18 was based  
7 on very sound business practice. We were involved  
8 in selling power at retail. Therefore, our rates were  
9 aimed at providing service to the ultimate consumer. We  
10 believed that it was an unsound business practice to  
11 interpose a middleman between the customer and the company.

12 The middleman would take those situations which  
13 were most satisfactory, which were most advantageous  
14 and leave those situations which were unsatisfactory and  
15 most disadvantageous to the company to serve.

16 This would increase the cost of service to  
17 the public and to Duquesne Light's customers.

18 CHAIRMAN RIGLER: Let's pause for a minute there.  
19 Do I correctly recall that Pennsylvania is a State of  
20 exclusive state assigned territories in which two companies  
21 may not compete with one another?

22 THE WITNESS: The service territories in the  
23 State of Pennsylvania are clearly delineated and defined,  
24 that is correct.

25 CHAIRMAN RIGLER: It would be illegal under

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1 Pennsylvania law for one company to offer service in the  
2 clearly delineated territory of another company?

3 THE WITNESS: Yes, sir, that is correct.

4 CHAIRMAN RIGLER: And you say your business  
5 reason, the company's business reason for not wishing  
6 to supply power for resale is because it interposes  
7 a middleman?

8 THE WITNESS: Yes.

9 CHAIRMAN RIGLER: Are there any other business  
10 reasons?

11 THE WITNESS: Well, we felt in our particular  
12 service territory which is a very compact urban area,  
13 there are some 147 municipalities in some 800 square miles,  
14 to have a lot of distribution systems in those small areas  
15 would so fragment the distribution system that the costs of  
16 supplying the service, the reliability of the service,  
17 the quality of the service would not be as great and this  
18 would affect not only the public but, of course, Duquesne  
19 Light's customers.

20 CHAIRMAN RIGLER: That is what I am having  
21 trouble with. If Duquesne Light's customers are here and  
22 the other municipalities are in their own protected areas,  
23 I have some difficulty following the logic of either your  
24 middleman argument or the effect on Duquesne customers  
25 argument because it appears to me that the customers who

eak10

1 would be served by the sale for resale, would be outside  
2 of Duquesne's area.

3 THE WITNESS: Rule 18 covering resale was a rule  
4 which we felt was an important rule and we applied it.

5 BY MR. OLDS:

6 Q Mr. Gilfillan, the difficulty is you are not  
7 making clear whether Rule 18 applied only to the situation  
8 of sales to municipalities or applied to the problem of  
9 efforts of persons within your service area to buy power  
10 from you at wholesale and resell it within your service area.

11 If you explain that, it perhaps will become clearer  
12 to the Board?

13 A We applied that rule to both circumstances within  
14 our service territory.

15 MR. SMITH: So, you are leaving out, I think, the  
16 final factor. That is, if you have a middleman and as you  
17 point out, he may take the better business, under Pennsylvania  
18 law you are required to serve the remainder?

19 THE WITNESS: If it is within our service  
20 territory.

21 MR. SMITH: No matter how profitable or unprofitable  
22 you are required to serve it.

23 THE WITNESS: That is correct. I thought that  
24 was the point I made. I am sorry. It would increase the  
25 cost of serving Duquesne Light's customers.

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BY MR. OLDS:

Q Mr. Gilfillan, further to clarify the answer you made to the Board, it would be helpful if you would describe what you meant when you referred to the possible fragmenting of the distribution system of Duquesne Light Company, if the company engaged in the practice of selling at wholesale to permit resale?

A Well, groups, for example, or individuals could aggregate the electric requirements of a number of customers and then take service at one point and sell on the wholesale for resale basis and then in effect, we have a distribution system which begins to fragment.

Fragmentation would increase the costs because the distribution system could serve maybe so far and then have to go around to get to other Duquesne Light customers in another location. The cost of things like meter reading, the cost of providing service to customers and finding where they were would certainly increase.

There would certainly be confusion in the customers' minds as to who really served them. We do find, for example, in the City of Pittsburgh, which has its own street lighting system, we frequently get calls because city street lights are out even though we don't have responsibility for them.

We have a number in our ad in the telephone book

eak12 1 for people to call when this happens, not a Duquesne  
2 number.

3 There is confusion in the customers' minds. That  
4 increases costs.

5 CHAIRMAN RIGLER: The company did not wish  
6 to sell for resale because it had business reasons such  
7 as fragmentation of customers and because of a desire to  
8 minimize costs?

9 It also relied on Rule 18 as a reason for not  
10 being willing to offer to sell electric power for resale,  
11 is that correct?

12 THE WITNESS: That is correct. Rule 18 was basically  
13 supported by the reasons I am stating.

14 CHAIRMAN RIGLER: I would be interested in hearing  
15 more about Rule 18, particularly whether it is a mandatory  
16 rule and whether it is a rule of general applicability which  
17 bound the company or whether the company could have  
18 applied for tariffs that would have gone differently from  
19 Rule 18.

20 The reason for my interest is the second paragraph  
21 of Mr. Gilfillans letter, NRC-16 where he states that  
22 they are not willing to sell for resale. I am thinking  
23 in terms of the Arnold Schwinn case which seems to say not  
24 only would it be inconsistent with the antitrust laws, but  
25 it might violate antitrust laws to impose constraints on the

eak13

1 sale or in connection with alienation of a product.

2 If you would explain that further, we would  
3 appreciate it.

4 MR. OLDS: This may require us to add to our  
5 witness list because I am not sure that any of the witnesses  
6 we have presently listed would fall into the category  
7 of an acceptable person to accomplish this task.

8 I will have to review that with our people.

9 CHAIRMAN RIGLER: All right.

10 BY MR. OLDS:

11 Q Mr. Gilfillan, what happened after you sent your  
12 letter of March 19, 1969 to the Borough of Pitcairn with  
13 reference to Pitcairn's requests that you have described?

14 A Mr. McCabe responded to my letter on, I believe,  
15 March 25 of 1968 and we then heard nothing further on the  
16 matter until July of 1968, when Pitcairn filed a civil  
17 antitrust suit against Duquesne Light Company.

18 MR. OLDS: If the Board please, for the sake  
19 of clarification and ease of review, I would like to note  
20 that the letter Mr. Gilfillan has referred to dated March 25  
21 from the Borough of Pitcairn and addressed to him, appears  
22 as an attachment to Department of Justice Exhibit 2, which  
23 involves a couple of other documents.

24 BY MR. OLDS:

25 Q Mr. Gilfillan, what was the outcome of that antitrust

eak14 1 litigation with reference to the questions raised in the  
2 three requests made by Pitcairn?

3 A Pitcairn filed a complaint with the Federal  
4 Power Commission in July of 1970 and then followed that up  
5 with another or I guess, an amended complaint in  
6 October of 1970.

7 The October 1970 complaint requested an emergency  
8 connection. That connection was installed in December of  
9 1970 and the antitrust suit was held in abeyance by the  
10 Judge as I recall while Pitcairn went to the Federal Power  
11 Commission.

12 Ultimately, Pitcairn entered into settlement  
13 negotiations with Duquesne Light and the case was settled  
14 or the case was negotiated in 1971.

15 I think it was late 1971 in which there was  
16 an agreement reached. And a rate was filed by Duquesne  
17 with the Federal Power Commission for full requirements  
18 wholesale for resale.

19 Service was supplied to Pitcairn, starting  
20 in December 1972.

21 So, we have been supplying Pitcairn for the past  
22 three-and-a-half years on a wholesale for resale full  
23 requirements basis.

24 MR. OLDS: I have no other questions of Mr.  
25 Gilfillan. This is a perfect time for a break.



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1 CHAIRMAN RIGLER: It is. You have been supplying  
2 Pitcairn on a wholesale for resale basis you say?

3 THE WITNESS: Yes, sir, under a rate filed with the  
4 Federal Power Commission.

5 CHAIRMAN RIGLER: How does this impact on your  
6 explanation of Rule 18?

7 THE WITNESS: During the period of 1968, we  
8 felt that such service was under the jurisdiction of  
9 the State of Pennsylvania. There were various FPC cases  
10 that were carried on through the courts and I think even  
11 through the Supreme Court, covering this matter.

12 CHAIRMAN RIGLER: What do you mean by this matter?

13 THE WITNESS: This matter of whether the FPC  
14 could order or could require a company to provide wholesale  
15 for resale service or not.

16 CHAIRMAN RIGLER: Notwithstanding the presence  
17 of any state regulation?

18 THE WITNESS: In effect, whether federal  
19 jurisdiction exceeded the state jurisdiction.

20 CHAIRMAN RIGLER: All right.

21 THE WITNESS: These occurred right around  
22 1970 and subsequent to it, up through the 1970's. Duquesne  
23 Light recognized really in 1970-71 that federal jurisdiction  
24 exceeded the state jurisdiction and proceeded at that point  
25 to assume that, therefore, the tariff filed with the State of



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1 Pennsylvania, with the Pennsylvania Public Utilities  
2 Commission, did not apply to wholesale for resale sales  
3 to municipalities. Rule 18 is still in the tariff  
4 and still applies to retail sales in our service territory.

5 CHAIRMAN RIGLER: I think this is a good time  
6 to break for lunch.

7 (Whereupon, at 1 p.m., the hearing was recessed,  
8 to reconvene at 2:30 p.m., this same day.)

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AFTERNOON SESSION

(2:30 p.m.)

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2  
3 . OLDS: If the Board please, I would like  
4 to ask leave to reopen the direct for one more question.  
5 It became clear to me during the luncheon recess that I  
6 had misunderstood one of the exhibits and I feel reasonably  
7 confident a question would help to clarify one of the  
8 exhibits.

9 If no one has objection, I hope I could have  
10 that privilege.

11 MR. LESSY: No objection.

12 MR. CHARNO: No objection by the Department.

13 Whereupon,

14 JOHN ARTHUR

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

17 DIRECT EXAMINATION (Continued.)

18 BY MR. OLDS:

19 Q Mr. Gilfillan, I put before you the document  
20 which has been marked as NRC-211 which is an exhibit  
21 containing seven pages. I ask of those seven pages,  
22 how many are in fact, Rate M.

23 A Rate M is just one of those seven pages and is the  
24 first page of this particular exhibit.

25 Q What are the other six pages of Exhibit 211?

1           A       The other six pages are the rules and  
2 regulations which are a part of our complete tariff covering  
3 a number of other rates.

4           Q       One last question. You made reference in your  
5 testimony to Rule 18. Would you tell us whether it appears  
6 as part of Exhibit NRC 211 and if so, on what one of the  
7 seven pages?

8           A       It is shown on page 4.

9           Q       Of the Exhibit?

10          A       Of Exhibit 211 and it is identified as "18,  
11 Redistribution."

12                   MR. OLDS: Thank you, your Honor, for the  
13 opportunity to reopen the direct.

14                   MR. SMITH: To avoid confusion, that is revised  
15 page number 7?

16                   MR. OLDS: Let me confirm that. That is correct,  
17 Mr. Smith. It says at the top, righthand corner, "fourth  
18 revised page number seven."

19                   MR. LESSY: We would ask that that provision  
20 be red lined.

21                   MR. OLDS: We would have no objection. Indeed,  
22 I was about to suggest the same myself.

23                   CHAIRMAN RIGLER: The Board on its own would be  
24 interested at some point in additional testimony relating  
25 to Rule 18 -- I am not sure Mr. Gilfillan is the witness who

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1 would be able to address the subject however -- for example,  
2 the last sentence which provides the "Rule shall not  
3 provide any type of undertaking . . ." suggests that in some  
4 circumstances companies bound by this tariff may, in fact,  
5 be able to offer electricity for resale.

6 The other question is a variation of the question  
7 we posed this morning. Provision 1 of the rules and  
8 regulations indicates that these rules and regulations  
9 could be construed as those of the supplying company rather  
10 than the Pennsylvania Public Utility Commission.

11 We would appreciate clarification on that.

12 MR. OLDS: Mr. Rigler, I do believe the witness  
13 could explain that last sentence.

14 CHAIRMAN RIGLER: We would be happy to have  
15 him do so.

16 MR. OLDS: Although he is not a lawyer, he has to  
17 operate under the provisions of this.

18 MR. OLDS:

19 Q Mr. Gilfillan, I direct your attention to the last  
20 sentence of Rule 18, as it appears on NRC 211 and ask  
21 whether you can state for the record what that sentence governs?

22 A The title of Rule 18 was changed in June 1965 from  
23 the title, "Resale," to the title, "Redistribution." Rule 18  
24 when it covered resale prohibited resale but not redistribution  
25 and this then allowed those practices which were in effect prior

eak20

1 to June 1, 1965, with regard to redistribution, to continue.

2 Q Could you explain what the difference is between  
3 resale and redistribution?

4 A Resale is the aggregation of the electric  
5 requirements of several customers and then taking the  
6 electricity at one point and reselling it and submetering  
7 it to other customers by a middleman.

8 Redistribution is the distribution of electricity  
9 at no separate and distinct charge or cost to a group of  
10 customers but does not involve resale. Does not involve  
11 submetering.

12 Q I believe you testified that Rule 18 had been in  
13 tariffs of the Light Company for many years?

14 A That is correct, since 1916 or at least 1916.

15 MR. OLDS: Does this provide some of the information  
16 to the Board?

17 CHAIRMAN RIGLER: It does, yes. I would like  
18 to make a further inquiry. Does Duquesne sell power to  
19 Pennsylvania Power which Pennsylvania Power either redistributes  
20 or resells to its customers?

21 THE WITNESS: To the best of my knowledge, Duquesne  
22 through an interchange agreement with Pennsylvania Power  
23 sells power to Pennsylvania Power. That is not my area.  
24 I do not deal in that area and that is not my area of  
25 responsibility. But to the best of my knowledge, we have an

eak21 1 interconnection with Pennsylvania Power.

2 CHAIRMAN RIGLER: Do you have any knowledge of  
3 the operations of the CAPCO agreement?

4 THE WITNESS: Only in a general way. I have  
5 not been directly involved in that other than as a member of  
6 the management group in general discussions of it. But I  
7 don't know the details of the agreement.

8 CHAIRMAN RIGLER: Does Duquesne ever receive  
9 power from Pennsylvania Power which Duquesne uses for the  
10 purpose of selling to its customers?

11 THE WITNESS: I believe we do. Based on an inter-  
12 change agreement.

13 CHAIRMAN RIGLER: On what basis would the company  
14 distinguish between policies which would enable Duquesne  
15 and Pennsylvania Power to sell power to one another for resale  
16 purposes while at the same time resisting the sale of  
17 power for resale purposes under municipal rate schedules?

18 THE WITNESS: Well, I think my letter of March 19  
19 addresses that as a separate item in paragraph 3, where  
20 we talk about an interchange agreement, not wholesale for resale  
21 but an interchange agreement. An agreement must be  
22 beneficial to both parties.

23 We saw no advantage to the company in such an  
24 agreement and went on to say that based on our knowledge of  
25 the Pitcairn generating and distribution facilities, that they

eak22 1 could not provide meaningful or reliable capacity to the  
2 company.

3 In the case of Pennsylvania Power, they do provide  
4 meaningful capacity to the company.

5 MR. OLDS: I think, Mr. Rigler, that perhaps  
6 what is implicit in your question is the question of the  
7 witness of the distinction between customers that is used  
8 in the rules and regulations and as it is controlled by the  
9 rules and regulations.

10 In the situation in an interchange agreement, those  
11 are under the jurisdiction of the Federal Power Commission  
12 and not under the jurisdiction of the Pennsylvania Public  
13 Utilities Commission. That is well-established by law. I  
14 believe, however, that is what you are suggesting you are  
15 interested in.

16 CHAIRMAN RIGLER: I am going back to what could  
17 be interpreted as a restraint on alienation which in turn  
18 could be inconsistent with the policies under the antitrust  
19 laws. By that I am referring to Rule 18, which would  
20 be contained in the municipal sales schedule.

21 I am wondering then what is so different  
22 about sales to municipal customers as opposed to sale back  
23 and forth between utility systems where apparently the  
24 practice does go on.

25 For example, I would assume and one answer that the



eak2p witness just gave is lack of mutuality in sales to municipal  
2 systems.

3 He said there is no benefit to Duquesne in  
4 being able to receive power from the municipal systems because  
5 they are of a size where they can't provide reliable power  
6 on a long-term basis. I was going to ask about that, whether  
7 mutuality is all that important, however. Suppose  
8 Penn Power was largely a hydroelectric system so that they  
9 could supply partial firm over a long term to Duquesne and  
10 yet were unlikely to take anything back from Duquesne.

11 I would still think Duquesne would want to get that  
12 power as long as it lowered its overall costs of serving  
13 its own customers.

14 MR. OLDS: I am observing your question is some-  
15 what hypothetical. That is not the circumstance. I am unaware  
16 that the record suggests that there is that  
17 circumstance.

18 CHAIRMAN RIGLER: It suggests that there is an  
19 element of mutuality. It goes beyond the theoretical because  
20 Mr. Gilfillan says he believes both systems do sell to one  
21 another.

22 MR. PERI: He didn't say that he had any knowledge  
23 that Pennsylvania Power would resell power that they were  
24 sold by Duquesne.

25 CHAIRMAN RIGLER: He knows Duquesne obtains power



eak24 1 on occasion from Pennsylvania Power.

2 MR. PERI: Yes, sir.

3 CHAIRMAN RIGLER: Although it was not his  
4 immediate expertise, he believed it to be the practice of  
5 Duquesne to sell to Penn Power.

6 MR. PERI: Yes, sir. Duquesne sells to Penn Power  
7 but what Penn Power does with it after that point, I don't  
8 think he testified to and I understood your comment to indicate  
9 he testified to both sides of that.

10 CHAIRMAN RIGLER: What could Penn Power do with  
11 it other than resell it to their customers?

12 MR. PERI: I took your comments to be wholesale-  
13 resale rather than retail. Perhaps I am mistaken. I will  
14 review the transcript and if there is a problem, I will bring  
15 it to your attention.

16 MR. OLDS: I have no other questions of the witness,  
17 Mr. Chairman.

18 CROSS-EXAMINATION

19 BY MR. LESSY:

20 Q Mr. Gilfillan, you testified --

21 MR. REYNOLDS: Excuse me a minute. I may have  
22 a question of two.

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BY MR. REYNOLDS:

1 Q Mr. Gilfillan, am I correct in my understanding  
2 of your testimony that Rule 18 is not included in the present  
3 rate schedule under which you serve Pitcairn today?

4 A It is not included in the schedule under which  
5 we serve Pitcairn. That schedule, of course, is the one  
6 filed with the Federal Power Commission.

7 Q And it has not been included since what date?

8 A The rate was filed sometime in 1972. I believe  
9 early 1972, as I recall, was when that rate was filed for  
10 service to Pitcairn with the Federal Power Commission.

11 Q So at least for three years now? Is that correct?

12 A That's correct, and that was the inception of the  
13 filing of that rate.

14 CHAIRMAN RIGLER: Well, there's no emergency rate  
15 schedule available at all for Pitcairn now, is there? Is  
16 there a Rate M in effect?

17 THE WITNESS: No, there is no Rate M in our tariff  
18 now. Of course, Pitcairn --

19 CHAIRMAN RIGLER: There's no need for one, is  
20 there?

21 THE WITNESS: There's no need for one. I was  
22 going to add Pitcairn does not have any generation.

23 I might add, Mr. Chairman, if I might, I think  
24 the confusion here is that my understanding with Pennsylvania  
25 Power is this is an interchange agreement. It is an

blt 2

1 agreement which in effect is this two-way concept of  
2 beneficial. It's not a wholesale from Duquesne for  
3 Pennsylvania to sell for resale. In that sense it's an  
4 interchange agreement, and that was my point in pointing out  
5 the third paragraph. We treated that -- in fact, it was a  
6 separate question raised by Pitcairn.

7 BY MR. REYNOLDS:

8 Q. And the reason that there is no need for an  
9 emergency schedule with Pitcairn today is because Duquesne  
10 Light provides their total requirements under the wholesale  
11 rate?

12 A. That is correct. Duquesne Light is providing and  
13 has provided for the last over three years full requirements,  
14 wholesale for resale.

15 MR. REYNOLDS: I don't have any further questions.

16 BY MR. LESSY:

17 Q. Mr. Gilfillan, you testified that one of the  
18 reasons you felt Duquesne Light did not desire to sell power  
19 for resale to Pitcairn was the belief that the FPC's ability  
20 to force Duquesne Light to sell power was questionable.

21 Isn't one of the reasons you felt that the settle-  
22 ment of the antitrust suit was attractive was that the FPC  
23 could have ordered the interconnection?

24 A. Pitcairn, of course, took their case to the Federal  
25 Power Commission in mid-1970, which was some two and a half

XXXXXX

blt 3

1 years after our discussions that we were talking about of  
2 March of 1968. Had Pitcairn taken it to the Federal Power  
3 Commission then, they may well have been able to get that.  
4 Pitcairn could have taken this to the Federal Power Commission  
5 at any time. They could have taken it to the Public Utility  
6 Commission at any time. They could have initiated that  
7 action.

8 Q Well, then Pitcairn -- the FPC's ability to force  
9 Duquesne Light to supply power, as you testified this morn-  
10 ing, wasn't questionable, was it?

11 A No, it was questionable. We didn't think in 1968  
12 -- my point is it's two years later, two and a half years  
13 later. In '68 we believed it was questionable.

14 Q There was no question, was there, as of 1968 that  
15 wholesale for resale sales such as that as had been requested  
16 by Pitcairn of Duquesne came under the jurisdiction of the  
17 Federal Power Commission as opposed to the Pennsylvania PUC?

18 A I think there was a question in our mind.

19 Q In 1968?

20 A In 1968.

21 Q Prior to -- during this same time period, did any  
22 other electric utilities in Pennsylvania sell power for  
23 resale to municipal electric systems?

24 A Yes, I believe they did.

25 Q Do you know what the average rate per kilowatt

blt 4 1 hour was of those sales?

2 A. No, I don't have that in mind at the moment.

3 Q. Would you accept the figure of 7.1 to 12.8 mills  
4 per kilowatt hour? Does that sound reasonable?

5 A. Well, that's a wide range -- about a half a cent.

6 MR. REYNOLDS: Could I ask whether we're talking  
7 about in Pennsylvania, in Ohio, in the whole country? I  
8 guess I'm not sure what the question is.

9 MR. LESSY: Would you read back the last question?

10 MR. OLDS: I think it takes two questions, Mr.  
11 Lessy. I think the last question was it did not relate to  
12 any specific jurisdiction. Your prior question before that,  
13 as I heard it, addressed itself to Pennsylvania.

14 MR. LESSY: Yes, sir.

15 MR. REYNOLDS: Was that the 7 and the 12?

16 BY MR. LESSY:

17 Q. Would you accept a range of electric utilities  
18 selling power for resale to municipals in Pennsylvania of  
19 between 7.1 and 12.8 mills per kilowatt hour?

20 A. It would depend on the conditions under which they  
21 sold it. Was this for all requirements power, partial re-  
22 quirements power, emergency power, or what? Without that  
23 definition I can't really respond.

24 Q. Okay. Partial requirements power for resale.

25 A. I would judge -- I don't really know the specific

blt 5

1 numbers. It would appear that power sold in that range  
2 would be -- at that point in time it would be a reasonable  
3 cost.

4 Q You testified another reason why you refused  
5 Pitcairn wholesale power was because you were afraid of a  
6 fragmented distribution system.

7 At that time, 1968, who other than Pitcairn had  
8 the ability to provide wholesale service in Duquesne Light's  
9 service territory?

10 A Well, I suppose any other supplier of electricity  
11 that could get to the Pitcairn area.

12 Q My question was who? What other electric  
13 systems, municipal electric systems, for example, small  
14 electric systems, other than Pitcairn had the ability to pro-  
15 vide wholesale service in Duquesne Light's service territory?

16 MR. OLDS: Excuse me.

17 Mr. Chairman, I have a feeling that Mr. Lessy is  
18 inadvertently not saying what he means to say when he speaks  
19 of wholesale service. Perhaps he means wholesale for resale.

20 MR. LESSY: Yes, sir.

21 MR. OLDS: When I heard the question I thought  
22 there was something missing.

23 MR. REYNOLDS: Could I have it read back, because  
24 I think he may have misspoken.

25 CHAIRMAN RIGLER: Why doesn't he rephrase it to

blt 6

1 save time.

2 BY MR. LESSY:

3 Q You testified another reason why you refused to  
4 provide Pitcairn power for resale was because you were afraid  
5 of a "fragmented distribution system."

6 Now, at that time who other than Pitcairn had  
7 the ability to provide retail service in Duquesne Light's  
8 service territory?

9 A Well, shopping centers, for one, had the ability  
10 to do it, large commercial complexes that might involve  
11 apartment buildings, stores, motels, that kind of thing  
12 could do it. A group of industrial customers could do it.

13 Q Electric systems, now -- municipal electric  
14 systems, other electric systems, as of 1968. What other  
15 electric systems whose primary business was providing elec-  
16 tric power were available to sell power for resale in essence  
17 to compete with Duquesne at that time?

18 A Well, if a shopping center got into the wholesale  
19 for resale business they'd be an electric system.

20 Q Other than shopping centers.

21 A A commercial complex.

22 Q Other than a commercial complex.

23 A Industrial customers.

24 Q Well, an industrial customer --

25 A Customers, plural.



blt 7

1 Q Serving a general area, such as a borough or a  
2 municipal, or serving 5,000 customers, something of that  
3 nature.

4 A You can have a commercial complex serving 5,000  
5 customers, an apartment complex serving 5,000 customers.

6 Q Were there any others?

7 A I can't think of any other possible combinations.  
8 There may be some.

9 Q How about other municipal electric systems?

10 A At what date?

11 Q '68.

12 A There were no other municipal electric systems  
13 at that time that had their own electric distribution  
14 systems within Duquesne Light's service territory.

15 Q Were there any commercials that had their own  
16 distribution system?

17 A No, because we did not permit it in accord with  
18 our rule against resale.

19 Q How many apartment complexes had their own  
20 electric systems in 1968?

21 A There were some apartment buildings which had  
22 their own distribution system. I don't know how many.

23 Q Did they serve any customers other than in that  
24 one building?

25 A Not to my knowledge.



blt 8

1 Q Wasn't the reason that there were no other  
2 municipal electric systems that could fragment Pitcairn's  
3 distribution system at that time -- Duquesne's distribution  
4 system was that Duquesne at that time had acquired the  
5 others or they had gone out of business?

6 A I don't know that that was the reason.

7 (Document handed to the witness.)

8 MR. OLDS: Mr. Lessy, may I see that?

9 MR. LESSY: Yes.

10 (Document handed to Mr. Olds.)

11 MR. LESSY: This is DJ-245.

12 BY MR. LESSY:

13 Q Now, with attention --

14 MR. REYNOLDS: I ask if we can wait just a  
15 minute so we can see what we're addressing.

16 (Pause.)

17 MR. CHARNO: Could you identify it?

18 MR. LESSY: Yes. This is DJ-245. It's a memo-  
19 randum dated December 5, 1966, from Mr. Gilfillan to Mr.  
20 Fleger re Borough of Pitcairn. I'm looking at the first  
21 page.

22 MR. OLDS: Mr. Lessy, may I ask whether at the  
23 time this was admitted any explanation was placed on the  
24 record with reference to the annotations at the lower right-  
25 hand corner?

blt 9

1 MR. LESSY: Disregard the annotations.

2 MR. CHARNO: That's not part of the exhibit.

3 MR. OLDS: I see. And that is agreed?

4 MR. LESSY: Right.

5 I'd like to show the Board a copy, also.

6 (Document handed to the Board.)

7 MR. OLDS: In the same light, may I also inquire  
8 whether it was agreed at the time the document was offered  
9 before that all of the interlineations and/or marks of  
10 emphasis that appear in the text were added by some anonymous  
11 hand?

12 MR. LESSY: I'm not sure of that. The redlining  
13 was, of course, clear. The other interlineations I'm not  
14 sure. We'll have to check the record copy.

15 MR. OLDS: I would think in fairness, then, we  
16 ought to at least ask Mr. Gilfillan whether he put any marks  
17 on the paper so that he may either accept responsibility or  
18 disclaim it.

19 In that connection, Mr. Rieser calls to my atten-  
20 tion that the copy which we were furnished at the time of  
21 the offer does not seem to contain any of the underlining.

22 MR. LESSY: Fine. We'll disregard them, then.

23 BY MR. LESSY:

24 Q Mr. Gilfillan, what did you mean when you wrote  
25 in the second paragraph:

blt 10

1 "I believe it would be to our advantage to  
2 continue these conversations, which could lead to  
3 negotiations to purchase Pitcairn's distribution  
4 system. This would clean up the remaining municipal  
5 electric system in our service area."

6 MR. REYNOLDS: What's the question?

7 MR. LESSY: What did he mean by that paragraph,  
8 especially the ambiguous phrase "clean up the remaining  
9 municipal systems."

10 MR. OLDS: May I ask whether the Staff is at this  
11 point making Mr. Gilfillan their witness? I did not ask  
12 about this on direct examination. I did not offer this docu-  
13 ment. I have some difficulty in understanding the propriety  
14 of this as cross-examination.

15 I can understand the Staff might be interested in  
16 the answer to the question, and it might be that you're  
17 choosing to reopen your case, with the permission of the  
18 Board, I assume, and call Mr. Gilfillan as your witness.  
19 But I do object to any suggestion that this is proper cross-  
20 examination.

21 MR. LESSY: The testimony this morning was that  
22 one of the so-called business reasons for the refusal was  
23 because of a fear of fragmentation of the distribution system.  
24 Now we're exploring the point here as to whether or not that  
25 is a realistic reason at all, and it can't be a realistic

blt 11

1 reason if in fact there are no other potential distributors  
2 or there are no other distributors in the area.

3 Now, why aren't there any other distributors in  
4 the area? The reason is -- well, I think Mr. Gilfillan  
5 could tell us that.

6 MR. OLDS: Well, I suggest, Mr. Lessy, that most  
7 of what you've said amounts to an argument rather than a  
8 justification.

9 MR. LESSY: Well, that's what you asked me for,  
10 isn't it?

11 MR. OLDS: I say I believe it's an argument rather  
12 than a justification for the question, for drawing a con-  
13 clusion from the prior testimony.

14 I still repeat that I did not refer the witness  
15 to this document, and I do not think this is proper cross-  
16 examination.

17 CHAIRMAN RIGLER: You're saying that if he wishes  
18 to utilize the document at some later date to support his  
19 argument he could do so but that you did not get into this  
20 area of inquiry.

21 MR. OLDS: That is correct.

22 CHAIRMAN RIGLER: I'm going to sustain the objec-  
23 tion.

24 BY MR. LESSY:

25 Q. Mr. Gilfillan, if there were no municipal

blt 12

1 distribution systems and there were no -- there were only  
2 a few apartment ones, then the fear of fragmentation wasn't  
3 much of a threat, was it?

4 A. Yes, it was. Shopping centers could, as a matter  
5 of fact and threatened to, get into the business back in  
6 that period, in 1968, and we were faced with that threat in  
7 a couple of different incidences.

8 Q. Shopping centers?

9 A. Large multi shopping centers and commercial  
10 complexes.

11 Q. You testified that in 1970 --

12 A. If I might add, a load similar to the load of  
13 Pitcairn and larger.

14 Q. Shopping centers would be serving in an area  
15 beyond the shopping center itself?

16 A. The load would be as large or larger than the --  
17 load of Pitcairn, substantially larger.

18 Q. Where would the shopping center serve?

19 A. The shopping center would be a multi shopping  
20 center adjacent to apartment and commercial buildings.

21 Q. So its potential area was limited to the shopping  
22 center, wasn't it?

23 A. It might well be a couple hundred acres.

24 Q. Well, isn't the answer to the question "yes"?

25 The shopping center doesn't serve beyond its customers in

blt 13

1 the shopping center, does it?

2 A. The shopping center and the adjacent commercial  
3 facilities, apartments, whatever, that were aggregated by  
4 that owner of that shopping center or owner of a portion of  
5 the shopping center.

6 Q. Okay.

7 You testified that in 1970, while the antitrust  
8 litigation between Pitcairn and Duquesne Light was pending,  
9 Duquesne Light interconnected on an emergency basis with  
10 Pitcairn. Am I correct?

11 A. Pitcairn went to the Federal Power Commission  
12 and amended their complaint-- I believe it was October of  
13 1970 -- requesting an emergency interconnection, and we  
14 made that interconnection in a fairly short period of time,  
15 as I remember in December of 1970, for a portion of Pitcairn's  
16 load after meeting with the Federal Power Commission.

17 Q. With the Federal Power Commission staff or with  
18 the Federal Power Commission --

19 A. I believe it was with the Federal Power Commission  
20 staff. I did not attend the meeting.

21 Q. Did you hear any report of that meeting?

22 A. I can't recall any of the specifics of any report.  
23 I'm sure I did hear a report. I don't recall any specifics  
24 of the discussion.

25 Q. Didn't the FPC staff make it very clear at that

blt 14

1 time that they expected Duquesne to interconnect with  
2 Pitcairn to provide emergency service?

3 A. I think in an emergency situation-- Duquesne in  
4 effect voluntarily went ahead with the emergency connection  
5 in that meeting with the FPC.

6 Q. They voluntarily did, yes, but didn't the FPC  
7 staff make it clear that they expected that to happen?

8 A. I was not in the meeting, and therefore I can't  
9 say what the FPC staff may have said.

10 Q. Prior to the FPC meeting, did Duquesne Light --  
11 was Duquesne Light not willing to effect an interconnection  
12 for emergency service at that time?

13 A. Well, the matter at that point was in the Federal  
14 Power Commission in the form of a complaint, of a broad com-  
15 plaint on an interconnection, and we were awaiting the  
16 adjudication of that complaint.

17 Q. But as a result of the FPC meeting it was agreed  
18 that Duquesne would take immediate steps to supply emergency  
19 capacity to Pitcairn, wasn't it?

20 A. Well, if it's an emergency there's some immediacy  
21 to it, obviously.

22 (Documents distributed.)

23 MR. LESSY: We have sufficient copies and we'll  
24 supply one later.

25 I'm showing Mr. Gilfillan a memorandum dated



blt 25

1 November 24, 1970, from Mr. W. C. Despler to Mr. Jarret with  
2 copies to Mr. Gilfillan among others.

3 We would ask that this memorandum be identified  
4 as Staff Exhibit 212.

5 CHAIRMAN RIGLER: What was that date?

6 MR. LESSY: November 24, 1970.

7 CHAIRMAN RIGLER: You wish this identified?

8 MR. LESSY: Yes, sir, as Staff Exhibit 212.

9 (Document handed to the Board.)

XXXXXX

10 (The document referred to was  
11 marked for identification as  
12 NRC Staff Exhibit No. 212.)

13 MR. OLDS: Mr. Lessy, may I understand, is this  
14 a paper that under the procedures of this hearing has here-  
15 tofore been catalogued or identified or listed?

16 MR. LESSY: I believe it has, sir, but in any  
17 event the cross-examination documents need not be so identi-  
18 fied.

19 MR. OLDS: I see. Well, I'm just asking as a  
20 matter of my own internal feelings.

21 MR. LESSY: Sure.

22 MR. OLDS: May I state on the record, Mr. Rigler,  
23 that the document which has been marked as Staff Exhibit 212  
24 according to our records was identified as document No. 3544,  
25 internal reference document number 3544.



blt 16

1 MR. CHARNO: For clarification of the record,  
2 Mr. Olds, is that the NRC Staff internal number of the  
3 Duquesne Light internal number?

4 MR. OLDS: I believe that's the Duquesne Light  
5 internal number.

6 MR. CHARNO: Thank you.

7 MR. LESSY: I would like to move it into evidence  
8 at this time.

9 MR. OLDS: I must confess, Mr. Rigler, that I'm  
10 not immediately able to perceive the relevance of it because  
11 I don't think it contradicts in any fashion the testimony  
12 of the witness.

13 I don't argue that it's a document that exists  
14 and it is from our files. To that extent, if it is helpful  
15 to the Board I would make no objection.

16 MR. REYNOLDS: Continuing objection on behalf  
17 of the Applicants.

18 CHAIRMAN RIGLER: The continuing objection is  
19 overruled. We will receive it.

XXXXXX

20 (The document previously marked  
21 for identification as NRC Staff  
22 Exhibit No. 212 was received in  
23 evidence.)

24 BY MR. LESSY:

25 Q Mr. Gilfillan, as a result of the Pitcairn

blt 17

1 settlement Duquesne Light presently sells wholesale power  
2 to Pitcairn. Do you know what the average rate per kilowatt  
3 hour is?

4 A. For what period, Mr. Lessy?

5 Q. The average rate for, say, the last two years.

6 A. Under the existing rate as filed with the Federal  
7 Power Commission?

8 Q. Yes, sir.

9 As I understand it, the rate hasn't changed, so  
10 the period is not too important.

11 A. Well, the period is important because the rate  
12 includes a fuel clause, and as I'm sure -- that's a sore  
13 subject, as you know, with many utilities.

14 As I'm sure you know, the fuel clause adjustment  
15 has increased over the past two years. It started, of course,  
16 with the oil embargo, but that's a different subject.

17 In 1975, as I recall, the average price to Pitcairn  
18 was something over 2 cents per kilowatt hour.

19 Q. Okay.

20 Would you convert that to mills per kilowatt hour  
21 for us?

22 A. Twenty.

23 Q. Twenty mills per kilowatt hour? Okay.

24 How about back in 1971?

25 A. Well, the rate with the Federal Power Commission

bt 18

1 did not go into effect until sometime in 1972.

2 Q In 1972, then.

3 A And I might add one point, that the figure I  
4 gave you is something over 2 cents, was the average for the  
5 entire year. It would be higher -- it would increase to  
6 some extent as the year went by.

7 Back in 1972, to the best of my recollection, it  
8 would have been something like 14 or 15 mills.

9 Q Would you accept the figure of 12.27 mills per  
10 kilowatt hour?

11 MR. OLDS: Mr. Lessy, if you have documents that  
12 indicate that in fact was what was charged, I think the only  
13 fair thing to do is to show them to the witness. I do not  
14 think it is fair cross-examination otherwise.

15 MR. LESSY: All right.

16 This is DJ-260.

17 (Document handed to the witness.)

18 If you'll look at 3.b. The handwritten notations  
19 are not what is in evidence.

20 MR. OLDS: May I have a copy?

21 MR. LESSY: Yes.

22 (Document handed to Mr. Olds.)

23 MR. LESSY: This is a handwritten memorandum  
24 of Mr. Gilfillan.

25 MR. REYNOLDS: Maybe I misunderstood the question

bit19 1 you asked. I thought you asked him the average cost in  
2 1972.

3 MR. LESSY: That's right.

4 MR. REYNOLDS: Your question now is could he  
5 accept 12.2 as the average cost?

6 MR. LESSY: 12.27 as the approximate average cost.

7 THE WITNESS: No, I won't accept that as the  
8 average cost. This memo is dated 1971, for one thing. The  
9 other thing is, as you'll notice, it says after that 12.27  
10 "plus FAC," which is fuel adjustment clause.

11 BY MR. LESSY:

12 Q So you would say 13 or 14 up to 20?

13 A I think I said 14 or 15 mills, to the best of  
14 my recollection.

15 Q Has Duquesne Light lost money on that rate?

16 MR. OLDS: Mr. Rigler, may I ask, sir, whether  
17 it really in the Board's opinion is legitimate cross-examina-  
18 tion to ask a question of that kind? I do not recall that  
19 I asked Mr. Gilfillan to testify on this subject at all on  
20 direct, and I object.

21 MR. LESSY: If the witness could be excused, I'd  
22 be happy to respond.

23 CHAIRMAN RIGLER: Would you step out for a few  
24 minutes, please?

25 (Witness leaving room.)

blt20

1 MR. LESSY: We're now going to take a look at  
2 Rate M. The offer that was made or the position of Duquesne  
3 Light at the time was that they would not sell power other  
4 than Rate M.

5 Mr. McCabe testified that this was not acceptable.  
6 I first want to look at what power -- what is the cost of  
7 power being sold under the settlement. Then we want to look  
8 at Rate M. Then we want to make a comparison. It's very  
9 simple.

10 CHAIRMAN RIGLER: Yes, but the objection, as I  
11 understand it, is that this does not go to any of the subject  
12 matters which were opened on direct.

13 Is that correct, Mr. Olds?

14 MR. OLDS: Particularly the question did Duquesne  
15 Light lose money selling at this rate. There certainly was  
16 no testimony that addressed itself to that point.

17 MR. LESSY: The area is that, assuming that they  
18 made money, for the purpose of argument, at 12 or 14 or 15,  
19 what would they have done at the rate under Rate M and why  
20 was it necessary to triple or quadruple the rate under the  
21 so-called Rate M?

22 There's only one question on whether or not the  
23 FPC approved rate under the settlement is a profitable or  
24 unprofitable rate. That's the entire thing to the line.

End 7

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EAK:bwl  
S8

1 MR. OLDS: I submit it is a different class  
2 of service that is involved under Rate M than that which is  
3 here addressed in this memorandum. I submit it is not  
4 at all proper. I do not disagree with Mr. Lessy's right  
5 to compare this rate to Rate M and ask questions about  
6 the Witness' explanation, if any, for the difference, if he  
7 believes that that somehow addressed the credibility of  
8 the Witness or the policy of the company in its reaction  
9 to the request of the Burough.

10 What I'm objecting to is the inquiry into the  
11 economics of the rate charged as part of a settlement.

12 CHAIRMAN RIGLER: Well, I'm not sure I agree with  
13 that part of your objection, but I do think that the original  
14 objection that it was beyond the scope of the cross continues  
15 to be well-taken despite your explanation.

16 The one reference I do see is the original  
17 inquiry as to whether Duquesne would be willing to sell  
18 at a rate different from Rate M.

19 I think your questions are going to have to stay  
20 within the confines of that area, however, and it looks to  
21 me as if the present comparison may be outside of that  
22 particular area.

23 MR. LESSY: All right.

24  
25

bw2

1 Whereupon,

2 W. F. GILFILLAN

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

5 BY MR. LESSY:

6 Q. Do you have Rate M in front of you, Mr. Gilfillan?

7 A. Yes, I do.

8 Q. Looking at the Rate M, can you tell us what the  
9 average rate per kilowatt hour is under Rate M?

10 A. The average rate under Rate M would be somehow  
11 grater than three cents per kilowatt hour or 30 mils per  
12 kilowatt hour, depending upon the demand charge that was  
13 incurred by the customer.

14 Q. In Rate M, entitled "Emergency Municipal Service,"  
15 wherein the rate -- or can you point to a place in the rate  
16 where the Duquesne Light Company defines "emergency" as it  
17 understands it in "Emergency Municipal Service"?

18 MR. REYNOLDS: Could I have the question back?

19 (The reporter read the pending question.)

20 THE WITNESS: The definition of "emergency" is  
21 in the availability class for emergency purposes.

22 BY MR. LESSY:

23 Q. Well, "Availability" says, "It is available  
24 for emergency purposes."

25 Now, does the rate define what emergency purposes



bw3

1 are?

2 A. The rate does not define emergency in so many  
3 words, but it would be basically an emergency that the  
4 municipality believed was an emergency, and which they  
5 wanted to take service on this rate. The rate was available  
6 to them for that.

7 Q. What do you mean by emergency?

8 What does that term mean to you as used in the  
9 phrase "emergency purposes" or "emergency rate"?

10 A. If a municipal electric system, for example,  
11 had problems with their generation and needed power, that  
12 certainly would be an emergency.

13 Q. It is intended that this Rate M be used or  
14 usable, if the municipality didn't have problems on its  
15 system?

16 A. Normally, I would not think that the municipality  
17 would wish to use it, if they did not have emergencies  
18 on their system.

19 Q. That is not the question. Would you read the  
20 question back, as I asked it.

21 (The reporter read the pending question.)

22 BY MR. LESSY:

23 Q. Is it intended?

24 A. Would you read that again.

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25 (The reporter reread the pending question.)

bw4

1 THE WITNESS: No, I don't think this rate was  
2 intended for other than emergency purposes which I think  
3 is what you are saying.

4 BY MR. LESSY:

5 Q. In your experience, do emergency rates usually  
6 include a demand charge?

7 A. Yes, an emergency rate should include a demand  
8 charge. In fact, a rate of this size should include a  
9 demand charge, and our retail rates of this size, include  
10 a demand charge.

11 The concept of a demand charge is that we have  
12 generation and transmission and distribution, if they  
13 are used, facilities, in effect, dedicated to that  
14 particular load.

15 And the municipality would expect that load  
16 to be available instantly, when they had the requirement  
17 for it.

18 Since that must be -- that generation and trans-  
19 mission capacity must be dedicated for this use and be  
20 available and not provided to anybody else, that is the  
21 purpose of what is called a "demand charge."

22 Q. Is this Rate M service interruptable?

23 MR. OLDS: I didn't hear the question.

24 BY MR. LESSY:

25 Q. Is this Rate M service interruptable?

bw5 1 A. By whom?

2 Q. By Duquesne Light Company.

3 A. No, it would not be interruptable by Duquesne  
4 Light Company.

5 Q. So, in the document you have in front of you,  
6 Paragraph 39 wouldn't apply?

7 A. Paragraph 39 of the Rules and Regulations  
8 would apply, if there were an emergency on the Duquesne  
9 Light System that threatened the integrity of the  
10 Duquesne Light System and it would apply to every other  
11 customer, every other customer, I emphasize, on our  
12 system.

13 Q. Then you haven't dedicated any facilities,  
14 exclusively to provide firm power on an emergency basis,  
15 have you?

16 A. That is what you charge the demand charge  
17 for?

18 A. Those two emergencies are different. The  
19 emergency on the one hand is an emergency on the municipal  
20 system. On the other hand these can be an emergency on  
21 the Duquesne Light System.

22 Q. You said the demand charge is appropriate where  
23 you have dedicated certain equipment.

24 A. Correct. We have dedicated that equipment  
25 in this case to the municipality, if they were taking

bw6

1 emergency service. The only time there would be an  
2 interruption called for by Rule 39 would be in the case that  
3 there was a dire emergency on Duquesne Light's system,  
4 which threatened the integrity of the system. That is  
5 not the concept of an interruptable rate. We would  
6 not interrupt that at our discretion, except in a dire  
7 emergency.

8 the facilities are dedicated to the municipality  
9 in the case of this emergency. They are there on call for  
10 the municipality whenever that municipality would desire  
11 to take that service.

12 Q. Unless Duquesne can't provide that service, because  
13 of its emergency?

14 A. In the very rare circumstances, and in that  
15 case every other customer is going to be affected  
16 similarly.

17 CHAIRMAN RIGLER: Suppose Duquesne is operating  
18 at peak capacity and an additional load comes on the line.  
19 Which customers would Duquesne shed first?

20 THE WITNESS: We would shed the large industrial  
21 customers first. We wouldn't shed the entire customer.  
22 We would ask those customers to voluntarily reduce some  
23 of their load.

24 CHAIRMAN RIGLER: You would reduce the load to  
25 the large industrial customers before you would

bw7

1 reduce emergency service being provided to municipalities?

2 THE WITNESS: Under Rate M, that is correct.

3 BY MR. LESSY:

4 Q Rate M requires an annual fixed charge be paid  
5 by the customer under Rate M, doesn't it?

6 A I'm not sure that I follow your terminology,  
7 "fixed charge." Where do you see the words "fixed charge"?

8 Q Minimum annual charge. Maybe that would be  
9 helpful.

10 A Yes, all right. There is the minimum annual  
11 charge which, in effect, is the demand charge that I have  
12 just been describing. It is the charge which is required  
13 for the dedication and transmission . and the distribution,  
14 if it is necessary, to supply that customer at the instant  
15 that that customer demands that service.

16 Q You have been utilizing this rate for some time.  
17 Do you know what the minimum annual charge would be --

18 MR. OLDS: Are you asking two questions at once?

19 BY MR. LESSY:

20 Q You have utilized this rate for some time.  
21 He testified to that this morning.

22 A Yes, Rate M has been used for some time.

23 Q Do you know what the minimum annual charge  
24 would be under Rate M for 1,600 kilowatts maximum demand?

25 A I don't have the figures.

1 Q. Would you accept the figure of \$23,000?

2 A. Well, not without calculating it, no.

3 Q. Could you calculate it for us?

4 A. I would prefer not to. I have used a calculator  
5 so long, that I can't do things in my head any more, despite  
6 my engineering background.

7 Q. I think it is important that we get a feel for  
8 the minimum annual charge, assuming 1,600 kilowatts of  
9 demand.

10 We could adjourn for ten minutes while you make  
11 the calculation. We could get a calculator for you if you  
12 need it.

13 MR. OLDS: If Mr. Lessy has had the calculations  
14 performed, it would be shorter and easier if he would show  
15 the calculations to the Witness.

16 MR. LESSY: We have the bottom line of the  
17 calculations which we procured from Duquesne Light in  
18 discovery and checked them ourselves. The minimum annual  
19 charge for 1,600 kilowatts of demand is \$23,400.

20 MR. REYNOLDS: Kilowatts or kva?

21 MR. LESSY: Kilowatt maximum demand.

22 MR. OLDS: Would you reference the place in  
23 discovery, the document that would permit us to --

24 MR. LESSY: The man testified he is familiar  
25 with the rate. The demand charge is a calculation that can be

bw8

bw9

1 made in five or ten minutes. If he wouldn't accept that  
2 figure, I will ask the Witness to make it himself. I don't  
3 think it is unreasonable. It is a relevant point here.

4 MR. OLDS: Mr. Rigler, I would submit that this  
5 Witness did not get on as a rate expert. This is, I think,  
6 extending the matter unreasonably. I urge again if he  
7 has the calculations then he should show them. If he  
8 does not have the calculations, then he ought to prove it  
9 by his own witness in rebuttal. Why does he try to extract  
10 this information at the expense of all of the rest of us by  
11 making the Witness do such calculations?

12 CHAIRMAN RIGLER: I agree.

13 Proceed. Ask the witness questions based  
14 on the assumption it would be \$23,000.

15 BY MR. LESSY:

16 Q. Let's assume the minimum annual charge under Rate  
17 M for 1,600 kilowatts of maximum demand would be \$23,400.  
18 That annual charge would run for a minimum term of three years,  
19 wouldn't it?

20 A. That is the terms of the contract.

21 Q. Yes or no, that annual charge would run for three  
22 years?

23 A. Yes, that annual charge would run annually for each  
24 year of three years.

25 Q. So that at the moment, assuming that the demand

bw10

1 charge I gave you was correct, \$23,400, at the moment  
2 a customer took power under Rate M, he immediately became  
3 obligated, irrespective of any energy that he took, to the  
4 Duquesne Light Company, contractually, for \$70,200; didn't  
5 he?

6 A. If he has contracted for 1,600 kw. If he has  
7 contracted for 1,600 kv. If he did not contract for  
8 1,600 kv, he would not be responsible for it. He would be  
9 responsible for whatever amount he contracted to down to  
10 200 kva or kw -- You can interchange those terms,  
11 if you want -- or an amount of \$4,800 a year.

12 Q. That demand charge is different and apart from  
13 any emergency charge for the power he actually took, isn't  
14 it?

15 A. That demand charge is independent of any consumption  
16 in kilowatt hours that the customer might require.

17 If he took zero kilowatt hours, the fact he  
18 had established a potential requirement upon the company for --  
19 that he could call at any moment or instant on us for whatever  
20 demand he might contract for, establishes that demand charge.

21 Q. Now, in your experience under Rate M, how many,  
22 approximately how many entities, customers took power under  
23 Rate M from you? A few? A lot? Do you have any idea?

24 A. That goes back prior to my direct knowledge of  
25 the situation.



bw11

1 Q Since your direct knowledge.

2 A I don't recall any since -- off-hand I don't  
3 recall any since 1975 that took any power under Rate M.

4 Q Now, you have been with the company for a number  
5 of years. How about prior to '65, when you were an employee  
6 of the company involved in these matters?

7 A Prior to '65 I was not involved in these matters.

8 Q So, in your experience, no entity took power  
9 under Rate M?

10 A That is a mischaracterization of my testimony.  
11 I said I can only comment since 1965. I can only go back  
12 to 1965.

13 Q I'm not trying to argue with you. Since 1965 did  
14 any customers of Duquesne take power under Rate M?

15 A Not since 1965, to my knowledge.

16 MR. LESSY: NO further questions.

17 MR. HJELMFELT: The parties have agreed that  
18 the City would follow the Staff for cross-examination.

19 CHAIRMAN RIGLER: How long do you have,  
20 Mr. Hjelmfelt?

21 MR. HJELMFELT: Very short. Five or ten minutes.

22 CHAIRMAN RIGLER: How extensive will the Department's  
23 cross be?

24 MR. CHARNO: Half hour to an hour.

25 CHAIRMAN RIGLER: Go ahead, then.

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BY MR. HJELMFELT:

Q Mr. Gilfillan, am I correct that Rate M is firm service?

A Yes, Rate M would be considered firm service in the terminology that I understand that word "firm" in our industry. Yes.

From that I assume you mean it is not interruptable. That is how I define them.

Q Fine. Are you familiar with emergency schedules that provide that the service will be available on a when, as and if basis?

A Well, not in that exact terminology, no.

Q Are you familiar with emergency service schedules which provide that the party selling the service will make the emergency power available, if it has it available on its system with no dedication of resources?

A In a very general way, yes, but I don't have anything; I don't have any rate specifically in mind.

MR. OLDS: Couldn't hear your answer. Raise your voice, please.

THE WITNESS: I said I'm generally familiar with this concept, but I don't have any specific rates in mind.

BY MR. HJELMFELT:

Q Is Rule 18 applicable to Rate M?

A Rule 18 would be applicable to all of the tariffs

bw13

1 that are in, that were in our -- all the rates that were  
2 in our tariff and Rate M was in our tariff and particularly  
3 provided for -- Rate M provided for service to municipalities  
4 for emergency purposes.

5 So that Rate M, in effect, provides for sale to  
6 a municipality.

7 Q And does Rule 18 then prevent the municipality  
8 from reselling that power in a purchase under Rate M?

9 A No, it does not.

10 Q Is there any mutuality in Rate M?

11 A I don't understand the term "mutuality," I'm  
12 sorry.

13 Q I believe you used the term with reference to  
14 an interchange agreement between Duquesne and Penn Power.

15 A You mean is there the opportunity in Rate M  
16 for the municipality to return power through an interchange  
17 agreement?

18 I don't understand your question.

19 Q Does Rate M provide for sales of power both ways,  
20 both from and to?

21 A No, it does not.

22 Q Does Rate M provide the Duquesne Light will obtain  
23 any benefits from -- under the schedule other than the payment  
24 of money?

25 A No. That is the payment of money by the municipality.

bw14 1 Q That is correct. That is the way I understood  
2 my question too.

3 I believe you testified the Rule 18 was litigated  
4 before the Pennsylvania Public Utilities Commission; is  
5 that correct?

6 A That is correct.

7 Q To your knowledge, did that litigation involve the  
8 sale of power at wholesale to a municipality?

9 A Not, it did not.

10 Q To your knowledge, did the Pennsylvania --

11 A I might say, it did not necessarily exclude  
12 it either. It didn't address itself in that particular  
13 situation, but it did not exclude it either.

14 Q It was simply a matter not involved in that  
15 litigation?

16 A In that particular litigation.

17 Q Do you know whether the Pennsylvania Public  
18 Utilities Commission ever directed Duquesne to file Rule 18  
19 or maintain Rule 18 in its tariffs?

20 A I believe, in effect, by the upholding of the  
21 rule, in my mind, it would be characterized in that sense.

22 Q You know of no -- you are not familiar with any  
23 order or directive by the Commission saying put Rule 18  
24 in your tariff or do not remove Rule 18? Or all utilities  
25 in Pennsylvania shall have Rule 18?

bw15

1 A. No, I'm not.

2 MR. HJELMFELT: I have no further questions.

3 CHAIRMAN RIGLER: This is probably a good time  
4 for a break.

5 Let's take five minutes to make sure we move  
6 along and finish at a reasonable hour.

7 (Récess.)

8 BY MR. CHARNO:

9 Q. Mr. Gilfillan, could you tell us what documentary  
10 material you reviewed prior to your testimony, in preparation  
11 for your testimony?

12 A. I went through the files on Pitcairn and through  
13 the file on Aspinwall, the Borough.

14 Q. Sir, let me direct your attention to --

15 A. That is my files on Pitcairn and my files  
16 on Aspinwall.

17 Q. Would your files on Pitcairn and Aspenwald contain  
18 all the material you authorized and received on those two  
19 subjects?

20 A. Well, they did, but I got them back from  
21 Washington, I'm not sure. To tell you the truth, I'm  
22 missing some things.

23 I don't mean to be facetious, but that is a  
24 factual answer. It should contain it, but I'm not sure  
25 it did.

bw16

1 Q Let me refer you to Staff Exhibit 16, which was  
2 your letter to Mr. McCabe of March 19, which you referred  
3 to on direct.

4 In the second paragraph of that letter, I believe  
5 that you -- would it be a correct summary of your statements  
6 there to say you offered to supply service under Rate M, but  
7 Duquesne is not willing to sell base load electric power  
8 to Pitcairn for resale?

9 A That is correct.

10 Q Is it a safe assumption, sir, that you are  
11 drawing a distinction between selling base load power  
12 for resale, and the service provided under emergency  
13 municipal service, Rate?

14 A I'm not sure I catch the impact of your question,  
15 I'm sorry.

16 Q I'm asking if you are offering to provide one and  
17 refusing to provide the other, is it a safe assumption that  
18 you find the two to be different?

19 A Well, they are different, in that Rate M was  
20 was an established rate that was in our tariff for emergency  
21 service. Base load electric power for resale would be, in  
22 effect, full requirements for all of the time, not for  
23 emergency service.

24 CHAIRMAN RIGLER: When Duquesne buys or sells  
25 power from or with Pennsylvania Power, pursuant to an

bwl7

1 interchange agreement, is that the sale of base load power?

2 THE WITNESS: No, that is not the purchase of  
3 power, as I view it, of wholesale base load power on a whole-  
4 sale for resale basis. It is an interchange.

5 There is a mutual -- somebody brought up the  
6 word mutual -- we purchase from them on the basis that they  
7 are going to need some from us at some point, and that  
8 there is a benefit to both parties.

9 CHAIRMAN RIGLER: You would not characterize  
10 the power being received by one party or the other, as base  
11 load power?

12 THE WITNESS: No, I wouldn't consider it. I'm not  
13 an expert in these various terms involved in the inter-  
14 connection agreements, but I wouldn't consider it base load  
15 power, no. Certainly, it not full requirements power  
16 by any means, no, sir.

17 BY MR. CHARNO: Wouldn't the answer to the  
18 Chairman's question concerning base load power depend upon  
19 the terms and conditions of the sale?

20 Let me expand that question a bit. For example,  
21 if the power in question was coming from Beaver Valley  
22 Number One, pursuant to the CAPCO agreements and that  
23 power was coming out of Duquesne and going into Penn Power.  
24 What type of power would that be?

25 A. Again, I'm not an expert or even that familiar

bw18

1 with the details of the CAPCO situation. I would hesitate  
2 to try to describe what that would be. It would seem to  
3 me that what you are talking about is power that may well  
4 be owned by that entity -- Pennsylvania, for example.

5 And if they own a portion of the generation, it is  
6 not our power.

7 Q Let me go back to NRC-16. What factors would  
8 you say distinguish service under emergency municipal  
9 service Rate M from base load electric power for resale?

10 A Well, the emergency service was to provide  
11 exactly that. To provide to the municipality the  
12 protection that they would not be without power if they had  
13 an emergency on their system.

14 Q So would one difference be that they could use it  
15 only in the case of emergency?

16 A In the case of Rate M, the availability clause  
17 clearly implies that Rate M is to be used only for  
18 emergency purposes; that is correct. Base load is full  
19 requirements for whatever the municipality might wish to use  
20 it.

21 CHAIRMAN RIGLER: Or could it be partial require-  
22 ments?

23 THE WITNESS Or partial requirements.

24 Now, we are not talking about Rate M. Rate M  
25 could be full or partial for an emergency. If the entire



bw19

1 generating facilities were down, for example.

2 BY MR. CHARNO:

3 Q Would service under Rate M be available to a  
4 municipal system which owned only distribution facilities?

5 A Yes, I would believe so, but I don't know under  
6 what circumstances they might use it.

7 What I would say is if it is just a distribution  
8 system, and if there is a fault or problem on the distribution  
9 circuit, you take that distribution circuit out of service for  
10 safety reasons, or it takes itself out, because there is a fault on it,  
11 and you are not going to feed power to it anyway, until that  
12 fault or emergency is cleared.

13 Q Is it correct, then, to summarize your testimony  
14 as saying that you don't conceive of an emergency situation  
15 existing with a municipal distribution-only system that would  
16 allow the taking of power under Rate M?

17 A I think that is correct.

18 I see no reason why it wouldn't be available,  
19 but I don't see any reason why they would use it, if they  
20 did not have any generation.

21 Q Could I refer you to Staff Exhibit 211, which was  
22 Rate M, and ask you to look at the first sentence under  
23 special terms and conditions?

24 Would that affect the answer to your last  
25 question?

bw20

1           A.     Well, it could. Obviously, the implication here is  
2 the point at which we would deliver the service. I think,  
3 in our minds, a municipality, with distribution only,  
4 really wouldn't have any use for Rate M. I'm not sure  
5 it was ever given any consideration in that sense.

6                     Whether we would supply it or not, frankly,  
7 my reaction would be, yes, if there were some conceivable  
8 means for it to be done.

9                     The first paragraph under special terms and  
10 conditions defines where the service shall be supplied, where  
11 it would be delivered.

12           Q.     Wouldn't it be necessary to amend that sentence,  
13 if you were selling to a distribution-only system?

14                     Only distribution facilities?

15           A.     Maybe. As I say, we haven't given any thought  
16 to that kind of eventuality.

17           Q.     It would be impossible to deliver energy to  
18 a municipal electric generating station, if there weren't  
19 one?

20           A.     Yes, I would agree to that.

21           Q.     Since it says electric service shall be delivered  
22 only under the special terms and conditions, that would  
23 have to be amended, in order to sell under Rate M to a  
24 distribution-only system?

25           A.     Yes, if there were any reason for that distribution

bw21 1 system to need emergency service.

2 MR. SMITH: Mr. Charno, in your example where  
3 does this distribution-only municipal system get its  
4 regular power.

5 MR. CHARNO: One could hypothesize a system  
6 that was not in the electric distribution business, who  
7 through condemnation went into the electric distribution  
8 business and had no source of bulk power supply.

9 MR. SMITH: Where would they get their bulk  
10 power supply that has stopped, requiring Rate M power? It is  
11 only when you have two suppliers in the picture that Rate  
12 M would come in.

13 Under your situation, which is not possible in  
14 Duquesne's area, as I understand the testimony, if the  
15 need Rate M on Wednesday, where did they get their power on  
16 Tuesday?

17 If they need Rate M on Wednesday in this  
18 distribution-only system, where did they get their power  
19 Tuesday?

20 MR. CHARNO: Depending upon whether -- if one  
21 regards Rate M as a substitute for wholesale power, for bulk  
22 power at wholesale --

23 CHAIRMAN RIGLER: How can you regard it that way?  
24 You look at the availability clause and it says it is for  
25 emergency purposes only.

THORPE/  
blt 1  
begin 9

1 MR. CHARNO: Well, I believe it's been briefed  
2 at some length that this constitutes wholesale service. I'm  
3 exploring that aspect of it.

4 CHAIRMAN RIGLER: I still have trouble with the  
5 same point that's bothering Mr. Smith. It seems to me  
6 unless you have two systems serving a distribution only  
7 system you'll never have Rate M come into play, just as  
8 Duquesne has suspended Rate M service to Pitcairn now that  
9 Pitcairn is an all requirements customer. There simply isn't  
10 any need for it.

11 MR. CHARNO: I would agree with that. The line  
12 is terminated.

13 MR. CHARNO:

14 Q Sir, earlier you testified that you believe in  
15 1968 that whether the FPC had jurisdiction over wholesale  
16 sales for resale was questionable, is that correct?

17 A That's correct.

18 Q What was the basis for your belief in 1968?

19 A Primarily the advice of legal counsel.

20 Q Were there any other factors that you recall?

21 A Well, my own knowledge of generally the factors  
22 affecting our industry.

23 Q Earlier, in response to a question I believe you  
24 testified or you stated that what a rate would be -- in  
25 response to Mr. Lessy's question -- what a rate would be

blt 2 1 would depend on whether it's all requirements service,  
2 partial requirements service, or emergency service. Is that  
3 in accord with your recollection?

4 MR. OLDS: Could I have that question read,  
5 please?

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

8 MR. OLDS: If the Board please, I request that  
9 the Board direct Mr. Charno to make that question a little  
10 clearer. I think it is unclear - a rate in what context?

11 MR. CHARNO: Well, let me withdraw that and re-  
12 phrase the question, hopefully more artfully.

13 BY MR. CHARNO:

14 Q Mr. Gilfillan, did you earlier testify that the  
15 amount of a wholesale for resale rate would depend upon  
16 whether that rate was for all requirements service, partial  
17 requirements service or emergency requirements?

18 A The rate structure would be different depending  
19 upon the applicability of the rate. That is correct.

20 Q And how would the rate structure differ?

21 A Well, in a rate that was used, for example, for  
22 emergency service the demand charge and the energy charge  
23 must provide for a return, in effect a proper return, to  
24 cover the cost of providing the generation and transmission,  
25 and distribution if distribution is needed, that the company

blt 3

1 in effect has dedicated to the service.

2 If it is an all requirements or a partial re-  
3 quirements power, the structure can be somewhat different  
4 because you do expect a customer to be using the power,  
5 consuming the power, not just -- not consuming it at all,  
6 you see. For example, in emergency he might not use it for  
7 a whole year. He might not use 1 kilowatt hour for a whole  
8 year, but you have dedicated and you have available to him  
9 at an instant's notice the generation and the transmission  
10 that is dedicated upon call to provide that power. If he  
11 is an all requirements customer, he is obviously using that  
12 power, hour by hour, day by day, through the period of a  
13 year, so the structure of the rate obviously is different  
14 for those two kinds of circumstances.

15 Q. Could you describe the nature of the difference?

16 A. Well, the rates would have demand charges. The  
17 demand and minimum bills may be different. Energy rates may  
18 be different because the load factor -- you can say that is  
19 the energy divided by the peak load that he imposes on your  
20 system will be different in one case than the other.

21 Q. Would it be possible for you to tell us the  
22 direction of the differences when you move from emergency to  
23 all requirements?

24 MR. OLDS: If the Board please, I urge that this  
25 is beyond the scope of the direct examination and I object.

blt 4

1 MR. CHARNO: The Department is still attempting  
2 to clarify the statement contained in Staff Exhibit 16, Mr.  
3 Gilfillan's letter, and we're trying to explore the differ-  
4 ences between service under Rate M and baseload electric  
5 power.

6 CHAIRMAN RIGLER: I'm not sure the letter goes  
7 into those differences. It announces what the intentions  
8 of the company are.

9 MR. CHARNO: I agree that it does not. I'm try-  
10 ing to distinguish one from the other, and my initial  
11 questions to the witness didn't seem to elicit what he felt  
12 were the differences. Now I'm trying to explore some aspects  
13 of what might be the differences between those two types of  
14 service.

15 MR. OLDS: I would submit the witness has answered  
16 as to the differences, Mr. Rigler, and that we're really  
17 here extending the cross-examination. We're building the  
18 matter unreasonably. I think the witness has answered the  
19 question as to what the witness has indicated were the dif-  
20 ferences between the power for emergency use and baseload  
21 power.

22 We're getting questions here that are very spe-  
23 cific about differences in rate structure for those two  
24 services, and I do not believe we offered this witness to  
25 testify in that regard.



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CHAIRMAN RIGLER: I'm inclined to agree with that.

Where do you expect to go on this line?

MR. CHARNO: I was not planning to go any further than that question, presuming I got an answer of the relative directions of the rate.

I withdraw the question.

THE WITNESS: May I volunteer a comment?

CHAIRMAN RIGLER: No, I think you'd better not in view of the ruling, not unless you want to testify at further length on the subject.

THE WITNESS: No.

BY MR. CHARNO:

Q Sir, you testified that you became aware of a request for an emergency interconnection from the Borough of Pitcairn in December of 1967, is that correct?

A In December? I think it was November of 1967, yes. I believe the date of the letter was November of 1967. Yes, November of 1967.

Q Do you recall any prior requests that were not made in written form by the Borough of Pitcairn?

A We received a letter from one of the councilmen from Pitcairn in mid-1966, as I recall. That letter wanted to discuss the interchange and pooling of power. It was not a request for an emergency interconnection.



blt 6

1 We had also had indications from Pitcairn that  
2 they might well be interested in disposing of their electric  
3 system in 1966.

4 Q With respect to the letter from the councilman  
5 in mid-1966, to whom was that letter addressed, do you re-  
6 call?

7 A I think that letter was addressed to Mr. Hunter,  
8 who was, I believe, at the time Superintendent of our  
9 Eastern District Transmission and Distribution Department.

10 Q Do you recall whether the councilman was writing  
11 in any official capacity?

12 A Well, he signed the letter. I believe it was on  
13 Borough letterhead. Whether that put him in an official  
14 capacity, I can't say, legally. I can't say.

15 Q Do you know what response, if any, was made to  
16 that inquiry?

17 A Yes. There was a meeting held in August of 1966  
18 in response to that.

19 Q Did you attend that meeting?

20 A I did not.

21 Q Can you tell us who did attend that meeting?

22 A Mr. Merriman attended it and one of the men who  
23 worked with Mr. Merriman attended that meeting, as I recall,  
24 along with some officials of the Borough of Pitcairn.

25 Q Can you tell us what request by the Borough of

blt 7

1 Pitcairn was stated at that meeting or discussed at that  
2 meeting?

3 A. Well, I think there was a report on that meeting  
4 that was made by Mr. Merriman, and my only knowledge of what  
5 was covered at that meeting would be in that report by Mr.  
6 Merriman.

7 Q. Do you recall whether Mr. Merriman answered the  
8 request at that meeting?

9 A. I believe he did, as I recall the memorandum.

10 Q. Was this matter taken up with you prior to the  
11 meeting?

12 A. I frankly don't remember. It is 10 years or  
13 almost 10 years ago -- 9 3/4 years.

14 Q. Do you recall any communication by the Borough of  
15 Pitcairn subsequent to that meeting but prior to the November  
16 letter in which they made any request of Duquesne Light?

17 A. The only knowledge I have is that the files indi-  
18 cate that there was a meeting or discussion between Mr.  
19 Merriman and Mr. McGuinness, who was at that time the Solicitor  
20 of the Borough of Pitcairn; but to my knowledge there were no,  
21 or at least my recollection of that memorandum, there were no  
22 requests made and so there really were no requests from  
23 Pitcairn from in effect the August 1966 -- for over a year  
24 then until November 1967.

25 Q. Sir, would it refresh your recollection if I

blt 8

1 mentioned a request from Mr. Schimke, S-c-h-i-m-k-e, a con-  
2 sulting engineer for Pitcairn, that was made to Mr. Merriman  
3 concerning the sale of wholesale power for resale by  
4 Duquesne to the Borough of Pitcairn?

5 A. Yes, the records show that there was that dis-  
6 cussion between Mr. Schimke of Loftus, an engineering con-  
7 sulting firm, and Mr. Merriman.

8 Q. Do you recall that Mr. Merriman answered Mr.  
9 Schimke's request?

10 A. No. Other than covered in that memo I have no  
11 recollection of that discussion whatsoever.

12 Q. Do you have any reason to believe that either of  
13 those requests was answered in the affirmative, that you  
14 would sell bulk power at wholesale for resale?

15 A. No, I have no reason to believe that it would have  
16 been answered "yes," except under Rate M, that we would pro-  
17 vide emergency service under Rate M.

18 Q. Are you telling me -- are you stating, then, that  
19 that's equivalent to bulk power at wholesale for resale?

20 A. No, I am not.

21 Q. Are you stating it is not equivalent to bulk  
22 power at wholesale for resale?

23 A. I would say it's not equivalent to what I would  
24 call full requirements power. The word "bulk" bothers me  
25 a little bit because I don't know quite how to define that.

blt 9

1                   Rate M is emergency power. We don't need to go  
2 through that again, I think.

3           Q       Well, let me ask one more question. Would you  
4 say it was not equivalent -- pardon me -- would you say  
5 service under Rate M was not equivalent to partial require-  
6 ments power at wholesale for resale?

7           A       No, because if there were not the element of  
8 emergency then it wouldn't be for partial requirements.  
9 Rate M could provide for either full requirements or partial  
10 requirements if there were an emergency.

11          Q       Okay.

12                   From the testimony that you gave after lunch today  
13 in response to your counsel's questions on Staff Exhibit 211,  
14 would it be safe to say that Rate M and the rules and regula-  
15 tions are separate documents but both part of a comprehensive  
16 tariff filing by Duquesne Light?

17          A       Well, I would not consider them separate documents  
18 in that sense. The Rate M is a part of our tariff and the  
19 rules and regulations are a part of our tariff, and as far  
20 as I'm concerned the tariff is one document.

21          Q       Let me ask it this way: Were they filed at the  
22 same time?

23          A       Well, that goes back essentially well before my  
24 time. They would be filed as one document. They are con-  
25 sidered as one document.

blt 10

1           When we considered them -- when you say, "Would  
2 you consider them separate," I would not consider them sepa-  
3 rate in the sense that this is separate from the rules and  
4 regulations, no.

5           When you say "filed," I assume the rules and  
6 regulations were filed at the one time at some point,  
7 obviously. I can't pinpoint the point in time.

8           Q.    As I understood your testimony this morning was  
9 the initial Rule 18 filed at least as early as 1960?

10          A.    Yes.

11          Q.    And, looking at Rate M, it states that it was  
12 issued in 1951 and that's the original page.

13                Would it be safe to assume from that that Rate M  
14 was filed for the first time in 1951?

15          A.    No, it would not be.

16                In Pennsylvania -- unfortunately, on my sheet  
17 there's some missing information at the top -- what would be  
18 at the top of that would be, and none of my pages have it;  
19 if you have the original it would show it, a tariff number.  
20 Right now we're on, as I recall, Tariff 13, which means there  
21 have been in effect thirteen tariffs filed.

22                So this Rate M would have been filed prior to this  
23 period, back at least in the 1920's and probably before that.  
24 I don't know. I can't go back any further than that.

          The reason for the October 1951 date is that this

blt 11

1 tariff was filed as the result of a Commission order, a  
2 Pennsylvania Public Utility Commission order, in a rate case.  
3 And when this particular rate -- when this whole tariff  
4 became effective, each of the pages in the tariff would have  
5 contained the date October 21, 1951, no matter when they  
6 originally would have gone in. The tariffs prior to that  
7 would have carried dates for 1940's, the 1930's, the 1920's,  
8 and so forth.

9 Q The fact that it states "original page" other  
10 than "revised page" is insignificant, then?

11 A Yes, that's correct. The original page numbers  
12 are carried through but do not mean that that was the origi-  
13 nal page with this 1951 date on it. It was the original  
14 page -- it was originally filed with this tariff, but the  
15 effective dates would change as the tariffs changed.

16 In other words, if you look at our tariff, similar  
17 pages, for example, in our tariff today, on the rules and  
18 regulations you'll see probably a 1973 or '74 date. I can't  
19 recall at the moment when our last tariff was filed.

20 That's the Pennsylvania Public Utility Commission's  
21 way of doing it. I must admit it's confusing, but it's their  
22 way of handling it.

23 But, having gone through all this long explanation,  
24 the date '51 is not significant.

25 Q Let me direct your attention to the pages which

blt 12 1 follow Rate M in Staff Exhibit 211. Could you tell me  
2 whether those are standard rules and regulations which are  
3 employed by every electric utility in Pennsylvania?

4 A. No, I can't.

5 Q With respect to Rule 18, can you tell me whether  
6 that is required by the Pennsylvania Public Utility  
7 Commission to be included in the tariffs of all electric  
8 utilities operating in Pennsylvania?

9 A. No, I cannot.

10 Q Are you aware of any other public utility which  
11 has a rule similar to Rule 18?

12 A. Not offhand. There may be or there may not be.  
13 I don't know.

14 Q Are you aware of any -- well, strike that.

15 Do you recall being informed in 1965 that there  
16 were other investor-owned utilities in Pennsylvania which  
17 were selling power at wholesale for resale to municipal  
18 systems?

19 A. I cannot recall any specific instance, no.

20 Q Do you recall informing Mr. Fleger of that fact  
21 at the same time a request for wholesale service by Duquesne  
22 Light was made by the Borough of Aspinwall in 1965?

23 A. No, I don't recall the specific reference that  
24 you're making; no, sir.

25 Q Sir, I'd like to show you a copy of a document



blt13

1 which has been identified and received in evidence as  
2 DJ-168.

3 (Document handed to the witness and to the Board.)

4 I'd like to direct your attention to the last  
5 paragraph of DJ-168.

6 Now, sir, I'd like to ask you, first, are you  
7 the author of DJ-168?

8 A Yes, I am.

9 Q And does the last paragraph of DJ-168 refresh  
10 your recollection with respect to the question I asked con-  
11 cerning your awareness of sales by investor-owned utilities  
12 to municipal systems in Pennsylvania and the fact that you  
13 communicated that to Mr. Fleger?

14 MR. OLDS: I would observe that the letter does  
15 not refer to "investor-owned utility," which I think was  
16 the form of the question.

17 BY MR. CHARNO:

18 Q Well, if I had originally asked you were you  
19 aware of such sales by a utility to a municipal system,  
20 would your answer have been the same?

21 A The question you asked me was do I recall in  
22 1965, or something to that effect, any municipality, and I  
23 said that I didn't.

24 I think the point here is the Borough manager  
25 had referred to some municipality that he had had experience



blt 14 1 with that had supposedly purchased electric power on a  
2 wholesale basis from a utility.

3 Q Did you have any reason to disbelieve that?

4 A No, I had no reason to believe it or disbelieve  
5 it.

6 Q Did you take his statement into account in answer-  
7 ing his request?

8 MR. OLDS: If the Board please, I object. I do  
9 not believe this is proper cross-examination at all. There  
10 was no testimony offered by this witness about the Borough  
11 of Aspinwall.

12 CHAIRMAN RIGLER: I agree with that, but there  
13 was substantial testimony with respect to the applicability  
14 of Rule 18 and I think it goes to that.

15 I'm going to permit it.

16 MR. OLDS: Mr. Rigler, so the record is clear as  
17 to the basis for what I am saying, I am only observing that  
18 the question seems to be asking whether the witness took  
19 into consideration the statement in this letter, which was  
20 not referred to at all in direct, in the course of responding  
21 to something which has not been testified to by this witness  
22 at all but was requested by the Borough Manager of the  
23 Borough of Aspinwall. It was on that basis.

24 It was not -- that is, I have not heard that  
25 this question relates in any way to Rule 18, and that's

blt15

1 where I have my difficulty in finding it to be within the  
2 scope of direct examination.

3 CHAIRMAN RIGLER: It relates to Mr. Cilfillan's  
4 letter to Mr. McCabe of March 19 in which he discusses the  
5 willingness or lack of willingness of Duquesne to sell elec-  
6 tric power to Pitcairn for resale, and we earlier discussed  
7 the policy considerations and the legal considerations that  
8 led to that unwillingness. I think it bears directly on  
9 that, and for that purpose I'm going to admit it.

10 THE WITNESS: Would you repeat the question?

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

13 MR. OLDS: I also object, that there's no testi-  
14 mony in the record that he answered the request.

15 MR. CHARNO: Let me withdraw that question and  
16 ask a prefatory question.

17 BY MR. CHARNO:

18 Q Did Duquesne Light respond to the request of the  
19 Borough Manager of Aspinwall?

20 A This memo indicates that it was an informal re-  
21 quest, and I really don't know whether we responded to his  
22 request or not. The matter never came to my attention in  
23 that sense, of "Should we respond to the Borough Manager or  
24 should we not?"

25 Q Well, did Duquesne Light sell power at wholesale

blt16 1 for resale to the Borough of Aspinwall?

2 A We did sell Aspinwall, I believe -- I can't be  
3 sure. It wasn't during my term of office. But I believe  
4 we sold Aspinwall some power on Rate M but not on a full  
5 requirements or partial requirements wholesale for resale  
6 basis, no.

7 CHAIRMAN RIGLER: If you sold to Aspinwall pur-  
8 suant to Rate M, would Rule 18 have been applied to that  
9 contract?

10 THE WITNESS: Well, Rate M, by its very terms --  
11 I guess it's not covered per se by Rule 18. It's the rate  
12 for emergencies and does contemplate resale by the customer,  
13 and the rate so states.

14 CHAIRMAN RIGLER: But the tariff under which  
15 Duquesne sold to Aspinwall would have been identical to the  
16 Rate M tariff, which is now NRC Exhibit 211?

17 THE WITNESS: It would be the identical rate.

18 CHAIRMAN RIGLER: And the rules and regulations  
19 appended thereto would apply to Aspinwall as much as it  
20 would to Pitcairn?

21 THE WITNESS: Oh, yes.

End 9

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BY MR. CHARNO:

Q Mr. Gilfillan, were you aware that at least as early as 1966, one of the toher CAPCO members, Pennsylvania Power, was selling power at wholesale for resale to municipal systems?

A I can't say for sure than in 1966 I was aware of that , no, sir. I just don't recall whether I was or whether I wasn't.

Q You are aware of it now?

A Yes, I am aware of it now.

Q And as early as 1966, that was pursuant to tariffs filed with the Federal Power Commission, is that correct?

MR. OLDS: Is he asking whether the witness knows that?

MR. CHARNO: That is what I am asking.

THE WITNESS: Do I know that now or did I know that in 1966?

BY MR. CHARNO:

Q Do you know that now?

A Do I know it now. I would assume that the tariffs were filed with the Federal Power Commission but I do not know that for a fact, for: the service they were supplying in 1966, if that would have been filed; I don't know whether it would have been or would not have been.

Q You don't recall being informed prior to 1968,

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1 that Pennsylvania Power was selling power at wholesale  
2 for resale to municipal systems under tariffs filed with the  
3 Federal Power Commission?

4 A Prior to 1968?

5 Q Being informed prior to '68 that Pennsylvania  
6 Power was selling power prior to '68.

7 A I may have been but I don't recall a specific  
8 date. Obviously, there was a date as we got into the  
9 antitrust suit that we discussed some of that. It ran on  
10 through 1970. Frankly, the dates begin to all melt together.

11 MR. PERI: Your Honor.

12 CHAIRMAN RIGLER: Mr. Peri?

13 MR. PERI: Do I understand this line of questioning  
14 is solely for the purpose of determining something in relation  
15 to Mr. Gilfillan's direct testimony and could not be used  
16 in any way to relate to the factual situation of Pennsylvania  
17 Power? I would like that made clear. The only ability you  
18 have to examine on this is with whatever connection it has  
19 to the direct testimony.

20 Since, as I understand it, there was no testimony  
21 on this matter relating to the factual situation of the  
22 Pennsylvania Power area, you would not be entitled to use this  
23 testimony somewhere down the line for the factual assertions  
24 contained herein.

25 MR. CHARNO: I think there are factual assertions.

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1           Basically, the witness' testimony is that he  
2 doesn't remember. At this point, if this is a fair summary  
3 of his testimony, he believes there was wholesale service  
4 going on from Pennsylvania Power to municipal systems sometime  
5 in the late '60s. I don't think he testified to a great  
6 deal more than that.

7           If you have some objection to that, the truth  
8 of it --

9           MR. PERI: If I might object to that series  
10 of questions being beyond the scope of the direct, you  
11 could respond in what way you believe it ties to the direct  
12 and that may get us out of whatever problem I may have with  
13 it. I object to that line of questioning. I believe it  
14 is the last three question. The basis is that it is beyond  
15 the scope of the direct.

16           CHAIRMAN RIGLER: That will be overruled. If the  
17 witness should disclose facts related to Pennsylvania Power,  
18 you should be prepared to contest those facts, if you do.  
19 On the other hand, you may have an argument that this is  
20 secondary evidence, at best, with respect to any activities  
21 engaged in by Pennsylvania Power.

22           MR. PERI: I believe so. Thank you, your Honor.

23           BY MR. CHARNO:

24           Q     Sir, I believe this morning you testified that there  
25 were a series of cases concerning the jurisdiction of the Federal

eak4

1 Power Commission over wholesale sales. Do you happen  
2 to recall the names of any of those that you had in mind  
3 when you made the statement?

4 A Well, I think the case of the City of Gainesville,  
5 Florida. I don't recall whether it was Florida Power  
6 Corporation or Florida Power and Light, but one of the  
7 Florida utilities. There was a case, Crisp County, in  
8 Georgia. Of course, there was the Otter Tail case. I  
9 don't remember the timing of the Otter Tail case. I think  
10 that was coming along at that time.

11 MR. ZAHLER: I would like to point out this  
12 particular area was gone into by Mr. Lessy as to the witness'  
13 knowledge of the FPC jurisdiction. This is an area where the  
14 Staff and Justice should be coordinating and they really  
15 are taking two bites at the apple at this time.

16 CHAIRMAN RIGLER: I tend to agree. Where are  
17 you going that Mr. Lessy did not go?

18 MR. CHARNO: At this point I am going absolutely  
19 no further. I do have a problem, however, with the two bites  
20 at the apple. The Staff and the Department do not have  
21 identical interests. We have made some attempt to coordinate  
22 our testimony where we have been able to. There are areas  
23 that I will go back into that Mr. Lessy has been into. I am  
24 not sure what to do about it, unless it is an arbitrary rotation  
25 of who goes first with the witnesses. I object to being



eak5 1 foreclosed from protecting the Department's interests.

2 CHAIRMAN RIGLER: Where the interests of the Depart-  
3 ment are different, we would not prevent you from developing  
4 the Department's separate line.

5 MR. ZAHLER: In this specific case, it doesn't  
6 appear to me how the interests of the Department and Staff  
7 would be different.

8 CHAIRMAN RIGLER: He has indicated he is at the end  
9 of the line, so let's save time by moving along.

10 BY MR. CHARNO:

11 Q Mr. Gilfillan, is Rate M still part of Duquesne  
12 Light's tariff?

13 A No, it is not.

14 Q How was it removed from the tariff?

15 A It was dropped from the tariff during the filing  
16 with the Pennsylvania Public Utility Commission of one of the  
17 tariffs as a result of an order by the Commission, not relating  
18 to Rate M, but relating to a rate case itself.

19 And the tariff was merely not placed -- Rate M  
20 was not placed in the tariff.

21 Q Is the dropping of the rate subject to challenge?

22 A Any customer or prospective customer can take  
23 any matter in front of the Public Utility Commission and they  
24 do so as a matter of fact.

25 Q Was the dropping of Rate M challenged?



eak6 1           A       No, it was not. At least not to my knowledge.  
2 I assume we would be informed by the PUC had it been.

3       Q       Is there anything that you are aware of since 1965  
4 on, that would have prevented Duquesne Light from either  
5 removing Rule 18 from its tariff or amending Rule 18 so that it  
6 no longer covered sales of bulk power at wholesale for  
7 resale to municipal systems?

8           MR. OLDS: Mr. Chairman, I object. That is not  
9 proper cross examination. There was no testimony by the witness  
10 that there was something that prevented it. Mr. Charno  
11 is seeking to make this witness his own witness for this  
12 purpose.

13           There is an important legal consideration  
14 which is involved here. It has been briefed twice by us.  
15 I am sure the Board is aware of it. The case is in the Fourth  
16 Circuit and deals with the question of whether or not a  
17 utility which has a provision in its tariff which is alleged  
18 to be anticompetitive by somebody, has any obligation  
19 to act with reference to that provision in the tariff and  
20 whether its failure to so act suggests any kind of anticompe-  
21 titive intent or conduct.

22           It is the Business Aids case. If Mr. Charno  
23 wishes to call Mr. Gilfillan as his own witness with the  
24 Board's permission, that is a different matter. We did not  
25 offer him to contend on this point or to present any

eak7 1 affirmative testimony by Duquesne Light. I submit it is  
2 not proper cross examination.

3 MR. CHARNO: I think Mr. Olds' objection misses  
4 my question. My question was not directed to whether or not  
5 there was an obligation to modify or change the tariff or  
6 remove Rule 18. I asked whether there was anything that  
7 would prevent the modification or removal from the tariff  
8 of Rule 18 of which the witness was aware. I don't believe  
9 Business Aids deals with that question at all.

10 MR. OLDS: And I would urge, the point is important  
11 because of the Business Aids case. I did not suggest  
12 that the situation was that precisely covered by Business  
13 Aids. The point is a sensitive one because of the Business  
14 Aids case. I would urge it is not proper cross-examination  
15 because the witness offered no direct testimony bearing  
16 on this issue.

17 MR. CHARNO: I take issue with counsel's statement.  
18 I think the correspondence referred to by this witness in  
19 his direct testimony states clearly they cannot deviate  
20 from Rate M.

21 CHAIRMAN RIGLER: Where does it so state.

22 MR. CHARNO: Pardon me. They will not deviate  
23 from Rate M.

24 CHAIRMAN RIGLER: That is a substantial difference.

25 MR. CHARNO: I am sorry. That is correct. I

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1 am asking if he knows of any reason that they could not  
2 in effect deviate from Rate M.

3 CHAIRMAN RIGLER: I will per mit that question,  
4 not the question you phrased originally, but the question  
5 you just asked of him.

6 THE WITNESS: May I have the question read again?

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

9 CHAIRMAN RIGLER: Do you know of any reason why  
10 Duquesne could not have deviated from Rate M?

11 THE WITNESS: Could not have deviated from Rate M.  
12 That would be deviate by filing a new tariff. Obviously,  
13 I suppose you are bound by the rate while it is in effect.  
14 You may not deviate from it as long as that is your  
15 effective rate.

16 CHAIRMAN RIGLER: The question should be interpreted  
17 to mean is there any reason why you could not have sought  
18 to amend Rate M. Is that the import of your question, Mr.  
19 Charno?

20 MR. CHARNO: As modified, yes.

21 MR. OLDS: To protect my record, Mr. Rigler, I urge  
22 again that I don't think that is part of appropriate cross-  
23 examination. I understand in this case, the Board is asking  
24 the question. That is probably not subject to the restric-  
25 tions I urged.

eak9 1 CHAIRMAN RIGLER: It is getting close, Mr. Olds.  
2 I will let that one question go.

3 THE WITNESS: I think the practical effect of  
4 amending or changing Rate M would depend on the kind of change  
5 that might be made to it.

6 If it became a wholesale for resale rate, it could  
7 very well then be asked -- it could well then be that other  
8 customers would ask for that, other retail customers  
9 would ask for that and we would be into this situation of  
10 the fragmentation of our distribution system with commercial  
11 projects and shopping centers and aggregation of industrial  
12 customers and so forth.

13 BY MR. CHARNO:

14 Q Isn't Rate M pretty effectively restricted  
15 to municipal corporations by almost all of its terms, both  
16 under availability and special terms and conditions. Wouldn't  
17 your shopping center have to be a municipal corporation  
18 in order to take advantage of this rate?

19 MR. OLDS: I object. The witness' answer made clear  
20 his premise. He said if it were changed to a wholesale  
21 for resale rate, then the company would have to answer other  
22 customers who asked why they could not have it. The answer  
23 is not inconsistent with the language.

24 CHAIRMAN RIGLER: I agree but I will overrule  
25 the objection.

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1 THE WITNESS: Would you read the question?

2 MR. CHARNO: I will ask it another way.

3 CHAIRMAN RIGLER: You have made the point. Proceed.

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

6 THE WITNESS: It may have to be. I am not a  
7 lawyer. I don't know what corporate structures may or  
8 may not be. I would have to seek legal advice before I  
9 could really determine what changes might be made to a rate  
10 like Rate M, variations or deviations or whatever the  
11 terminology was that was used in the original question.

12 BY MR. CHARNO:

13 Q Mr. Gilfillan, are you aware of any impediment  
14 to Duquesne Light filing a rate for wholesale service for  
15 resale to municipal systems with the Federal Power Commission  
16 at any time from 1966 on?

17 MR. OLDS: You mean a legal impediment or business  
18 impediment or all kinds of impediments?

19 THE WITNESS: From our viewpoint, as my testimony  
20 discussed, we felt it obviously would be an unsound business  
21 practice. In my mind, that is an important impediment.  
22 I don't know if there would have been any legal impediment  
23 in the period of 1966, '67, '68, '69, '70.

24 BY MR. CHARNO:

25 Q Were you aware that there were other systems that had

eakll 1 done so during that period?

2 A Was I aware in '66 or '67 that this was the case?

3 Q Yes, sir.

4 A I really don't recall whether I was aware in  
5 '66 or '67. This gets back to the question we had before.  
6 In '68 we began to get -- in mid '68 we began to get involved  
7 in this because of the antitrust case. That period tends  
8 to melt together. I can't remember definitive dates  
9 in that period.

10 Q Was one of the business reasons that Duquesne  
11 refused to sell -- I will use your phrase -- baseload  
12 electric power for resale to municipal systems to aid Duquesne  
13 in the acquisition of those systems?

14 A No.

15 Q Do you recall ever being asked by a municipal  
16 system that Duquesne Light sell that municipal system bulk  
17 power at wholesale rather than acquire it as a specific alterna-  
18 tive to acquiring it?

19 A No. The only discussion I had was with Mr.  
20 McCabe in our March 6 meeting and I don't remember that discussio  
21 at all. Or discussion on that subject at all.

22 Q Would it refresh your recollection if I suggested  
23 that a request for wholesale power was made by Aspinwall  
24 and consistently refused by Duquesne Light in the course  
25 of Duquesne Light's acquisition of the municipal system?

eak12 1           A       The only official request that I recall, the  
2 Borough of Aspinwall making of Duquesne Light, was in a call  
3 that Mr. Munsch told me about that was made to him  
4 by Mr. Donaldson, the Solicitory of Aspinwall, the Borough.

5           Q       Well, if you had authorized the term "consistently  
6 refused" to be used, would you expect that to refer to more  
7 than one request?

8           THE WITNESS: I don't recall authorizing that term.

9           MR. OLDS: I object.. I do not think this is  
10 proper cross examination at all. I don't know what  
11 Mr. Charno is referring to. I submit there was no paper  
12 offered by Mr. Gilfillan during his direct; there was no  
13 direct testimony by him that used that phrase. And I submit  
14 that this must be some form of collateral attack on something  
15 else.

16           I don't know what it is but I am sure it is not  
17 proper cross examination. I object.

18           MR. CHARNO: The Department is attempting to explore  
19 the scope and nature of the so-called business reasons  
20 for Duquesne Light's refusal to sell bulk power at wholesale  
21 to municipal systems.

22           MR. OLDS: That may well be the case. I urge again  
23 that the specific question is objectionable. That is not  
24 a necessary part of any such examination. It is obvious  
25 from the context of it that is some form of collateral attack.



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He does not suggest this witness has used that phrase. He doesn't show him a paper nor does he refer to testimony by the witness using this phrase. I can only deduce he is attempting to obtain from this witness some kind of commentary upon the use of the phrase by someone else.

That is not proper cross examination under the circumstances of this witness' direct testimony.

MR. CHARNO: I agree with Mr. Olds' last statement.

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1 CHAIRMAN RIGLER: I'm going to let him answer  
2 subject to a motion to strike if he does not connect it up  
3 in the next two questions or so.

4 Do you want the question repeated?

5 THE WITNESS: Yes.

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

8 THE WITNESS: Well, I don't remember authorizing  
9 the term "consistently refused." The term in itself might  
10 well mean more than one.

11 CHAIRMAN RIGLER: The question was if you used that  
12 term, would it mean more than one?

13 THE WITNESS: If I used the term "consistently  
14 refused," it probably would mean more than one, yes, sir.

15 BY MR. CHARNO:

16 Q Sir, I'm going to offer you an exhibit in evidence  
17 as DJ 321 and direct your attention to the fourth page and the  
18 third full paragraph of that page.

19 I would like you to examine that and find it if  
20 refreshes your recollection with respect to authorizing  
21 the use of the term "consistently refused."

22 MR. OLDS: You are referring to the fourth page,  
23 Mr. Charno. What is the first word?

24 MR. CHARNO: As a matter of fact, it might save a  
25 bit of time if you could examine the entire document.

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1           Could we have a five-minute recess and then ask a  
2 couple of brief questions, and then I think I will be finished.

3           CHAIRMAN RIGLER: Let's do it sitting here,  
4 without the recess.

5           MR. CHARNO: Certainly.

6           MR. OLDS: May I be heard from, Mr. Rigler?

7           I object to this line of questioning. Under  
8 the guise of examining into the business reasons, what Mr.  
9 Charno is trying to do is to attack the credibility of  
10 the witness by asking him one question on cross-examination,  
11 getting a particular answer, and then coming to a later  
12 document and trying to get the witness to recant.

13           That is not proper under the rules of cross-  
14 examination and that is what we are involved in here.  
15 This witness did not offer this paper as an affirmative  
16 statement of policy or anything else.

17           We are wandering far afield under the guise of  
18 examining the business reasons. This doesn't examine  
19 business reasons. This is examining a very small and very  
20 narrow point.

21           Was there more than one request? I don't see how  
22 that establishes a business reason, one way or the other. I  
23 think it is really abusing the power of cross-examination.

24           MR. CHARNO: Mr. Chairman, the initial question or  
25 the second question in the line was, has it ever happened

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1 that Duquesne has refused at the same time they were attempting  
2 to acquire a system.

3 Now we are talking about repeated requests.  
4 Concurrent with the Duquesne Light's attempt to acquire a  
5 system. I believe it is directly relevant and it certainly,  
6 in my mind, bears directly on possible business reasons  
7 for Duquesne's refusals to sell power at wholesale.

8 I will admit that the --

9 CHAIRMAN RIGLER: Through this document you are  
10 attempting to show that the business justifications advanced  
11 by the witness either were not correctly stated or in fact  
12 did not reflect the true motives or business purposes of  
13 Duquesne?

14 MR. CHARNO: Did not reflect all of the business  
15 purposes of Duquesne in making the refusal.

16 MR. OLDS: This document, Mr. Rigerl, you do  
17 understand, clearly does not refer at all to Pitcairn.  
18 There is no indication that it does.

19 CHAIRMAN RIGLER: I understand that, Mr. Olds,  
20 but the problem is that the business reasons, the policies which  
21 Duquesne applied to its Pitcairn decision, were the subject  
22 of direct examination of this witness. And I think the  
23 Department is entitled to probe the accuracies or the persuasive-  
24 ness of the business reasons, and I'm going to overrule the  
25 objection on that ground.

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1 This is subject to a connection between this  
2 document which the witness is now reading and some statement  
3 of the witness. It does not appear on the Board's copy  
4 who the author of this is.

5 MR. CHARNO: There is a stipulation of record  
6 with respect to this document.

7 CHAIRMAN RIGLER: All right. The stipulation to  
8 which you refer is the stipulation on February 25 that the  
9 document, DJ 321, was okayed by Mr. Gilfillan and it is  
10 authored by Mr. O'Nan. Is that the stipulation?

11 MR. CHARNO: That sounds like it, yes, sir.

12 CHAIRMAN RIGLER: All right.

13 Subject to that stipulation, Mr. Olds, I will  
14 overrule the objection.

15 Is there a pending question?

16 MR. CHARNO: I believe there is.

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

19 THE WITNESS: Does it refresh my memory; is that  
20 the question?

21 BY MR. CHARNO:

22 Q Yes, sir.

23 A Yes.

24 This was, as I recall at this time, some material  
25 which was hastily pulled together, given very little thought,

ar5

1 was for a discussion, if I remember, and I don't remember  
2 too much of the details of it.

3 Q Sir, on that paragraph I initially directed  
4 your attention to, would it be a fair reading of that para-  
5 graph that during negotiations to acquire Municipal Electric  
6 System, that system had requested wholesale power for resale  
7 and had been refused by Duquesne Light?

8 A The discussions that took place with Aspinwall  
9 occurred, as I recall --

10 Q Sir, could you answer the question yes, or no,  
11 and then explain your answer?

12 Would that be a fair reading was the question.

13 A Well, yes, I would say that -- the reading of  
14 this, is that a fair reading of this. That is what this says,  
15 if that is what you are saying.

16 I'm not sure I recall that at this point in  
17 time to be the case, but the details are not absolutely clear  
18 in my mind.

19 Q Do you have any reason to believe it is inaccurate?

20 A Except that I do recall this thing had been very  
21 hastily thrown together and given very little attention,  
22 frankly, so it could contain inaccuracies.

23 Q I'm sorry, do you have any reason to believe that  
24 it is inaccurate? You just answered that question by saying  
25 that it could contain inaccuracies.

ar6

1 I'm going one step further: Do you have a reason  
2 to believe that it is wrong?

3 A No, I don't have any recollection that it may be  
4 wrong, but I don't recall the circumstances to be that.

5 Q Sir, do you recall being instructed by Mr. Fleger  
6 that you should proceed along the lines laid down in the  
7 case of Aspinwall in attempting to acquire the facilities of  
8 Pitcairn?

9 A Yes. We were discussing there the internal  
10 organizational plans that there would be just one individual  
11 who would make the contacts and that in our approach to any  
12 acquisition, we never initiated any discussions on acquisition  
13 unless the municipality had raised the issue with us first,  
14 and we had some criteria on what we would pay for a municipal  
15 acquisition.

16 It had to be within a range on the dollars per  
17 customer, the -- as I remember it, dollars per customer  
18 revenue as compared to our average system figures, the original  
19 cost or reproduction cost less depreciation of the system,  
20 impact on earnings, things of that nature; and it related to  
21 this proceeding in the same fashion or whatever the terminology  
22 was that you used.

23 CHAIRMAN RIGLER: Was it the company's philosophy  
24 to try to acquire municipals because they were perceived as a  
25 threat to the company?



ar7

1 THE WITNESS: We did not initiate any acquisitions  
2 with municipalities. We did not pursue acquisitions of a  
3 municipality until the municipality came to us and  
4 initiated the discussion.

5 CHAIRMAN RIGLER: Now try to answer my question,  
6 please.

7 THE WITNESS: I thought I did. I'm sorry.

8 CHAIRMAN RIGLER: Let's try again.

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

11 THE WITNESS: I think we felt that in the broad  
12 sense of this fractionalizing of our service territory, that  
13 wholesale for resale, as I indicated earlier, was not in the  
14 public interest.

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THORPE/  
blt 1  
egin 11

1 CHAIRMAN RIGLER: Now will you try again to  
2 answer my specific question? Do you want it reread once  
3 more?

4 THE WITNESS: I'm trying to answer it. I'm  
5 sorry.

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

8 THE WITNESS: No, I don't believe so.

9 BY MR. CHARNO:

10 Q Sir, does your last answer reflect a change,  
11 either in your opinion or in the company's position?

12 MR. OLDS: Change from what?

13 MR. CHARNO: From any prior inconsistent position.

14 MR. OLDS: I object. That is certainly not part  
15 of any proper cross-examination.

16 CHAIRMAN RIGLER: That's sustained.

17 BY MR. CHARNO:

18 Q Sir, on direct this morning --

19 CHAIRMAN RIGLER: I do note for the record that  
20 on page 2 of this exhibit it is explicitly stated:

21 "It is our company's philosophy to try to  
22 purchase municipal systems because they can be  
23 a potential threat to the wellbeing of the company."

24 It then continues with respect to price considerations.

25 Continue with your question.

blt 2

1 BY MR. CHARNO:

2 Q This morning, Mr. Gilfillan, on direct examination,  
3 tion, you testified that a portion of Pitcairn's load had  
4 been served beginning in 1970, if I correctly caught your  
5 testimony. Is that true?

6 Pardon me, a portion of Pitcairn's load had been  
7 served by Duquesne -- I didn't say that -- beginning in  
8 1970.

9 A Yes, beginning in 1970, as a result of Pitcairn's  
10 petition to the Federal Power Commission for an emergency  
11 interconnection, Duquesne began to serve power for a portion  
12 of Pitcairn's load, that's right.

13 Q That service was over the emergency interconnection,  
14 is that correct?

15 A Well, there was an emergency interconnection made,  
16 but there wasn't any connection -- there was an emergency  
17 connection made for that service.

18 Q And was that a synchronous connection between  
19 Pitcairn and Duquesne Light?

20 A No, it was not. It was a separate connection  
21 and, if I recall, was the way that it was set up with --  
22 apparently at the FPC meeting -- with Pitcairn and Duquesne  
23 Light and the FPC.

24 Q To your knowledge, have the systems of Pitcairn  
25 and Duquesne Light ever been operated in parallel?

blt 3

1           A.     No, they have not been operated in parallel;  
2 however, that was Pitcairn's unilateral decision. We did  
3 not refuse to operate with Pitcairn -- we did not refuse  
4 to operate in parallel with Pitcairn.

5                     Let me restate that, if I might. We did not  
6 refuse to operate in parallel with Pitcairn. It was Pitcairn's  
7 unilateral decision not to operate in parallel. I think  
8 that will clarify it.

9                     MR. CHARNO: Well, rather than exploring that, I  
10 think I will move to strike the last part of the answer as  
11 non-responsive.

12                    CHAIRMAN RIGLER: You asked if they operated in  
13 parallel with Pitcairn?

14                    MR. CHARNO: Have they ever operated the two  
15 systems in parallel was the question.

16                    CHAIRMAN RIGLER: And he answered "No," and then  
17 he went on to explain that they had not been requested to  
18 do so.

19                    MR. CHARNO: That they had never refused a request  
20 to do so. No, he didn't say they hadn't requested them to  
21 do so. He said they had never refused to.

22                    CHAIRMAN RIGLER: It is non-responsive, yet I  
23 think it develops the record and I'm going to deny the  
24 motion. It's a fair comment on the question as asked, I  
25 think.

blt 4

1 BY MR. CHARNO:

2 Q Were you requested by Pitcairn to operate in  
3 parallel at any time?

4 A During the settlement negotiations, I understand  
5 that there was discussion of this. Whether it became a  
6 specific request per se or not, there was discussion of what  
7 would be required to operate in parallel.

8 Q Were you present at those discussions?

9 A No, I was not.

10 Q Who reported to you on those discussions?

11 A Mr. Starke.

12 Q Sir, would it be possible to have an interchange  
13 agreement between systems which did not operate in parallel?

14 A By that do you mean an interchange of power flow-  
15 ing in either direction, or do you mean solely wholesale  
16 for resale sale? I'm not sure -- I just want to be sure that  
17 I understand your terminology.

18 Q Well, you were referring earlier in your testimony  
19 to interconnection agreements and interchange agreements.  
20 Let me ask you: What did you mean by "interchange agreement"  
21 when Duquesne Light said that they would not enter into an  
22 interchange agreement with Pitcairn?

23 A This was an interchange of power with the systems  
24 operating in parallel in which power would flow from  
25 Duquesne to Pitcairn or from Pitcairn to Duquesne if that

blt5

1       latter were possible, technically possible.

2               MR. CHARNO: I have no further cross-examination  
3 of the witness.

4               MR. OLDS: I'm most anxious to try to finish with  
5 Mr. Gilfillan, if I may. I appreciate the Board's great  
6 indulgence in staying late. I really only have one question,  
7 because I think there was a lack of clarity.

8                               REDIRECT EXAMINATION

9               BY MR. OLDS:

10              Q       Mr. Gilfillan, you were asked a long time ago  
11 about whether or not there was a demand charge under Rate M  
12 which was separate and apart from any energy charge.

13                       Now, I want you to be clear in your answer. Was  
14 whatever was paid under that minimum charge that is referred  
15 to in Rate M a sum which was applied to any energy charge  
16 for energy consumed under Rate M?

17              A       Yes. The amount of the minimum charge in effect  
18 would be like a -- I guess the best characterization is like  
19 a minimum charge in a nightclub. Unfortunately, it's the  
20 most descriptive.

21               MR. OLDS: I have no further questions of the  
22 witness.

23               CHAIRMAN RIGLER: Thank you, Mr. Gilfillan.

24                               (Witness excused.)

25               CHAIRMAN RIGLER: I will see everyone at 10:00 a.m.

blt6

1 on Tuesday the 4th. We'll start a half-hour later that day  
2 than ordinarily.

3 MR. OLDS: I'm sorry, Mr. Chairman, were you  
4 speaking to me?

5 CHAIRMAN RIGLER: We'll reconvene Tuesday morning  
6 the 4th at 10:00 a.m. instead of our usual 9:30.

7 MR. OLDS: Do I understand Mr. Gilfillan is ex-  
8 cused?

9 CHAIRMAN RIGLER: Yes.

10 MR. OLDS: Thank you.

11 MR. ZAHLER: Mr. Chairman, if I may before we  
12 adjourn, you indicated over lunchtime the Board would be  
13 considering or scheduling replies to the motions to dismiss.

14 I was wondering if we could have some indication  
15 of what the Board decision is in that area.

16 CHAIRMAN RIGLER: The Board has a bench order  
17 which will set the briefing schedule. In the bench order  
18 we set forth some of the considerations which went into our  
19 timing; however, in view of the lateness of the hour, what  
20 I propose to do is to give you the dates right now and start  
21 Tuesday morning by reading into the record the bench order,  
22 which will set forth in greater detail our reasoning.

23 The bottom line of the order is that we want  
24 opposition parties to respond to all individual company  
25 motions no later than May 17 and to the blanket motion for



blt7

1 summary disposition filed on behalf of all Applicants no  
2 later than May 21.

3 Mr. Peri?

4 MR. PERI: Your Honor, I have one other small  
5 matter, if I can beg the Board's indulgence.

6 On April 1, when Mr. Lewis was testifying, there  
7 was a matter brought up at transcript page 8030 which dealt  
8 with Mr. Lewis providing his files on Oroville and its  
9 relation to the Ohio Edison Company.

10 I discussed this matter with the Department of  
11 Justice. I understand there has been some difficulty in  
12 this regard, but we've had nearly a month now. We must go  
13 forward with our direct case in about a week, and I would  
14 appreciate it if the Department of Justice would indicate to  
15 the Board some of the difficulties they are having.

16 MR. MELVIN BERGER: I had indicated earlier to  
17 Mr. Peri that we had some problem contacting Mr. Lewis and  
18 getting him to go through his records; however, as it stands  
19 right now, his secretary informed me -- I believe it was  
20 Monday or Tuesday -- when I spoke with her that they had  
21 put a package in the mail to us on Sunday. I had asked them  
22 to mail it here in Silver Spring, and as yet I have not  
23 gotten it.

24 We have attempted to call Mr. Lewis' secretary  
25 this afternoon. I'm not sure if we got through to her.

bltG

1 CHAIRMAN RIGLER: All right.

2 If it became vital, the Board could issue a  
3 subpoena with a short return date.

4 My recollection is that these documents were  
5 ones which Mr. Lewis wanted to discuss with his attorney.  
6 Is that correct?

7 MR. PURI: Yes, sir, and I believe the way the  
8 record reads is that he would be provided a transcript and  
9 10 days after we provided the transcript he would attempt  
10 to produce those.

11 It's quite some time past that. I just want the  
12 Board to appreciate our difficulty in making the decision  
13 about whether to recall him and what action we might take  
14 in our direct case.

15 CHAIRMAN RIGLER: All right. If you do not have  
16 them by Tuesday, which seems reasonable even with the slow  
17 mails, bring it up again.

18 MR. PERI: Thank you very much.

19 (Whereupon, at 5:25 p.m., the hearing in  
20 the above-entitled matter was recessed, to reconvene  
21 on Tuesday, 4 May 1976, at 10:00 a.m.)

22 End 11 - - -

23

24

Applicant's  
Submission

Rec'd 4/29/76

(1-3) 3/17/76

COMPLIANCE WITH 10 CFR, PART 100, REQUIREMENTS REGARDING POPULATION

The site for the proposed facility does not conform to the requirements of 10 CFR, Part 100, because the population density in the vicinity of the proposed site is either unexpectedly high at the present time or will be unexpectedly high during the life of the plant (CCSC G.1.; LW F.1.; TR F.1.) as there is no mechanism to control population density (LW addition, 4/9/76). In addition, AEC's April 17, 1973 report (released 4/9/74) on "Population Distribution Around Nuclear Power Plants" has been disregarded as has been the proximity of schools within the two mile zone. (CCSC Contention G.1.).

(4)

COMPLIANCE WITH REGULATIONS LIMITING RADIATION EXPOSURE OF WORKERS

CCSC must clarify and make specific this Contention D.6.

(5-8)

SECURITY

LW and TR must clarify and make specific their respective Contentions G consistent with the Board's Order of August 25, 1975.

The Environmental Analyses of the Applicant and Staff are incomplete because they do not consider radioactive releases resulting from criminal acts and sabotage occurring during the transportation of fuel to the facility from the fabricator and transportation of radioactive wastes from the facility to a fuel reprocessing

plant or waste storage area. (TR Contention C.3.).

The County of Suffolk must clarify and make specific its additional Contention CS 1.g., as limited by the Board's Order dated July 1, 1975.

Applicant's cost estimates do not reflect the cost associated with any extra security precautions recently called for by the NRC and do not reflect costs for the greater security needed in the transportation and handling of plutonium fuel (CCSC Contention B.4.).

Applicant's cost estimates do not reflect higher costs - both social and economic - of reprocessing plutonium fuel, which applicant has indicated it plans to use at some time (CCSC Contention B.3).

The Applicant must advise the Board why it did not list in its March 17, 1976 submission Contentions B.1. and B.2. of CCSC, and why did not treat B.1-9 as Cost contention

(9)

COMPLIANCE WITH 10 CFR, PART 50, APPENDIX E, I AND II  
CCSC must clarify and make specific its Contention D.4. as limited by the Board's Order of October 23, 1975.

The Applicant and Staff are herewith notified that the Board is very interested and will partake in the examination of witnesses regarding whether preliminary evacuation plans are adequate and feasible.

(10)

ADEQUACY OF DESCRIPTION OF DECOMMISSIONING ALTERNATIVES

CCSC with respect to Contention B.5., Suffolk County with respect to Contention 4.e. and TR with respect to Contention H as limited by the Board's Order of July 1, 1975 must clarify and make specific their contentions.

TECHNICAL QUALIFICATIONS - QUALITY ASSURANCE

(11)

Applicant is not qualified to design and construct the proposed facility because it is not technically qualified to design and implement quality assurance and quality control programs which meet the requirements of 10 CFR, Part 50, Appendix B. (LWV Contention E, TR Contention E.1., as admitted by Order of May 8, 1975; CCSC Contention D.5. as limited by Order of July 1, 1975).

(12)

VI  
FUEL HANDLING AND STORAGE ACCIDENTS

With respect to Contentions D.1., LWV and TR must clarify and make specific said contentions.

(13-15, & 17)

VII  
SPENT FUEL AND RADIOACTIVE WASTE STORAGE AND DISPOSITION

Applicant has made no provisions for additional radioactive waste storage at the site, occasioned by the present lack of any commercial operating fuel reprocessing plant in the U. S. or of any NRC permanent waste storage repository. (CCS Contention B.6., admitted by Order of May 8, 1975). The environmental impact of the fragile and unique water supply of the North Fork area will be more permanent than Applicant's description of it indicates. In addition, the probability of longer storage of radioactive waste at the plant may well mean radioactive spills which will contaminate the ground water (CCS Contention F.9., admitted by Order of May 8, 1975). The one reprocessing plant at (West Valley, New

plant that handled waste from commercial reactors has shut down for proposed expansion and incorporation of increased safety features. Its earliest expected start up date is 1978). A second plant at (Morris, Illinois) is expected to be in operation in 1984 has run into critical problems and might be abandoned. A third plant (in Barnwell, S. C.) has also been delayed and its expected start up date has now been postponed back to 1977 and just recently, the New York State Department of Environmental Conservation closed down the burial ground in West Valley, New York, operated by Nuclear Fuel Services for low level radioactive wastes from nuclear power plants, thus, at the present time there is no assurance that there will be a safety facility for reprocessing or disposing of high radioactive fuels that will be generated by the Jamesport units. In the absence of an available operating reprocessing center and burial ground for radioactive wastes, the Applicant may be obliged to store such wastes at the site, thus, creating the risk of contamination of ground water which is the sole source of Suffolk County's public water supply. (Additional Contention 1.d., CS, is limited by Order of May 8, 1975; Contention D.3. of CCSC admitted by Order of May 8, 1975).

CCSC contention G.3. will be rejected by the Board unless explanation is given why such a contention is within the scope of this hearing on application for a Construction Permit, and is thus relevant.

(16)

VIII  
UNDERSTANDABILITY OF TABLE S-3

The additional Contention 2.f. of CS is rejected as being deemed a challenge to the NRC's regulations. However, during the course of the hearing it is expected that the Applicant and/or Staff will clearly explain Table S-3 which appears in 10 CFR, Part 51.

(44)

IX  
INTERACTION BETWEEN EFFLUENTS AT JAMESPORT AND OTHER FACILITIES

CCSC Contention E. 7. is limited by Board Order of July 1, 1975, CCSC F.6.B as modified in the March 26, 1975 Prehearing Conference and admitted by Board Order of May 8, 1975, CCSC Contention F.7. is limited by Board Order of July 1, 1975, and LWV Contention 3. is limited by Board Order of July 1, 1975 and must be clarified and made specific.

( - )

X  
EMERGENCY CORE COOLING SYSTEM

TR must clarify and make more specific Contention D.2. to indicate why the proposed ECCS has not been designed to conform to the requirements of 10 CFR <sup>50.46</sup> 45 and 10 CFR, Part 100.



XI

( - )

GASEOUS AND LIQUID RADIOACTIVE RELEASES

LWV with respect to Contention C.4 and TR with respect to Contention C.2. must specify and indicate the reasons why the gaseous and liquid releases from the proposed facility will not be "as low as practicable" as required by 10 CFR, Part 50.36a.

XII

( - )

SEISMOLOGICAL, GEOLOGICAL AND HYDROLOGICAL REQUIREMENTS

LWV with respect to Contention F.2. and TR with respect to Contention F.2. must state specifically wherein Applicant's design does not conform to the requirements of 10 CFR, Part 100..

( - )

STEAM GENERATOR TUBES

XIII

additional

With respect to Contention <sup>6</sup>, CS must specify wherein the steam generator tubes have not been designed so as to assure to withstand the forces of LOCA, i.e., specify wherein said design fails to adequately conform to the Commission's requirements with respect to the design of the primarily coolant pressure boundary area.

XIV

(21)

ADEQUACY OF APPLICANT'S CONSIDERATION OF NON-NUCLEAR GENERATING ALTERNATIVES

With respect to Solid-waste combustion (CCSC A.4, LWV A.2), with respect to modern fluidized bedding, scrubber equipped coal (CCSC A.4), with respect to combined cycle turbines (Id.), with respect to solar (LWV A.2, TR A.2), with respect to <sup>A.1</sup> fission (Id.), with respect to

wind power (Id.), with respect to geothermal (TR A.2), and with respect to western low - sulfur coal (SC 4.c.) the intervening parties must specify wherein the Applicant has not given adequate consideration to these alternatives to nuclear generation.

XV

(18)

EFFECT ON GROUND WATER

With respect to TR Contention <sup>B.</sup> B.2 and LWV B.2, said intervenors must specify wherein the protection against lowering the water table during construction <sup>is</sup> inadequate.

(19)

With respect to Contention B.3, LWV must specify wherein the Applicant's protection against other forms of potential pollution of ground water is inadequate.

(20)

With respect to Contention F.9, CCSC must specify wherein the environmental impact on the North Fork water supply will be more permanent than Applicant's description indicates.

~~XVI~~

(22-24)

POWER PLANT RELIABILITY

Applicant must advise why the intervenors' contentions are placed under this caption rather than under COST. ]

(25)

~~XVII~~

PREFERABILITY OF ALTERNATIVE SITES

With respect to Contention A.3., TR must specify what other alternative sites on Long Island are preferable to the Jamesport location.

(26)

~~XVIII~~

CONTRIVENTION OF EXISTING LAND USE PLANS

Applicant's plans for the Jamesport project (a) ignore the Riverhead town plan which designates park land and open area, sets aside Sound Avenue as a historic road and identifies 7 structures as historic houses and 2 archeological sites as important Indian habitations (CCSC F.3), and (b) Applicant's plans are contrary to a recommendation of the Nassau-Suffolk Regional Development Plan because they removed the Jamesport site from its present agricultural use (LW C.5). ✓

(27)

~~XVII~~

COST OF MOVING JAMESPORT SITE FROM AGRICULTURAL USE

With respect to Contention C.5., LW must specify wherein the Applicant and Staff have inadequately considered the cost to society of moving the Jamesport site from its present agricultural use.

(28)

~~XV~~

EFFECT OF CONSTRUCTION WORKERS TRAFFIC

Increased traffic occasioned by out-of state and out-of county construction workers, as well as equipment

allegedly too heavy for the design of the roads, will mean a hardship for local motorists and a degrading of road surfaces, and may well require construction of extra roads (CCSC F.4, Order of May 8, 1975).

XIX

(29)

IMPACT OF TRANSMISSION FACILITIES

With respect to Contention F.8., CCSC must specify wherein the environmental impact of the transmission lines for the facility which allegedly involves more land than is required for both units and involves a new impact for Long Island, that of 345 KV transmission lines, has not been adequately weighed.

XX

(30)

EFFECTS OF FILLING LILLY & HALLOCKS' PONDS

With respect to Contention F.5., CCSC must specify whether any unique flora or fauna features of the ponds will be destroyed by the filling in of said ponds.

(31)

THERMAL EFFECTS

With respect to Contentions B.9., CCSC must clarify its contention and/or advise whether or not it now possesses these cost estimates.

XXI

(32)

A waiver of the FWPCA cooling tower requirements will mean use of large intakes and diffusers which will produce unquantifiable, irreversible destruction of marine

life at the site and Long Island Sound, and these effects would not be proveable until symptoms show the process has proceeded too far to rectify. (CCSC F.I., admitted by Order of May 8, 1975).

(33) With respect to LW C.1. the Staff, Applicant and LWV are required to advise whether they consider that this Board has jurisdiction over the subject matter.

(34) There will be a unacceptable adverse impact on the aquatic life of Long Island Sound in the vicinity of Jamesport resulting from the discharge of heated effluents into Long Island Sound from Jamesport (LW C.2; TR C.1.).

(35) IMPACT OF ENTRAINMENT AND IMPINGMENT

There will be an unacceptable adverse impact on the aquatic life of Long Island Sound resulting from the entrainment and impingment of fish and larvae in the intake structure in the Jamesport vicinity. (LW C.2 and TR C.1., admitted by Order of May 8, 1975).

(36) The fish and shellfish industries and the Long Island economy will suffer irreparable damage and loss. Not only have Applicant's studies ignored an extremely productive habitat off-shore at the site of the diffuser, but daily impingment of fish on intake screens and

daily entrainment of biomass(which includes fish eggs and plankton)and will provide a death trap to the young produced off shore as well as to migrating schools of fish. (CCSC F.2 admitted by Order of May 8, 1975).

(38)

IMPACT OF DREDGING

Applicant has not evaluated the total impact on Long Island Sound of the dredging necessary to construct the Jamesport facility (CCSC F.10 <sup>as</sup> limited by Order May 8, 1975). <sup>1/10/75</sup>

(39)

Applicant, Staff and LW are required to advise whether they deem this Board has jurisdiction over this contention.  

(40)

IMPACT OF JETTIES AND BEACH EROSION

The jetties which the Applicant plans to erect will cause an adverse impact on the shore line at and adjacent to the Jamesport site (LW C.3., admitted by Order of May 8, 1975).

(41)

Applicant has not evaluated the total impact on Long Island Sound of the beach erosion and of the dredging

for diffusers, piers and intakes associated with the presence of the Jamesport facility (CCSC F.10, as limited by Order of May 8, 1975).

(42, 43)

With respect to Contentions B.1. and C.1., the Applicant, Staff and LWV are required to advise whether the Board has jurisdiction over these contentions.

NEED

Applicant is required to advise when it will have revised and/or updated information upon the participation of the New York State Electric & Gas Corporation.

I.B.E.W. and other intervenors' contentions will be considered when Applicants' aforementioned information is received.