[7590-01]

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-358

THE CINCINNATI GAS AND ELECTRIC COMPANY

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY

AND THE DAYTON POWER AND LIGHT COMPANY

NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

AND TIME FOR FILING OF REQUESTS FOR REEVALUATION

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review of Zimmer Nuclear Unit 1 by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. On September 12, 1979, the Commission formally delegated the authority to make the 'significant change' determination with respect to nuclear reactors to the Director, Office of Nuclear Reactor Regulation. In 1977 prior to this delegation of authority, and based on procedures then in effect, the staff of the Office of Nuclear Reactor Regulation and the Office of the Executive Legal Director, hereafter referred to as the 'staff,' had reviewed the operating license application submittal by the Applicants, The Cincinnati Gas and Electric Company (CGE), Columbus and Southern Ohio Electric Company (CSOE), and The Dayton Power and Light Company (DPL) and had concluded that no significant changes had occurred that warranted an antitrust review at the operating license stage. The staff did, however, note the pendency before the Securities and Exchange Commission (SEC) of an application under the Public Utility Holding Company Act of 1935

(15 USC § 79, et. seq.) by American Electric Power Company, Inc. (AEP) to acquire CSOE. In 1973 a SEC Administrative Law Judge had rendered an initial decision denying the application partly on the basis of competitive considerations. At the time of staff's review in 1977 the initial decision was under appeal to the SEC. The staff was interested in the possible impact of the acquisition on the competitive situation in Ohio, should the application be approved by the SEC.

"By its opinion of July 21, 1978 and subsequent orders the SEC approved the acquisition. Thus staff has been prompted to undertake a determination as to whether the acquisition represented a significant change in CSOE's activities or proposed activities that would warrant a second antitrust review at the operating license stage. As a result of its analysis, staff has determined that the acquisition does not represent a significant change, i.e., it does not have antitrust implications that would likely warrant some Commission remedy.

"The Conclusion of the staff's analysis is as follows:

> 'Since the initial operating license antitrust review of the Zimmer 1 application was completed in 1977, the SEC has approved the acquisition of CSOE by AEP. The staff has examined the effect of the acquisition upon the coordination and competitive relationships among CSOE and its neighboring electric entities and, in addition, has reviewed the recent coordination agreement entered into by AMPO, AEP, CSOE, and Ohio Power. In the staff's view the acquisition does not adversely affect the competitive or coordination posture of rural electric cooperatives, CGE or DPL. The staff is further of the opinion that the acquisition has not detrimentally affected the coordination and competitive position of municipal electric systems and that the 1979 Coordination Agreement possesses the potential for improving the competitive stance of such utilities. Therefore, the staff has concluded that the acquisition does not have any antitrust implications that would likely warrant some Commission remedy and, as a result, does not represent a significant change in CSOE's activities that would warrant another antitrust review at the operating license stage.
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> 'The Department of Justice has reviewed a draft of this analysis along with other material and has concurred in the staff's finding.'

"Based on the staff's analysis, it is my finding that an operating license antitrust review of Columbus and Southern Ohio Electric Company with respect to Zimmer Nuclear Unit 1 is not required."

Signed on July 14, 1981 by Harold R. Denton, Director Office of Nuclear Reactor Regulation.

Any person whose interest may be affected pursuant to this initial determination may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555 by (60 days).

FOR THE NUCLEAR REGULATORY COMMISSION

Argil Toalston

Argil Toalston, Acting Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor Regulation

ZIMMER OPERATING LICENSE ANTITRUST REVIEW
DOCKET NO. 50-358

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C. Letter from Jerome Saltzman, NRC to E. A. Borgmann, Senior Vice President, CGE, November 19, 1980.

D. Notes of telephone conversations of the Staff with Officials of AMPO, CSOE, CGE, DPL and ECAR, February 6, 9, and 10, 1981.

E. Letter from Donald A. Kaplan, Chief, Energy Section, Antitrust Division, U.S. Department of Justice to Joseph Rutberg, Assistant Chief Hearing Counsel, OELD, NRC, June 18, 1981.

ZIMMER NUCLEAR POWER STATION, UNIT 1
NRC STAFF'S ANALYSIS OF WHETHER CSOE'S ACQUISITION BY AEP CONSTITUTES A "SIGNIFICANT CHANGE" REQUIRING A FURTHER ANTITRUST REVIEW

INTRODUCTION

On May 10, 1975, the Cincinnati Gas and Electric Company (CGE), Columbus and Southern Ohio Electric Company (CSOE), and The Dayton Power & Light Company (DPL) tendered their joint application to obtain an operating license for the William H. Zimmer Nuclear Power Station, Unit 1 (Zimmer 1). The operating license for Zimmer 1 is presently expected to be issued in late 1981.

By statute the Nuclear Regulatory Commission (NRC) is required to determine the need for an antitrust review of each operating license application on the basis of whether "significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous [construction permit] review by the Attorney General and the Commission."[1/] Based upon procedures in effect at the time of the operating license application submittal, the NRC staff conducted an internal review of the antitrust information and concluded "that changes in the Applicants' activities occurring since the construction permit antitrust review do not represent significant changes that would now warrant another antitrust review at the operating license stage."[2/]

1/ Section 105c(2) of the Atomic Energy Act of 1954, as amended (42 USC § 2135(c)(2)).

2/ Memorandum of November 28, 1977, from Argil Toalston, Antitrust and Indemnity Group, NRR to I. Peltier, Licensing Project Manager (hereafter referred to as Memorandum), p. 8. Attached as Exhibit A.

At the construction permit stage of Zimmer 1, the Cities of St. Marys and Piqua, Ohio and the American Municipal Power-Ohio, Inc. (AMPO), a planning entity then representing 30 Ohio municipal electric systems, filed intervention petitions principally seeking the procurement and use of power from Zimmer. Negotiations were undertaken between Applicants and the petitioners regarding participation in Zimmer. Pursuant to the provisions of Section 105(c)(8) of the Atomic Energy Act[3/] and consistent with the recommendation of the Department of Justice, a construction permit was issued for Zimmer 1 prior to completion of these negotiations and of the Department's and staff's antitrust review. The construction permit was conditioned to provide that a post-construction permit antitrust hearing could be held (which would determine reasonable terms of conditions for participation of petitioners in Zimmer 1) if Applicants and petitioners were unable to reach agreement and that the construction permit could be continued as issued, rescinded, or conditioned on the basis of the findings made in such proceeding. Subsequently, the petitioners withdrew their petitions to intervene stating that they had no further interest in the proceeding. The Commission thereafter deleted the antitrust condition from the construction permit.

3/ 42 UCS § 2135(c)(8). This section provides that for a construction permit application on file at the time of enactment of the provision (which includes Zimmer 1), the Commission may determine, after consultation with the Attorney General, that issuance of the construction permit is necessary in the public interest to avoid unnecessary delay.

The NRC staff's review of whether any "significant changes" had occurred since the construction permit antitrust review was conducted in 1977 and concluded, as noted above, that there were no such changes warranting another antitrust review. The staff did, however, note the pendency before the Securities and Exchange Commission ("SEC") of an application under the Public Utility Holding Company Act of 1935 (15 USC § 79, et. seq.) by American Electric Power Company, Inc. ("AEP") to acquire CSOE. In 1973, an initial decision had been rendered by the Administrative Law Judge presiding over that proceeding which had denied the application primarily upon the basis of competitive considerations and an inadequate showing that savings would result.[4/] At the time of the staff's review the matter was under appeal to the SEC, but a decision had not yet been rendered. The staff was interested in the possible impact of the acquisition on the competitive situation in Ohio, should the application be approved by the SEC.

Subsequent to the Staff's "significant change" review, the SEC reversed the initial decision and approved the acquisition. By its Opinion of July 21, 1978,[5/] the SEC found that the proposed

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4/ In the Matter of American Electric Power Co., Inc., Administrative Proceeding File No. 3-1476, Initial Decision (July 20, 1973), pp. 95-98, 147.

5/ In the Matter of American Electric Power Company, Inc., (HCAR No. 20633), a copy of which is Exhibit No. 1 to a letter of December 22, 1980 from W. S. White, Jr., Chairman of the Board and Chief Executive Officer of AEP, and B. T. Ray, President of CSOE, to Jerome Saltzman, then Chief of the Utility Finance Branch, NRC. This document will hereafter be referred to as "Opinion." The December 22, 1980, letter is attached to this analysis as Exhibit B.

acquisition met all of the standards of the Public Utility Holding Company Act. Among other things, the Commission concluded that the acquisition "will not burden or impair competition to an extent which will contravene the public interest standard stated in the Act."[6/] A significant factor in reaching this conclusion was a proposed settlement which had been reached among the municipal systems which had been opposing the acquisition and AEP. Among other features, that settlement would afford the municipals the possiblity of access to large-scale generation and supplementary coordination services.[7/] In the SEC's view the proposal would (1) allow the municipal systems to attain economies of scale and (2) lessen concentration of control of the utility industry in Ohio.[8/] The SEC conditioned its ultimate approval of the acquisition, however, partly on the executing of a contract between AEP and the municipals which would reflect the settlement proposal.[9/] Subsequently, on May 1, 1979, AEP, Ohio Power Company (an AEP affiliate), CSOE, and AMPO entered into a coordination agreement.[10/] By order of February 13, 1980, the SEC issued an order approving the acquisition of SCOE by AEP.[11/]

6/ Id. at 392.

7/ Id. at 378.

8/ Id. at 393.

9/ Id.

10/ Exhibit No. 2 to the December 22 1980 letter.

11/ In the Matter of American Electric Power Co., Inc. Supplemental Memorandum and Order, (HCAR No. 21433) (hereafter, "Supplemental Memorandum") a copy of which is supplied as Exhibit No. 3 to the December 22, 1980 letter.

On the basis of the SEC's approval of AEP's acquisition of CSOE, the NRC Staff published a "Notice of Supplementary Antitrust Review of Operating License Application."[12/] That notice invited comment on whether the acquisition would result in a significant change in the activities or proposed activities of CSOE.[13/] No comments were received in response to the notice.

SIGNIFICANT CHANGE CRITERIA

The Commission's criteria to be employed in making a "significant change" determination are set forth in a decision issued in the operating license review for the Summer [14/] facility. A finding that a significant change has occurred requires "that the change or changes (1) have occured since the previous antitrust review of the licensee(s); (2) are

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12/ 45 Fed. Reg. 75398 (November 14, 1980). The Commission's procedures now call for publication of such notice and for solicitation of comments from the public. The Commission has delegated its authority with respect to "significant change" determinations to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate. "Delegation of Authority to Make 'Significant Change' Determination for Operating License Antitrust Review" (September 12, 1979). These procedures are reflected in a proposed rule which has been published by the Commission for comment. "Implementation of Commission's Delegation of Authority to Determine Whether There Have Been Significant Changes in Operating License Applicant's Activities or Proposed Activities Since the Construction Permit Antitrust Determination," 46 Fed. Reg. 18747 (March 26, 1981).

13/ AEP has not become a co-holder of the construction permit for Zimmer 1 and an applicant for the operating license by virtue of the acquisition.

14/ South Carolina Electric and Gas Co. and South Carolina Public Service Authority (Summer Nuclear Station, Unit No. 1), CLI-80-28 11 NRC 817 (1980).

reasonably attributable to the licensee(s); and (3) have antitrust implications that would likely warrant some Commission remedy."15/ The Commission further explained criterion 3 as involving the following two inquiries: "(a) whether an antitrust review would be likely to conclude that the situation as changed has negative antitrust implications, and (b) whether the Commission has available remedies."16/

In applying the three criteria to the Zimmer OL application staff confines the present analysis to AEP's acquisition of CSOE and other events related thereto. Other changes subsequent to the CP antitrust review were the subject of the staff's earlier OL evaluation.

The changes wrought by the acquisition have clearly occurred after the antitrust review conducted at the construction permit stage, thus satisfying the Commission's first criterion. Looking at the acquisition and the coordination agreement with AMPO together, it is clear that these changes are, at least in part, imputable to CSOE and the second criterion is thus also satisfied. The analysis, therefore, turns on whether the acquisition, when considered in conjunction with the 1979 coordination agreement, has antitrust implications that would likely warrant some Commission remedy.

ANTITRUST ANALYSIS

Market Characteristics of Potentially Affected Utilities

AEP's acquisition of CSOE most direclty affects, of course, the behavior of the participants themselves. In addition, however, the

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15/ Id., 11 NRC at 824-25.

16/ Id., 11 NRC at 835.

acquisition may also affect the competitive posture of other electric entities with whom CSOE does business or who may look upon CSOE as a potential supplier or purchaser. As reported to FERC in 1979, CSOE sells at wholesale to two electric utility companies (Ohio Edison Company ("OE") and Ohio Valley Electric Corporation) and four municipalities and has "Interchange Power" transactions with Ohio Power Company, DPL, CGE, and OE.[17/] Three of the four municipal customers of CSOE belong to AMPO, the only exception being the Village of Glouster, which purchases approximately one megawatt from CSOE.[18/] Since Ohio Power is an affiliate of AEP, the nature of its transactions with CSOE will, of course, be altered by the acquisition. A description of the market characteristics of the participants and other potentially affected entities follows.[19/]

AEP, the acquiring firm and a holding company, serves parts of seven states with a total generation capacity of over 17,000 Mw. Ohio Power Company, the AEP's largest affiliate, controls over 11,600 Mw of generation capacity and 6,300 circuit miles of transmission lines. Although heavily coordinated with other AEP affiliates, Ohio Power maintains several major interconnections with large adjacent utilities,

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17/ Exhibit No. 9 to the December 22, 1980 letter.

18/ Id; information supplied to NRC Staff by AMPO in February 1981. It is our understanding that Glouster could join AMPO if it determined to do so.

19/ Unless otherwise indicated, the sources for the following data are 1979 Forms 1 and 12 for each utility filed with the Federal Energy Regulatory Commission, and Electrical World Directory of Electric Utilities, 1979-80.

including CSOE, CGE and DPL. As well as providing retail service to over 600,000 customers, Ohio Power also supplies wholesale power to nine municipal electric systems and one generation and transmission cooperative.

CSOE, the acquired firm, supplies retail power to over 450,000 customers in and about the city of Columbus, Ohio and provides wholesale power to four municipal electric systems, as noted above. CSOE also controls approximately 3,100 Mw of generation capacity and 1,600 circuit miles of transmission lines and is interconnected with and virtually surrounded by facilities of AEP subsidiaries. In addition, CSOE, along with CGE and DPL, formed the Columbus, Cincinnati and Dayton (CCD) power pool for the primary purpose of capturing the economies of scale of large units.[20] Thus far, the CCD members have placed in operation six large generating units.[21]

CGE and DPL are similarly fully integrated electric utilities primarily serving urban areas. CGE owns approximately 3,800 Mw of generation capacity and serves over 580,000 customers, including about six utilities at wholesale. DPL accounts for nearly 2,700 Mw of generation capacity and supplies power to over 400,000 retail customers and 14 wholesale customers. In addition to coordination with CSOE in the CCD pool, CGE and DPL are also interconnected with Ohio Power and OE.

Rural electric cooperatives and municipal electric utilities comprise the remainder of the potentially affected electric entities. All of

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20/ Opinion, at 377.

21/ Id.

Ohio's 28 cooperatives are members of Buckeye Power, Inc. (Buckeye), a generating arm of the distribution cooperatives. Buckeye came into existence in 1968, at which time it purchased one of Ohio Power's 600 Mw generation units at the Cardinal Station. Since then, the load of Buckeye members has grown to over 800 Mw, sufficient to support the installation of an additional 600 Mw unit at the Cardinal Station.[22/] CSOE does not, have any rural electric cooperative customers, although it does transmit power to members of Buckeye.

Many of the municipal electric systems in Ohio are members of AMPO, an organization formed to own and operate generation and transmission facilities. Of the 51 municipal system members of AMPO, 14 own generation capacity, totaling 700 Mw. Ohio Power and CSOE supply power at wholesale to 7 municipal members of AMPO. Some 30 other municipal systems in Ohio do not belong to AMPO and only one of these possesses any notable generation capacity (57 Mw). Instead, nearly all purchase wholesale power from one or another of the state's private utilities. Ohio Power and CSOE supply 6 non-members of AMPO.

Effects of the Acquisition

The competitive effects of an acquisition are properly assessed in terms of a relevant market, with both geographic and product dimensions. For the purpose of making a significant change finding, staff believes it appropriate to concentrate the analysis on the market that usually has been the main focus of study in previous proceedings, the bulk power

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22/ Id.

supply market. This market encompasses the full range of coordination services as well as wholesale power. The choice of bulk power supply as the relevant product market has two bases: (1) a general recognition exists that bulk power markets are much more potentially competitive than retail markets; and (2) retail power costs are a function of bulk power costs, so that it is more in order to study the role of competition at the bulk power level.

The geographic bounds of the market considered encompass the areas served by CSOE and by those electric entites with which it transacts business. We have also considered in our analysis the extent to which CSOE's wholesale customers may have regarded Ohio Power as a bulk power supply alternative, an option which the acquisition has necessarily foreclosed. We have grouped potentially affected utilities into three categories: (1) rural electric cooperatives, (2) the other CCD systems (CGE and DPL) and (3) municipal electric systems.

1. Rural electric cooperatives

As mentioned previously, Ohio's electric cooperatives formed Buckeye in 1968 and assumed ownership of a 600 Mw unit at Ohio Power's Cardinal Station. As part of the coordination arrangement worked out with Ohio Power, the co-operatives were assured access to back-up power and to Ohio Power's transmission system for transmitting the power to the cooperatives.[23/] Subsequently, another 600 Mw unit has been placed in operation by Buckeye.

23/ Opinion, p. 5.

The apparent success of this coordination arrangement is just one factor which prompts staff to conclude that the acquisition has not adversely affected the competitive position of the cooperatives. A second factor is that even prior to the acquisition, CSOE, as well as Ohio Power, was offering transmission services to Buckeye for the purpose of transporting power to members of Buckeye.[24/]

2. CCD pool members

By acquiring CSOE, AEP has potentially changed the nature of coordination relationships between CSOE and the other CCD members, CGE and DPL, and in so doing, may also have adversely affected competition between the CCD utilities and AEP. AEP itself has stated that in order to achieve the objectives of the acquisition, "the planning and operation of bulk power supply facilities... must be done on an overall AEP system basis"[25/] and that steps have already been taken "to permit the operation of CSOE's generation capacity and its bulk transmission as an integral part of the AEP system."[26/]

For its part, the SEC has found that the competitive position of the CCD utilities will not substantively change as a result of the acquisition.[27/] In the SEC's view, even a CCD pool including CSOE would

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24/ Response of CSOE to Question 9, Information Requested from the Attorney General, April 15, 1971.

25/ December 22, 1980 letter, p. 6.

26/ Id., p. 7.

27/ Opinion, p. 19.

not produce the economies available from the AEP sysem and, as a result, thc pool could not credibly expect to close the gap in costs between it and AEP.[28/]

The staff, in attempting to arrive at a judgment on this matter, directed a series of questions to AEP[29/] and conducted conversations with knowledgeable personnel from CSOE, CGE and DPL. In its response AEP indicated that the acquisition of CSOE "is not expected to change, in any way the existing close working relationship among CGE, CSOE and DPL"[30/] and has not given CSOE a larger proportional vote in the deliberations of the CCD committees. For their part, CGE and DPL feel that together they can now build economically sized fossil units. It was understood, by CGE at least, that CSOE would not have built additional fossil units jointly with CGE and DPL, even if it had not been acquired by AEP. Yet, the sharing of future nuclear units among AEP, CGE, and DPL has not been ruled out. The acquisition also is not expected to affect operational coordination among the utilities since interchanges of power have always occurred under bilateral contracts, not under the pool agreement.

Based primarily on these responses the staff concludes that the acquisition will not adversely affect the coordination opportunities of DPL and CGE, or their ability to achieve economies of scale and compete in bulk power markets.

28/ Id., pp. 15, 19.

29/ Letter from Jerome Saltzman, Nuclear Regulatory Commission, to E. A. Borgmann, The Cincinati Gas and Electric Company, November 19, 1980. Attached as Exhibit C.

30/ December 22, 1980 letter, p. 5.

3. Municipal electric systems

Aside from the possible implications of the acquisition for the coordination relationship among the CCD utilities, the primary focus of the effects of the acquisition has been on the competitive position of municipal electric systems in Ohio. As noted above, CSOE sells at wholesale to four municipalities. Three of these municipalities will benefit from the access to large-scale generation and to coordination services made possible by 1979 Coordination Agreement. CSOE would also undertake obligations to municipal systems outside its service territory by virtue of the terms of the Agreement. An understanding of the role played by the Coordination Agreement in improving the competitive posture of the AMPO members requires a review of aspects of the SEC proceeding.

In August 1972, prior to the initial decision, AMPO joined with AEP, the City of Orrville, Ohio, and the Ohio Municipal Electric Association (OMEA) in a proposal to the SEC that the acquisition be approved subject to certain conditions.[31/] Subsequently, in April 1974, AMPO and Ohio Power Company entered into an interconnection agreement ("1974 interconnection agreement") providing that Ohio Power would render transmission service, emergency service, short-term service, and limited term service to AMPO and that AMPO in turn would offer emergency service,

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31/ Appendix No. 4 to the "Coordination Agreement among American Municipal Power-Ohio, Inc., Columbus and Southern Ohio Electric Company, Ohio Power Company, and American Electric Power Company, Inc.," p. 2. (The Coordination Agreement is hereafter referred to as the "1979 Coordination Agreement").

short-term service, and limited term service to Ohio Power.[32/] Utilizing the 1974 interconnection agreement AMPO has acted as a broker in the sale of power to Orrville and arranged a seasonal power exchange between Buckeye and the Cities of Cleveland and Hamilton.[33/]

The main coordination option lacking in the 1974 interconnection agreement was access to generation, but this void was filled with the execution of the 1979 Coordination Agreement. Under the agreement, AMPO could elect to either (1) purchase one or two previously planned units (Poston Nos. 5 & 6) from CSOE or (2) arrange, with cooperation and support from CSOE and Ohio Power, to construct generation facilities with capacity between 600 Mw and 1,300 Mw at another site.[34/] AEP has recently advised AMPO that it is discontinuing construction of Poston No. 5 and Poston No. 6 and is extending the decision date for AMPO to exercise the first option to June 30, 1981.[35/] The most recent information available to the Staff is that AMPO does plan to acquire Poston No. 5 and No. 6.[36/]

32/ Agreement between American Municipal Power-Ohio, Inc., and Ohio Power Company, April 1, 1974, Appendix 1 to the 1979 Coordination Agreement.

33/ Appendix No. 2 to the 1979 Coordination Agreement, Article 1, Section 0.05; and telephone discussions with George Crosby, AMPO, February 9-10, 1981. Notes of the telephone conversations of the Staff with Mr. Crosby, as well as with officials of CSOE, CGE, DPL, and the East Central Area Reliability Council (ECAR), are attached to this analysis as Exhibit D.

34/ 1979 Coordination Agreement, Article One, Section 1.3.

35/ Letter from W. S. White, Jr. AEP to George Crosby, AMPO, December 5, 1980.

36/ Telephone discussions with George Crosby, AMPO, February 9-10, 1981.

In addition to the generation alternative, the 1979 Coordination Agreement also assures AMPO of back-up power for Poston No. 5 and No. 6 and power delivery.[37/] Further, to cover the period between the purchases of the generating units and the date of commercial operation, the Agreement provides that AMPO may buy as much as 200 Mw from Ohio Power's Gavin Plant.[38/] Thus, AMPO seems to have achieved a wide range of coordination options through the 1979 Coordination Agreement and the 1974 interconnection agreement.

The Staff has been made aware of certain difficulties encountered by AMPO in availing itself of the generation option conferred by the 1979 Coordination Agreement.[39/] These difficulties arise from the vote of the Ohio electorate against a constitutional amendment which would have enabled the legislature to designate AMPO a political subdivision with the power to issue bonds on a tax-exempt basis.[40/] Despite the difficulties, AMPO still feels the purchase of Poston No. 5 and No. 6

37/ 1979 Coordination Agreement, pp. 31-45.

38/ Supplemental Memorandum, p. 2.

39/ Telephone conversation with George Crosby, AMPO, February 9-10, 1981.

40/ The proposed constitutional amendment appears as Appendix No. 7 to the 1979 Coordination Agreement. The parties to the Agreement were obligated to use their best efforts to secure adoption of this amendment (Article Three) and AMPO has indicated that the companies did support adoption. Telephone conversation with George Crosby, AMPO, February 9-10, 1981.

is economically and technically feasible.[41] AMPO has indicated to Staff and AEP that it believes alternative financing and legal arrangements are possible.[42] In any event, the SEC in approving the acquisition noted that the 1979 Coordination Agreement was not dependent upon passage of the proposed constitutional amendment and that the agreement has apparently satisfied the interests of the Ohio municipal electric systems.[43]

We conclude that the acquisition of CSOE by AEP, when viewed with AEP's offer of coordination services, does not adversely affect the competititve posture of municipal systems which are members of AMPO. CSOE and AEP have stated that they do not expect the acquisition to affect CSOE's policy with respect to its wholesale customers, nor its coordination activities.[44] The municipal customers of CSOE (including the Village of Glouster) should not, therefore, be adversely affected by the acquisition.

CONCLUSION

Since the initial operating license antitrust review of the Zimmer 1 application was completed in 1977, the SEC has approved the acquisition of CSOE by AEP. The staff has examined the effect of the

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41/ Discussions with George Crosby, AMPO.

42/ Id.; See letter from W. S. White, Jr., AEP, to George Crosby, AMPO, p. 2.

43/ Supplemental Memorandum, p. 3.

44/ December 22, 1980 letter, responses to Questions 2 and 3.

acquisition upon the coordination and competitive relationships among CSOE and its neighboring electric entities and, in addition, has reviewed the recent coordination agreement entered into by AMPO, AEP, CSOE, and Ohio Power. In the staff's view the acquisition does not adversely affect the competitive or coordination posture of rural electric cooperatives, CGE or DPL. The staff is further of the opinion that the acquisition has not detrimentally affected the coordination and competitive position of municipal electric systems and that the 1979 Coordination Agreement possesses the potential for improving the competitive stance of such utilities. Therefore, the staff has concluded that the acquisition does not have any antitrust implications that would likely warrant some Commission remedy and, as a result, does not represent a significant change in CSOE's activities that would warrant another antitrust review at the operating license stage.

The Department of Justice has reviewed a draft of this analysis along with other material and has concurred in the staff's finding.45/

45/ The Department's letter is attached as Exhibit E.

EXHIBIT A

AT

November 28, 1977

MEMORANDUM FOR: I. Peltier
Licensing Project Manager

FROM: Argil L. Toalston, Chief
Power Supply Analysis Section
Antitrust & Indemnity Group. NRR

SUBJECT: WILLIAM H. ZIMMER NUCLEAR POWER STATION, UNIT 1

Section 105c(2), of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an Operating License if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review in connection with the construction permit. Based upon examination of the events that have transpired since issuance of the construction permit for the captioned nuclear unit, it is our conclusion that no significant changes have occurred that would now warrant an operating license antitrust review. The Office of the Executive Legal Director concurs in this conclusion.

On April 6, 1970, the Cincinnati Gas and Electric Company (CG&E), Columbus and Southern Ohio Electric Company (C&SOE), and the Dayton Power & Light Company (DP&L) filed a joint application for construction permits and facility licenses to construct two nuclear units in Clermont County, Ohio.1/ An amendment to the application, dated December 15, 1970, reflected the Applicants' desire to modify their initial construction plans to construct a single unit to be designated William H. Zimmer Nuclear Power Station, Unit 1. Receipt of the application, as amended, by the Atomic Energy Commission (AEC) was noticed in the Federal Register on May 21, 1971.

1/ Since this filing preceded the December, 1970 amendments to the Atomic Energy Act, the applicants were subject to the grandfather provision of Section 105c(8).

On October 15, 1971, the Attorney General submitted an interim advice letter to the AEC stating that "some of the matters necessary to rendering definitive antitrust advice on this application" had not yet been resolved. Accordingly, Justice pledged to continue its review of the application, anticipating submittal of its final advice "within the next several weeks."

On December 15, 1971, prior to receipt of the Attorney General's final advice, petitions requesting leave to intervene were filed with the AEC on behalf of the Cities of Georgetown and Blanchester, Ohio. The Cities, recognizing a need to retain some measure of control over their bulk power supply, sought a condition to the Applicants' license allocating to the Cities 20 MW of power from the Zimmer unit.2/

Applicants responded to the petition with cost comparisons intended to demonstrate that participation in Zimmer by the Cities would not be economically attractive. The comparisons showed, in particular, that purchases of unit power from Zimmer would be significantly higher in cost than power presently available to the Cities under Applicants' existing rate schedules.

An analysis of the comparisons, later performed by the AEC staff and discussed in detail at a meeting held March 15, 1972 with representatives of the Antitrust Division, Department of Justice, upheld the Applicants' findings. Staff concluded, in view of the comparisons, that unless the Cities obtained some form of reasonable equity participation in Zimmer (as opposed to a unit power purchase), there would be no economic advantage to either Georgetown or Blanchester from access to the nuclear unit.

On July 5, 1972, the Attorney General issued advice with similar but less conclusive findings than the AEC Staff. Although acknowledging that the Applicants had prepared studies showing that unit power purchases

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2/ Three months earlier, on September 7, 1971, a similar petition had been filed with the AEC on behalf of the Midwest Ohio Municipal Power Pool, Inc. (MOMPP). MOMPP, a non-profit corporation providing electric service to the towns of Piqua, St. Marys, and Celina, Ohio, sought a condition comparable to that of Cities allocating to pool members 30 MW of power from the Zimmer unit.

from Zimmer would be a higher cost alternative to the present level of wholesale service, the Attorney General observed that:

> no effort had been made to project likely increases in the level of wholesale rates over the economic life of the Zimmer unit, during which period the cost of a unit power purchase would be relatively stable.

The Attorney General noted further that:

> Even if analysis [had been] confined to the present level of CG&E and DP&L wholesale rates, one cannot draw very firm conclusions. CG&E and DP&L have assumed that any participation by municipals in Zimmer would have to take the form of unit power purchases since, in their view, any kind of joint ownership would be in violation of provisions of Ohio law.....

The Attorney General, however, viewed only the most "simple and direct" forms of joint ownership as violations of Ohio law. Thus, the possibility remained that certain equity participation arrangements were indeed feasible and within the scope of Applicants' legal obligations.

In order to investigate this possibility further and reach a more definite conclusion on the question of municipal access, the Attorney General proposed the following in connection with Zimmer application:

> We recommend that the Commission give MOMPP and the Cities of Blanchester and Georgetown a limited period (such as 60 days) in which to file any evidence showing that the cost of power available through participation in the Zimmer units is cheaper than that available on purchase of firm power from one or more of the Applicants. The Commission would have to require the Applicants to make available all underlying information necessary to make such comparisons.
>
> In the meantime, if the Applicants now contend that it would not be feasible.... to include the municipalities as participants in the Zimmer unit, from an engineering or operating standpoint, they should submit a specific showing in support of that contention.
>
> If the Commission finds that (i) the municipalities have made a prima facie showing on the cost question, and (ii) the Applicants have not shown the infeasibility of complying with the requests

for inclusion, we would recommend that the Commission set the antitrust question of access to the Zimmer unit for a full hearing. Otherwise, we would recommend that the Commission proceed in its consideration of the application without an antitrust hearing.

The Attorney General's advice letter was published in the Federal Register on July 18, 1972. On August 10, 1972, the Cities of St. Marys and Piqua, and American Municipal Power-Ohio, Inc. (AMP-O), a planning entity representing 30 Ohio municipalities, filed a timely joint petition to intervene. Concomitant with the petition were motions on the part of MOMPP and the Cities of Georgetown and Blanchester to consolidate certain matters relating to the several petitioners as a whole. Foremost among such matters was the procurement and use of electric power relating to the Zimmer unit. Thus, in filing the joint petition Cities, MOMPP, AMP-O, St. Marys and Piqua (hereinafter cited as Ohio Municipal Intervenors) sought an order from the Commission compelling Applicants to make available all underlying information necessary to make appropriate comparisons of the cost of power from Zimmer to the cost of power from other sources.

Applicants responded to the intervenors' petition in a memorandum dated August 30, 1972, as well as before the Commission in a prepared Response,3/ advising the Petitioners of the following:

1. Participation in Zimmer would be allowed upon a reasonable basis,

2. Any available information would be provided to reasonably assist in determining the feasibility of participation, and

3. "Serious negotiations" would be entered into with a view to identifying exactly what participation in Zimmer the Petitioners desire and determining how such participation would be achieved.

In view of the Applicants' willingness to negotiate, the Attorney General issued additional advice on September 29, 1972 regarding the possible issuance of a construction permit prior to the completion of the antitrust review. Justice felt that the Commission could appropriately issue a construction permit pursuant to Section 105(c)(8) of the Atomic Energy Act of 1954, as amended,

> "if such permit were to include conditions which (1) embody Applicants' commitments, [summarized above] and (2) provide for a subsequent antitrust proceeding and determination by the

---

3/ Applicants' Response, dated August 30, 1972.

> Commission of reasonable terms and conditions for participation in Zimmer in the event that the parties should be unable to agree with respect thereto."

On October 19, 1972, pursuant to an Initial Decision of the Atomic Safety and Licensing Board, the AEC issued Construction Permit No. CPPR-88 to the Applicants authorizing construction of the 807 MWe Zimmer unit. The permit was issued in accordance with section 105(c)(8) and contained the following provision:

> In the event that an antitrust hearing is held, on the basis of findings made as a result of such proceeding, the Commission may continue this permit as issued, rescind this permit or amend this permit to include such conditions as the Commission deems appropriate.

The need for a formal antitrust hearing was mooted on May 15, 1975, with the filing of a motion by the Ohio Municipal Intervenors to withdraw their individual and joint petitions to intervene. Citing a thorough investigation of their "legal and financial position" as a basis for having "no further interest" in the proceeding, Intervenors implicity chose not to make a prima facie showing on the cost question enumerated in the Attorney General's advice letter of July 5, 1972.

In view of the above, the Commission issued an order on July 20, 1976, granting the intervenors' motion to withdraw their various petitions to intervene. The Commission further ordered that Staff be directed to amend the construction permit for the Zimmer facility by deleting certain paragraphs relating to antitrust considerations.

The Cincinnati Gas & Electric Company, Columbus & Southern Ohio Electric Company, and Dayton Power & Light Company, tendered their joint application to obtain an operating license for the Zimmer unit on May 10, 1975. Antitrust information, dated April 27, 1977 and submitted in accordance with NRC Regulatory Guide 9.3, was received by this office for antitrust evaluation.

Among the primary changes in Applicants' activities occurring since issuance of the construction permit are those relating to the provision of new or additional types of electric service. These include:

1. Consummation of an Interchange Agreement between DP&L and the City of Piqua, Ohio providing for the sale of electric power, effective May 10, 1972.

2. Execution of a Service Agreement between DP&L and St. Marys, Ohio, effective December 1, 1973.

3. Establishment of four new delivery points by C&SOE providing new service to the Delaware Rural Electric Cooperative, Inc., and improved service to three other rural cooperatives.

4. Planning of a new interconnection by CG&E connecting Applicants' jointly owned Stuart Station with the Spurlock Station of the East Kentucky Rural Electric Cooperative.

5. Construction by DP&L of two radial lines to serve the City of Minster, Ohio, and a new tap to serve the City of Tipp City, Ohio.

Since these activities represent motivations on part of Applicants to coordinate with smaller systems, ... thus improve the "possibilities of competitive selection among the components of bulk power supply",4/ it is our belief that the above represent changes that would not warrant an operating license antitrust review.

Other changes, occuring since issuance of the construction permit, focus on past negotiations between the City of Piqua, Ohio and the Dayton Power & Light Company. On June 15, 1975, the City of Piqua requested from DP&L, a proposal for purchase of the City's electric system. DP&L responded on May 14, 1976, with a proposal to lease the City's distribution system and purchase only a combustion turbine generator. DP&L's proposal was not accepted by the City and no discussions on the matter have been held since. In view of the City's decision, Staff feels that no significant change has resulted which would now require a second antitrust review.

Additional changes reported by Applicants include a reduction in recent load forecasts and modification of all rate schedules to reflect addition of a fuel adjustment clause. Staff believes such changes are rooted in uncertain energy demand projections and escalating fuel prices and do not suggest any antitrust implications.

4/ David W. Penn, James B. Delaney, T. Crawford Honeycutt, Coordination, Competition, and Regulation in the Electric Utility Industry, U. S. Nuclear Regulatory Commission, June 1975 (NUREG-75/061).

Of particular interest to the Staff, at present, is the pending disposition of an application by the American Electric Power Company, Inc. (AEP) to acquire C&SOE pursuant to Sections 6(a), 7, 9, and 10 of the Public Utility Holding Company Act of 1935. The Securities and Exchange Commission (SEC), having authority to enforce the Act, received an Initial Decision on the application from Administrative Law Judge Irving Schiller on July 18, 1973 ordering that the proposed acquisition be denied. Judge Schiller, expressing concern for the competitive situation in Ohio, cited, among other reasons for denial, the following:

> If the antitrust policies are to be given "significant content" the necessity for preserving competition must prevail. The long-term benefits which will enure from competition substantially outweigh any short term benefits which the proposed acquisition herein may possibly effect.5/

A petition for SEC review of the Initial Decision was subsequently filed by AEP on September 7, 1973 and granted by the Commission on September 27, 1973. As yet, a final decision on the application from the Commission has not been promulgated.

Staff's interest in this matter stems from recognition of the possible impact the acquisition may have on the competitive situation in the Ohio area. Structural as well as procedural changes would certainly result from the merger and, modify, in some manner, the present competitive arrangement. We believe, at present, however, that no significant change has occurred which would now require antitrust review.

An inquiry made to a representative of the Federal Energy Regulatory Commission revealed that no complaints of refusal to deal have been lodged against Applicants in the last five years. However, "price squeeze" contentions are currently pending before the FERC against C&SOE and DP&L in Dockets ER-77-529 and ER-76-887, respectively. We will continue to follow these proceedings, but based on the Supreme Court decision in FPC v Conway Corp., conclude that this matter should and will be resolved before the FERC.

5/ Initial Decision, p. 147.

In sum, it is our conclusion that changes in the Applicants' activities occuring since the construction permit antitrust review do not represent significant changes that would now warrant another antitrust review at the operating license stage.

/s/ A. L. Toalston

Argil L. Toalston, Chief
Power Supply Anlaysis Section
Antitrust and Indemnity Group
Nuclear Reactor Regulation

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EXHIBIT B

AMERICAN ELECTRIC POWER *Company, Inc.*

AEP

180 East Broad Street, Columbus, Ohio 43215
(614) 223-1000

W. S. WHITE, JR.
Chairman of the Board
and
Chief Executive Officer
(614) 223-1500

December 22, 1980

Re: William H. Zimmer Nuclear
Power Station, Unit No. 1
Docket No. 50-358A

Mr. Jerome Saltzman, Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor Regulation
Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Saltzman:

Reference is made to the notice issued November 6, 1980 with respect to the re-evaluation by the staff of its earlier finding in the above proceeding of "no significant change" under Section 105c(2) of the Atomic Energy Act of 1954, as amended, and your letter, dated November 19, 1980, to Mr. Earl A. Borgmann, Vice President-Engineering of The Cincinnati Gas & Electric Company (CGE) with respect to such matter.

Since the questions which are appended to your letter of November 19, 1980 relate specifically to the acquisition by American Electric Power Company, Inc. (AEP) of Common Shares of Columbus and Southern Ohio Electric Company (CSOE) and matters related thereto, we are requesting Mr. Borgmann of CGE to cause the updated information set forth below to be transmitted to you. Since the questions are specific in nature, the responses thereto are intended as specific responses to the questions posed and are not intended by AEP and CSOE, except as otherwise noted, to supply information with respect to the completion of construction and the operation of Zimmer Unit No. 1, by CGE, or the operation of generating and other facilities which are, or are to be, owned as tenants in common by CGE, CSOE and/or The Dayton Power and Light Company (DPL) except where the information so supplied is stated to be common to CGE, CSOE and DPL.

Since the staff's re-evaluation is being effected in the light of the acquisition of CSOE by AEP, updating information with respect to the acquisition itself is set forth below by AEP and CSOE:

"Subsequent to Mr. Borgmann's letter, dated April 27, 1977, to NRC, which transmitted a document, dated April 25, 1977, entitled "Information for Antitrust Review of Operating License Application", the Securities and Exchange Commission (SEC) issued on July 21, 1978 its Opinion (HCAR No. 20633), a copy of which is attached as Exhibit No. 1 hereto, in the proceeding (File No. 70-4596; Administrative Proceeding File No. 3-1476) under the Public Utility Holding Company Act of 1935 (the 1935 Act) in which it indicated that a careful, independent review of the record convinced it that the acquisition of Common Shares of Columbus and Southern Ohio Electric Company (CSOE) by American Electric Power Company, Inc. (AEP) will in all probability yield substantial benefits to the 1.2 million people in CSOE's service area and to the many other people served by Ohio's municipally-owned systems; concluding, inter alia, that CSOE's arrangements involving undivided ownership interests in electric facilities with CGE and DPL could not provide CSOE with the potential economies and efficiencies anticipated by its affiliation with AEP and stating that it would be prepared to issue an order approving the acquisition if AEP's proposed arrangement with the Ohio municipal electric utilities were to be set forth in an executed contract with them, and updated materials as to the fairness of the exchange ratio submitted to SEC.

Negotiations between representatives of CSOE, AEP and the Ohio municipal electric systems ensued which resulted in the execution and delivery of a Coordination Agreement, dated as of May 1, 1979, among American Municipal Power-Ohio, Inc. (AMPO), CSOE, Ohio Power Company (OPCO), a subsidiary of AEP, and AEP, a copy of which Coordination Agreement is attached as Exhibit No. 2 hereto.

After the filing by AEP and CSOE of the Coordination Agreement with SEC and the submission of

updated data in support of the proposed exchange ratio, SEC issued on February 13, 1980 in the proceeding under the 1935 Act a Supplemental Memorandum and Order (HCAR No. 21433), a copy of which is attached hereto as Exhibit No. 3, approving the acquisition of Common Shares of CSOE by AEP. The Department of Justice, a party to the proceeding before SEC, did not at that time take action to preclude the completion of the acquisition so authorized by SEC. Promptly thereafter, on March 28, 1980, after clearance by SEC of the proposed offering circular (HCAR No. 21498), AEP extended to holders of Common Shares of CSOE the opportunity to exchange such Common Shares for shares of Common Stock of AEP on the terms approved by SEC.

On May 9, 1980, the requisite number of Common Shares of CSOE having been tendered for exchange pursuant to AEP's Exchange Offer, AEP declared its Exchange Offer effective and, upon completion of the other steps described in SEC's Supplemental Memorandum and Order of February 13, 1980, AEP consummated exchanges of tendered Common Shares of CSOE for shares of Common Stock of AEP. Through October 31, 1980 AEP acquired 16,096,366 or 98.1% of the 16,410,426 outstanding Common Shares of CSOE pursuant to AEP's Exchange Offer.

On October 30, 1980 SEC approved (HCAR No. 21768) a plan filed by AEP and CSOE under Section 11(e) of the 1935 Act for the retirement, on the same terms as those contained in AEP's Exchange Offer, of the remaining publicly-held Common Shares of CSOE and on November 6, 1980 SEC made application, a copy of which is attached hereto as Exhibit No. 4, to the United States District Court for the Southern District of Ohio, Eastern Division, to enforce the provisions of the plan pursuant to Sections 11(e) and 18(f) of the 1935 Act. On December 19, 1980, the Court issued an order finding the plan appropriate to effectuate the provisions of Section 11(b)(2) of the 1935 Act and enforcing the provisions of the plan.

On November 7, 1980, AEP, CSOE and OPCO delivered to AMPO a letter, a copy of which is attached as Exhibit No. 5 hereto, waiving, on the

terms therein set forth, any requirement that the Election Date under Section 1.3(a) of the Coordination Agreement occur on or before November 10, 1980 and also waiving, on the terms therein set forth, any requirement that the Election Date under Section 1.3(b) of the Coordination Agreement occur on or before November 10, 1980. On December 5, 1980, AEP, CSOE and OPCO delivered to AMPO a letter, a copy of which is attached as Exhibit No. 6 hereto, waiving, on the terms therein set forth, any requirement that the Election Date under Section 1.3(a) of the Coordination Agreement occur on or before December 31, 1980 and also waiving, on the terms therein set forth, any requirement that the Election Date under Section 1.3(b) of the Coordination Agreement occur on or before December 31, 1980. AEP and CSOE understand that AMPO is proceeding with an organizational and financing plan which, if effected in accordance with the plan, will provide the municipal electric systems of Ohio with an opportunity to attain economies of scale and the coordination of operations to a greater extent than previously achieved by such systems."

With respect to the questions in Item 1 of the attachment to your letter of November 19, 1980, CSOE advises NRC that:

"In the early 1960's, CGE, CSOE and DPL entered into arrangements calling for the construction and operation of certain commonly-owned generating facilities, and the associated transmission, to obtain the benefits of economies of scale for their customers. Six coal-fired generating units, aggregating 3560 MW in capacity have been built on this basis and one nuclear unit (i.e., the Wm. H. Zimmer Unit No. 1) is still under construction. Even prior to July 21, 1978, when SEC issued its Opinion (HCAR 20633) CSOE had commenced installing its generating capacity additions on a single-ownership basis, and CGE and DPL had commenced installing units commonly-owned by CGE and DPL. Exhibit No. 7 shows the generating capacity additions installed, or planned to be installed, by CGE, CSOE and DPL, and by CSOE on a single-ownership basis, since 1969, and the ownership participations in such capacity.

Through this period, CGE, CSOE and DPL worked closely together on all matters pertaining to the planning, construction, and operation of the generating facilities commonly-owned by the three systems, and the associated transmission, so as to assure the greatest possible reliability and economy to their customers. Toward this end, CGE, CSOE, and DPL established an Executive Committee, as well as an Engineering and Operating Committee, a Legal Committee, an Accounting Committee, a Nuclear Finance Committee, and an Insurance Committee, it being intended that all such committees would carry out discussions, analyses, and studies in their respective areas as required. Some of the committees have subcommittees or working groups under them to carry out a variety of specific assignments. A recent example of the organizational structure of these committees is shown on Exhibit No. 8 hereto."

With respect to the questions in Item 2 of the attachment to your letter of November 19, 1980, CSOE advises NRC that:

"The acquisition of CSOE by AEP did not change, and is not expected to change, in any way the existing close working relationship among CGE, CSOE and DPL. CSOE continues, as in the past, to have its representatives participate in the work of the various committees, subcommittees, and working groups previously described. CSOE did not acquire a larger proportional vote in the deliberations of any of these committees, subcommittees or working groups as a result of its becoming a part of the AEP System. Also, CSOE's coordination activities with respect to neighboring utilities other than CGE and DPL are not affected by AEP's acquisition of CSOE."

With respect to the questions in Item 3 of the attachment to your letter of November 19, 1980, CSOE advises NRC that:

"During the calendar year 1979 CSOE effected the power and energy transactions which CSOE reported to the Federal Energy Regulatory Commission (FERC) in the annual report of CSOE to FERC on pages 412, 413, 424 and 424A of Form No. 1 for 1979 which are attached hereto as Exhibit

No. 9. CSOE does not expect that its acquisition by AEP will affect CSOE's policies with respect to CSOE's power and energy transactions with Ohio Edison Company, Ohio Valley Electric Corporation CGE or DPL, nor, except insofar as the municipal electric systems served by CSOE at wholesale in 1979 may participate in the future contractual arrangements contemplated by the Coordination Agreement attached as Exhibit No. 2 hereto, affect its policies with respect to such customers. CSOE does contemplate that if the arrangements contemplated by the Coordination Agreement are effected as planned, CSOE will thereafter participate in the transactions under which municipal utilities not presently served by CSOE will be served pursuant to the arrangements contemplated by the Coordination Agreement."

With respect to the questions in Item 4 of the attachment to your letter of November 19, 1980, CSOE advises NRC that:

"In order to achieve for CSOE, AEP, its other operating subsidiary companies, and their customers, the many benefits visualized by the two companies when they decided to proceed with their affiliation, and anticipated by the SEC when it approved the acquisition of Common Shares of CSOE by AEP, the planning and operation of bulk power supply facilities, i.e., major generation, extra high voltage transmission, and interconnections with neighboring but non-affiliated utilities, must be done on an overall AEP System basis. Such planning and operation give full recognition to the needs and internal resources of each of the AEP System operating companies.

The planning and operation of the distribution, subtransmission, and area or regional transmission facilities of the AEP System, on the other hand, are specifically aimed at meeting the power requirements of customers in the particular area or region, and are handled accordingly.

In view of the above, steps already have been taken to incorporate the planning activities of CSOE into the overall AEP System framework. Likewise, steps are now under way -- including engineering, design, and installation of appropriate

metering and communication facilities -- to permit the operation of CSOE's generating capacity, and its bulk transmission, as an integral part of the AEP System under circumstances designed to achieve both of the above-described objectives of the System."

With respect to the request contained in Item 5 of the attachment to your letter of November 19, 1980, CSOE advises NRC that:

"A copy of the Coordination Agreement dated as of May 1, 1979, among AMPO, CSOE, OPCO and AEP is attached as Exhibit No. 2 hereto and the earlier (1974) Interconnection Agreement between OPCO and AMPO is also attached as Appendix No. 1 to the Coordination Agreement."

Very truly yours,

AMERICAN ELECTRIC POWER
COMPANY, INC

By _____
W. S. Wh[illegible] Jr.
Chairman of the Board and
Chief Executive Officer

COLUMBUS AND SOUTHERN OHIO
ELECTRIC COMPANY

By _____
B. T. Ray
President

State of Ohio)
) ss.:
County of Franklin)

The undersigned, a Notary public, duly qualified, commissioned and sworn, and acting in and for the County and State aforesaid, hereby certifies that on this 22nd day of December, 1980 the foregoing individuals duly subscribed the foregoing letter and swore to the undersigned that the information contained therein was true and correct to the

best of the knowledge, information and belief of the signers.

Notary Public

RUTH A. OHLIN[illegible]
NOTARY PUBLIC, STATE [illegible]
MY COMMISSION EXPIRES.....19.....

NUCLEAR REGULATORY COMMISSION
Docket No. 50-358A
Exhibits to letter, dated December 22, 1980
from
American Electric Power Company, Inc. and
Columbus and Southern Ohio Electric Company
to
Mr. Jerome Saltzman, Chief,
Utility Finance Branch,
Division of Engineering, of the
Office of Nuclear Reactor Regulation

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EXHIBIT NO.	DOCUMENT
1.	Opinion, dated July 21, 1978 of SEC (HCAR No. 20633)
2.	Coordination Agreement, dated as of May 1, 1979, among, AMPO, CSOE, OPCO and AEP
3.	Supplemental Memorandum and Order of SEC (HCAR No. 21433)
4.	Application by SEC to United States District Court for the Southern District of Ohio, Eastern Division, to enforce Section 11(e) Plan
5.	Letter, dated November 7, 1980 from AEP, CSOE and OPCO to AMPO, waiving certain requirements as to Election Date.
6.	Letter, dated December 5, 1980 from AEP, CSOE and OPCO to AMPO, waiving certain requirements as to Election Date
7.	Schedule of Steam Electric Generating Capacity Additions
8.	Membership of CCD committees
9.	Excerpts (pages 412, 413, 424 and 424A) from Report of CSOE to FERC on FPC Form No. 1

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 20633/July 21, 1978

Administrative Proceeding File No. 3-1476

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York

(70-4596)

OPINION OF THE COMMISSION

ACQUISITION OF SECURITIES OF INDEPENDENT OPERATING ELECTRIC UTILITY BY REGISTERED HOLDING COMPANY

Acquisition Generally—Applicable standards

Registered public utility holding company's application for approval of proposed acquisition of all of common stock of substantial operating company conditioned by settlement proposal to municipal utilities, **approved in principle**, because of adequate showing that acquisition would produce efficiencies and economies and where no significant deteriment would result; but actual approval **deferred**, pending clarification of applicant's settlement offer which was material to the Commission's decision.

APPEARANCES:

Richard M. Dicke, Rogers M. Doering, Albert X. Bader, Jr., Luin P. Fitch, Jr., Patrick F. Walsh, Derek C. Brown, John F. Keuther and **James J. Haugh**, of Simpson Thacher & Bartlett, for American Electric Power Company, Inc.

William G. Porter, Jr. and **Michael P. Graney**, of Porter, Stanley, Platt & Arthur, for Columbus and Southern Ohio Electric Company.

Thomas E. Kauper, Milton J. Grossman, Joseph J. Saunders, and **Mark M. Levin**, for the United States Department of Justice.

The Honorable William J. Brown, Attorney General of the State of Ohio.

The Honorable C. Luther Heckman, Chairman, Public Utilities Commission of the State of Ohio.

Philip P. Ardery, of Brown, Todd & Heyburn, for the City of Orrville, Ohio, and the Ohio Municipal Electric Association.

J.R. Newlin and **Edward S. Pinney, William B. Marshall, Robert W. Olson**, and **Jonathan E. Colby**, of Cravath, Swaine & Moore, for the Dayton Power and Light Company, **Amicus Curiae.**

William J. Moran and **Edward S. Pinney, William B. Marshall, Robert W. Olson**, and **Jonathan E. Colby**, of Cravath, Swaine & Moore, for the Cincinnati Gas & Electric Company, **Amicus Curiae.**

Aaron Levy, Grant G. Guthrie, Bernard Nash, Gary N. Sundick, and **Douglas V. Pope**, for the Commission's Division of Corporate Regulation.

George Spiegel and **James N. Horwood**, of Spiegel & McDiarmid, for the City of Richmond, Indiana.

John C. Elam, of Vorys, Sater, Seymour & Pease, for the City of Columbus, Ohio.

Robert P. Mone, of George, Greek, King, McMahon & McConnaughey, for Ohio Rural Electric Cooperatives, Inc.

The Honorable James A. Rhodes, Governor of the State of Ohio.

I. INTRODUCTION

The American Electric Power Company, Inc. ("AEP"), a holding company registered as such under the Public Utility Holding Company Act of 1935 ("the Act"), seeks to acquire all of the common stock of the Columbus and Southern Ohio Electric Company ("CSOE"), an all-electric company. AEP proposes to effect the acquisition by issuing shares of its own common stock to CSOE's present stockholders. The contemplated exchange ratio is 1.3 shares of AEP common for each share of CSOE common. AEP will not go forward unless at least 80% of CSOE's common is tendered.[1]

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[1] Experience in these situations suggests that a residual minority interest in CSOE's common will probably have

Continued on following page

Since, under Section 9 of the Act, AEP cannot proceed without our approval, it has applied for an order of approval. CSOE, as well as the State of Ohio and the City of Columbus, supports AEP. Moreover, Ohio's municipally-owned utility systems and the State's rural electric cooperatives urge us to approve AEP's application. On the other hand, our Division of Corporate Regulation, the Antitrust Division of the department of Justice, two investor-owned utilities and the City of Richmond, Indiana oppose the application.

II. HISTORY OF THE CASE

AEP's application was filed in February, 1968. Hearings commenced several months later and were concluded on November 8, 1968. Thereafter, in April, 1969, AEP moved to reopen the proceedings for the purpose of submitting additional evidence relating to the possible anticompetitive effects of the proposed acquisition. Its motion was granted in June of 1969. However, as a result of delays, due primarily to procedural requests by the parties and by other persons seeking to intervene in this proceeding, the testimonial evidence did not commence until January, 1970. In the interim, the State of Ohio and its Public Utilities Commission, the United States Department of Justice, and various municipalities in Ohio became participants in the proceeding, as did CSOE. The record was finally closed in January, 1972. Following extensive briefing, the administrative law judge rendered his initial decision in July of 1973. This decision denied AEP's application primarily upon the basis of competitive considerations and an inadequate showing that specific savings would result from the acquisition.

The Commission heard oral argument in October, 1974. Upon considering the matter, the Commission concluded that the factual record, much of which had been compiled in 1968, was out of date in view of developments since that time and, in August, 1975, requested the parties to provide material to update the earlier data.[2] This process was completed in 1976. The decision has since been further delayed primarily as a result of changes in the composition of the Commission since 1975. This is the Commission's oldest case. It would not be useful to attempt to allocate responsibility for the delay, but no doubt the Commission should bear a share of the blame.

III. DESCRIPTION OF THE AEP SYSTEM

The service area of the AEP system extends from southeastern Virginia and a small portion of eastern Tennessee in a generally northwesterly direction to southwestern Michigan.[3] AEP does not, however, sell electricity to the entirety of any state, but rather serves portions of Indiana, Kentucky, Ohio, Tennessee, Virginia, West Virginia, and Michigan. Its most important subsidiary is the Ohio Power Company ("Ohio Power"), which is the largest electric utility company in Ohio. AEP's service territory has a total area of about 42,000 square miles and an aggregate population of about 6,300,000. In calendar year 1977, AEP's gross operating revenues came to over $2 billion. Other pertinent statistics, as of the end of 1977, are set forth below:

TOTAL ASSETS	—	$7.44 billion
DEPRECIATED HISTORICAL COSTS OF CONSOLIDATED UTILITY PLANT	—	$6.14 billion
SYSTEM CAPABILITY	—	17261 megawatts ("MW")

In purely physical terms (generating capacity and quantity of electric power sold) AEP is the largest investor-owned utility in the nation. In financial terms (value of assets and amount of revenues) three other utility systems are larger than AEP.[4]

AEP's service area is largely rural and small-town. The largest community served is Fort Wayne, Indiana with a population of some 180,000. Because AEP does not serve any large city, it can do more with a dollar of capital investment than a metropolitan system which is subject to greater environmental requirements. Much

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Continued from preceding page

to be eliminated. AEP has agreed to take appropriate steps to eliminate any such minority interest. Thus, there is no basis under Section 10(c)(1) for any adverse findings on the ground that the resultant corporate structure would be unduly complicated. **See Eastern Gas and Fuel Associates**, 43 S.E.C. 524, 540 (1967).

[2]Public Utility Holding Company Act Release No. 19145 (August 27, 1975), 7 SEC Docket 731.

[3]Our findings are based on an independent review of the record and on public documents.

[4]One of the three, The Southern Company, is a holding company registered with us under the Holding Company Act. The other two, Pacific Gas & Electric Company and Consolidated Edison Company, are independent operating companies.

of AEP's business comes from bulk power sales to industrial customers and to distributors of electric power whose own generating capacity is insufficient to satisfy their demand. Over the years, AEP has grown and flourished on this business. Because of the economic geography of its system, its bulk power business and its acknowledged efficiency, AEP's rates, over the years, have been the lowest of any other investor-owned utility in Ohio.

IV. THE CSOE SYSTEM

CSOE, an essentially urban system, supplies power to most of the City of Columbus. Columbus, the capital of Ohio, the site of Ohio State University, and a thriving city, has a population of about 540,000. The Columbus metropolitan area from which CSOE derives approximately 80% of its revenues has a population of over 1,000,000.

Though far smaller than AEP, CSOE is itself a substantial company. Its service area has a population of about 1.3 million and its 1977 gross operating revenues exceeded $320 million. CSOE's assets at the end of that year were about $1.253 billion, of which over $1 billion represented electric utility plant. Its net generating capacity at that time was 2,480 MW.

V. THE AREA OR REGION AFFECTED

A. Investor-Owned Companies

Investor-owned companies provide most of the State of Ohio's electric power. AEP's Ohio subsidiary, Ohio Power, is by far the largest of these companies. Some of its transmission lines pass through the service area of CSOE. There are six other large investor-owned electric utility systems, including CSOE, in the State. CSOE's service area is contiguous to those of two of the companies, the Cincinnati Gas & Electric Company ("CGE") and the Dayton Power and Light Company ("DPL"), which are both combination gas and electric companies.

The electric utility operations of CSOE, CGE, and DPL are roughly the same size. In the late 1950's, each system realized that it was too small to take advantage of contemporary technology. Together they began to explore the feasibility of joint operations that would enable them to own and operate large generating units for the common benefit of all three companies. This relationship among the three companies has become known as the "CCD pool." Acting together, the pool members have built and placed into commercial operation six large generating units. Each of the three participating companies is a part owner of each of these units. The pool members are building a seventh generator that will also be owned in common.

The pool members in the 1960's also explored the possibility of combining into a single integrated system which might have entailed the formation of a new holding company. But AEP's offer to acquire CSOE put an end to such discussions. Although the CCD pool remains in being and the three companies continue to work together through it, CSOE's management now looks to AEP as its principal long-term partner. It claims it has no present interest in forming closer links with the two other pool members, CGE and DPL, on the other hand, argue that the loss of CSOE, which has almost one-third of the pool's total resources, will have an adverse effect on their competitive position.

B. Public Power

Beyond the investor-owned companies, there are two forms of public power in Ohio: (1) rural electric cooperatives (the "cooperatives"), which are consumer-owned, and (2) municipally-owned utilities ("municipals"). The cooperatives serve about 60% of the land area of Ohio and have about 165,000 customers. The area served is largely rural and is spread throughout the State of Ohio.

Ohio's 28 rural cooperatives are members of Buckeye Power, Inc., a joint enterprise with AEP—the so-called "Buckeye Project." As part of that arrangement in 1968, Ohio Power sold one of its 600 megawatt units at its Cardinal Station to Buckeye. The cooperatives' fear that this generator might be larger than their immediate needs called for was allayed by Ohio Power's commitment to buy the surplus power, if any.

In addition, Ohio Power agreed to provide backup power to the cooperatives from Ohio Power units. Finally, under the agreement Ohio Power must make its transmission system available for the purpose of transmitting energy to over 200 delivery points, located in 60 of the 87 counties in Ohio. This was seen as a way for the Buckeye members to avoid the substantial cost of constructing transmission facilities to carry their loads.

The peak demand of the Buckeye members on their unit at the Cardinal Station was less than 300 MW in 1968. It increased throughout the intervening years to a peak of about 849 MW in January, 1977. Under the terms of the 1968 agreement, this growth necessitated plans for the construction of another 600 MW unit at the Cardinal Station to be owned by the Buckeye members. This new unit was placed in commercial operation recently. As the cooperatives point out, they have prospered under "this landmark project."

There are more than 80 municipally-owned systems in Ohio which, in the aggregate, serve some 240,000 customers. Like the cooperatives, the municipals are found all over the State and face a problem similar to that once faced by the cooperatives. They lack modern low-cost generating capacity either because they have no such capacity at all or because the small scale of the generating facilities they have makes them inefficient. Of the municipals, we are told, fewer than 20 generate all the electricity they need, nine generate part of their needs and the remainder distribute purchased power. The aggregate generating capacity owned and operated by all municipal distribution systems in Ohio is about 622 MW. The total non-coincident peak demand[5] of the electric distribution systems of municipal corporations in Ohio is about 1,000 MW.

When the municipals do not generate their own power, they purchase power in the wholesale market and pay a markup. They complain that these markups are excessive and that they sometimes find it difficult to get power at all.

The municipally-owned systems are eager for an arrangement similar to the Buckeye Project. They claim that, without an assured supply of reliable, low-cost power, their demise and absorption by the investor-owned companies is only a matter of time.

The municipals, which are leagued in an organization called the Ohio Municipal Electric Association ("OMEA"), initially intervened in opposition to AEP's proposal. However, after the record closed, they joined with AEP in a so-called "settlement proposal"[6] which has been filed with us. AEP has proposed that the terms and conditions in that settlement be prescribed as special conditions, which may be imposed pursuant to Section 10(e) of the Act, to an order approving the acquisition.[7] The settlement proposal provides that Ohio Power will sell to or construct for the municipals one or more generating units having a capacity of between 600 MW and 1300 MW.[8] Should such unit or units produce more power than the municipals need, the proposal provides that Ohio Power will buy the excess energy. Conversely, if the municipals need additional power, Ohio Power will provide back-up from its own generators to firm up scheduled deliveries. Finally, Ohio Power has undertaken as part of the arrangement to assist the municipals in buying fuel and to deliver power over its bulk transmission facilities to municipal delivery points in Ohio.

VI. THE STATUTORY STANDARDS

An acquisition of securities such as this is unlawful unless we approve it under Section 10 of the Act. The two provisions of that section which are chiefly involved are Section 10(b)(1) and Section 10(c)(2). Section 10(b)(1) precludes approval of an acquisition if the Commission finds that

> "such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers."

Section 10(c)(2) provides that the Commission shall not approve such an acquisition unless

> "the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system."

The key term "integrated public-utility system" is defined in Section 2(a)(29(A) as follows:

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[5]The non-coincident peak demand of two or more utilities is the total of the peak demand of each utility, no matter at what day or time it occurs. It should be contrasted with the coincident peak demand which is the total of the peak demand of each utility occurring at the same time.

[6]This term is something of a misnomer. A proceeding such as this can hardly be "settled" in the sense of arriving at a negotiated result. Rather, we view this proposal as simply a proposed amendment to AEP's application, which is intended to deal with the objections of the municipals to the original application.

[7]Section 10(e) provides:

"The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and conditions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers."

See generally Municipal Electric Association v. S.E.C., 413 F.2d 1052, 1060 (C.A.D.C., 1969).

[8]The unit or units will be owned and operated by AMP-Ohio, a corporation to be organized by representatives of the municipals to own and operate facilities for the transmission and distribution of electric power.

"(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation;"

Aside from the physical interconnection and single area requirements of Section 2(a)(29)(A), the wording of these standards is rather general, and it, accordingly, appears necessary to consider them in the context of the general purpose, history and objectives of the Act.

The statute was enacted against a background of unbridled and unsound expansion of utility holding companies controlling utilities scattered from coast to coast.[9] These systems were not based upon any rational pattern of utility system structure, but rather were an exercise in empire building based primarily on financial considerations and financial maneuvering. Holding companies were piled on top of holding companies resulting in highly leveraged corporate structures of extraordinary complexity. The end result was that the top holding companies controlled vast amounts of utility assets with a minimum of equity investment.[10] With the onset of the Great Depression, many of these systems encountered severe financial difficulties.[11] In the late 1920's, the Congress directed the Federal Trade Commission to make a study of the holding company problems and thereafter Congressional committees conducted extensive studies on their own. The Act was the product of these studies and of the deplorable situation which they revealed.[12]

The Act, therefore, focused on the elimination of the perceived abuses and excesses against which it was directed. The key provision is Section 11(b) which requires the Commission, with narrow exceptions, to limit each holding company system to a single "integrated public-utility system" as defined in Section 2(a)(29). This provision has been referred to by the Supreme Court as the "heart of the Act,"[13] and its implementation was a principal activity of the Commission during the early years of the Act's history.

Various other provisions of the Act were designed to provide for the continuing regulation of registered holding company systems both before and after they came into compliance with Section 11(b). These provisions were, of course, also designed to prevent a recurrence of the practices which gave rise to the Act.[14]

Section 10 in particular was intended to prevent acquisitions which would be "attended by the evils which have featured the past growth of holding companies."[15]

A. Integration Standards of Section 2(a)(29)(A)

Section 10(c)(2) requires a finding that an acquisition will tend towards the economical and efficient development of an integrated public-utility system. Section 2(a)(29) defines such a system primarily in terms of physical and geographical integration and efficiency. Those opposing the acquisition claim that AEP has not demonstrated that the acquisition will result in any economies or efficiencies and that the resultant entity cannot satisfy all of the integration standards of Section 2(a)(29)(A). The latter argument focuses primarily on the size of the intended system.

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[9] See, e.g., S. Rep. No. 621, 74th Cong., 1st Sess. 55 (1935).

[10] Id. at 55-56. See also Federal Trade Commission, Utility Corporations, S. Doc. No. 92, 70th Cong., 1st Sess. Part 72A, pp. 136-59 (1935).

[11] See The United Corporation, 13 S.E.C. 854 (1943); The Commonwealth & Southern Corporation, 26 S.E.C. 464 (1947).

[12] H.R. Rep. No. 1318, 74th Cong., 1st Sess. (1935); S. Rep. No. 621, 74th Cong., 1st Sess. (1935).

[13] S.E.C. v. New England Electric System, 384 U.S. 176, 180 (1966); North American Company v. S.E.C., 327 U.S. 686, 704 n. 14 (1946).

[14] See, e.g., Sections 12, 13 and 17(c).

[15] H.R. Rep. No. 1318, 74th Cong., 1st Sess. 16 (1935).

It is undisputed, however, that adding CSOE to the AEP system meets certain of the criteria of Section 2(a)(29(A):

> (1) The electric utility systems of CSOE and AEP are geographically contiguous, would be physically interconnected and are capable of being operated as a single system.
>
> (2) The combined system would operate within a single area or region.

This conclusion also seems to have been reached, at least by implication, in 1946 when the Commission considered and denied the application discussed below by AEP (then known as American Gas and Electric Company) to acquire CSOE.[16]

Specifically, CSOE is now interconnected with the electric facilities of Ohio Power at several points and is capable of interconnection at additional points with that system. Moreover, CSOE is located almost in the center of the AEP system and has been likened to the hole in the middle of a doughnut. The AEP system is unquestionably efficient and the addition of CSOE to the system would seem to be a natural development.[17]

VII. SIZE

Section 2(a)(29)(A) further requires that the system be

> "not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

In addition, Section 10(b)(1), which is urged upon us as the basis for denial of the application, is more general. It requires disapproval if we find that the acquisition will tend towards

> "the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers."

The standards in these sections were relatively easy to apply to the huge, complex, and irrational holding company systems at which the Act was primarily aimed; such systems clearly contravened these standards as well as the physical ones. But those standards were, and are now, difficult to apply to a system like AEP, which is large but efficient, with, or without, CSOE. Our predecessors wrestled with this problem in 1945,[18] as well as in 1946.

AEP and its predecessors, originally controlled by Electric Bond and Share Company,[19] owned in 1945 essentially its present system, then called the "central system," together with additional systems in New Jersey and Pennsylvania. The Commission held that Section 11(b) required the divestiture of the New Jersey and Pennsylvania systems, but that the "central system," was a single "integrated public-utility system," within the meaning of Section 2(a)(29)(A), and therefore could be retained under Section 11(b). The Commission had little difficulty in concluding that the physical and geographical standards were met, but stated that the central system "approaches the maximum size"[20] which would be consistent with the other requirements of Section 2(a)(29)(A) and pointed out that they were merely authorizing the continuance of the "status quo" and not approving "the creation of a new holding company over the central system."[21]

This foreshadowed the conclusion, developed more fully in the 1946 Decision, that the Act seems to contemplate a more rigorous standard in terms of permissible size and concentration of control for new ac-

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[16] **American Gas and Electric Company**, 22 S.E.C. 808, 811-12 (1946) (the "1946 Decision").

[17] The fact that CSOE was not originally included in the AEP system appears to have been a historical accident, attributable to the illogical holding company structures of the 1920's. CSOE was part of another holding company system, that of United Light and Power Company, which involved numerous sub-holding companies, utilities and other businesses scattered from Texas to Ohio. The Commission in 1941 required the divestiture of CSOE from that system, thus giving rise to the proceedings in 1946. **See The United Light and Power Company**, 9 S.E.C. 833 (1941) and 22 S.E.C. 754 (1946).

[18] **American Gas and Electric Company**, 21 S.E.C. 575, (1945) (the "1945 Decision").

[19] **See American Gas and Electric Company**, 9 S.E.C. 247 (1941).

[20] 1945 Decision at 596.

[21] 1945 Decision at 595.

quisitions than for the retainability of existing properties.[22] This conclusion flows particularly from the presence in the Act o: Section 10(b)(1), applicable only to acquisitions, which requires approval of an acquisition which will result in an undue concentration of economic power.

In the 1946 proceeding, AEP had applied for permission to acquire the stock of CSOE. There our predecessors, in a 2-1 decision, rejected AEP's application on the basis that it did not satisfy the acquisition standards of the Act. The majority's rationale was that

> "the substantially enlarged group of properties that would result from the acquisition . . . cannot be found to be 'not so large as to impair . . . the advantages of localized management and the effectiveness of regulation'."[23]

The opinion, however, made no attempt to describe any evils which might ensue from the affiliation. Instead, it emphasized that an essential part of the spirit of the Act was the desire to avert the process of concentration of power which had characterized the growth of holding companies.

It is therefore quite clear that the Act requires disapproval of an aquisition which will result in a system which is "too big," although it does not specify what "too big" is. The opponents of the acquisition, however, seizing on the decisions in 1945 and 1946, claim that Section 10 limits holding company system size **per se**, without reference to economies and efficiencies stemming from the acquisition, and that the resulting AEP/CSOE system will exceed those limits. They also argue that the CCD pool can effect all the claimed economies without impairing CSOE's independence. Finally, they claim that the resulting size of the entity will impair the "benefits of localized management, efficient operation and the effectiveness of regulation" and, thus, cannot be approved.

A. Size Per Se

While Congress imposed the duty on the Commission in both Section 10(b)(1) and Section 10(c)(2) to consider the size of the combined system before granting approval of any acquisition, neither section can be said to impose any precise limits on holding company growth. Both sections are couched in discretionary terms. They require the Commission to exercise its best judgment as to the maximum size of a holding company in a particular area, considering the state of the art and the area or region affected. It is significant that in its statement of abuses and conditions which adversely affect the public interest, the Congress condemned the

> "growth and extension of holding companies [that] bears no relation to economy of management and operation or the integration and coordination of related operating properties;"[24]

Hence, the determination of whether to permit enlargement of a system by acquisition is to be made on the basis of all the circumstances, not on the basis of preconceived notions of size. Thus, although we said in 1945 that AEP approached the maximum size limit and in June, 1946, we allowed AEP to acquire another utility.[25]

In sum, the framers of the Act were clearly concerned about the evils of bigness, and they pointed to certain problems which large holding company systems may create. On the other hand, they were also aware that the combination of isolated local utilities into an integrated system afforded opportunities for economies

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[22] 1946 Decision at 815.

[23] 1946 Decision at 816-17.

[24] Section 1(b)(4) of the Act.

[25] **Midland Utilities Company**, 24 S.E.C. 483 (1946). In that case, we said:

> "True, we concluded that the sheer size of the . . . combination with Columbus and Southern Ohio would have been too large. However, we did not impose an absolute limitation on further acquisitions of any kind. We affirmed that the Central system [as AEP was known then] approached the maximum size permissible under the standards of the Act, but we said the issue in each case depends upon the facts and specific considerations applicable to the case." 24 S.E.C. at 505.

See also American Gas and Electric Company, 32 S.E.C. 130 (1950); **American Electric Power Company, Inc.**, 43 S.E.C. 407 (1967), and **Ohio Power Company**, 44 S.E.C. 340 (1970). Cf. **Ohio Edison Company**, 30 S.E.C. 613, 621-22 (1949); **The Southern Company**, 31 S.E.C. 821, 833 (1950); and **Mississippi Valley Generating Company**, 36 S.E.C. 159, 186 (1955).

of scale, the elimination of duplicate facilities and activities, the sharing of production capacity and reserves and generally more efficient operations. They wished to preserve these opportunities while avoiding an excess of concentration and bigness.

B. **The State of the Art (Pools vs. Integrated Systems)**

Section 2(a)(29)(A) requires that a determination as to whether or not a system is too large be made upon consideration of "the state of the art." In the years since World War II, there have been important changes in the technology of electric generation and distribution which have, in turn, brought about significant changes in the economics and structure of the electric utility industry. This process is continuing, and the ultimate outcome cannot now be foreseen.

Two major developments in the technology are particularly important for present purposes:

> (1) There has been a tremendous increase in the capacity of individual generating units. The optimum size of generators is far larger than it used to be.
>
> (2) It has become possible to transmit electricity economically and efficiently over greater distances. Electrical energy can be and is moved across entire regions, a feat which was not previously possible.

See generally Federal Power Commission, 1970 National Power Survey, Part I, Chapters 5 and 13.

Since a large generator generally costs less to build than two or more small ones having the same aggregate capacity, and since the generating plant no longer has to be in close proximity to the community in which the electricity is used, the concept of self-contained, local utility systems in each community has become technologically obsolete.

Under the conditions prevailing in 1935, there was no strong economic or technical need for grouping a large number of local utilities under one holding company, nor were the pre-1935 systems organized on any such basis. But now there are technological justifications for large systems spanning many states. This was not clear in 1945 or 1946 when we considered the size of AEP.[26]

AEP has been able to avail itself of the new technology, and its efficiency is not seriously questioned. While CSOE is of substantial size, it is clear that it is not big enough by itself to take full advantage of the economies of scale which contemporary technology permits.

These developments have led to a debate as to how the electric utility industry should be structured in order to take full advantage of modern technology.

Those opposing the application argue that a pool such as CCD makes it possible for a utility such as CSOE to obtain the economies of scale offered by modern technology while preserving its independence, and that this solution is preferable to making an already large system such as AEP even larger. But this argument assumes that a pool is inherently an adequate substitute for an integrated system. This is not necessarily so. Administration of a pool requires a consensus among independent entities whose interests are not identical. As AEP's expert witness on bulk power supply planning testified, pools inevitably "wind up having the lowest common denominator." A study made for the Federal Energy Administration, and entitled "Structural Reform in the Electric Power Industry",[27] reached a similar conclusion. That study explained that "voluntary coordination" is afflicted by "organizational problems involved in operating and planning as one system the activities of many individual systems, each with their own objectives and peculiar problems."[28]

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[26]This change in the state of the art would serve to distinguish the 1946 Decision—even if we were disposed, which we are not, to apply concepts such as **res judicata** or **stare decisis** to the essentially regulatory and policy determinations called for in a Holding Company Act case such as this. **See Union Electric Company**, Holding Company Act Release No. 18368 (April 10, 1974), 4 SEC Docket 89, 100 n. 52, **aff'd sub nom. City of Cape Girardeau v. S.E.C.**, 521 F.2d 324 (C.A.D.C., 1975).

[27]Federal Energy Administration, Structural Reform in the Electric Power Industry (FEA) G-76/323 (1976). The Federal Energy Administration, now a part of the Department of Energy, pointed out that, although it had commissioned the study, the conclusions there expressed do not necessarily reflect the views of the FEA.

[28]Id. at 32. The Report explained its conclusions as follows:

> "Equitable apportioning . . . costs and benefits . . . can be very difficult. Large firms . . . provide greater benefits to a pool

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Indeed, AEP, as well as industry authorities, conclude that the existing systems are fragmented and too small, and that 12 to 15 fully integrated systems, each under a single management, should, and ultimately will, be brought into being in this country. For example, a Brookings Institution study asserted that the Holding Company Act's atomization of the electric power industry is now as undesirable as the over-concentration of earlier years had been under the technology of that day.[29]

The pooling issue is one aspect of the major debate, referred to above, as to what should be the future structure of the electric utility industry.[30] We will not undertake to resolve these issues since they are beyond our mandate in this case and because they are within the province of the Congress and the Department of Energy. It is enough for present purposes to conclude that the concept of an integrated public-utility system mandated by the Act has not been superseded by the development of pooling.[31]

Continued from preceding page

> in relation to those they receive than do smaller ones. Deciding on the way system transmission costs should be shared can consume seemingly interminable periods for negotiation. Pool members in rural areas may be reluctant to have plants built within their territories in order to supply power to distant urban centers. Even the basic task of effectively reaching decisions can be a significant problem. Such difficulties should not be underestimated. Problems associated with management by committee and disagreements over cost apportionment have led to the breakup, for example, of the Carolinas-Virginia Power Pool and the Illinois-Missouri Pool." Id.

[29]Hughes, **Scale Frontiers in Electric Power**, in **Technological Change in Regulated Industries** 78, Capron, ed. (1971).

[30]**See** Federal Power Commission, 1970 National Power Survey, Part I, I-17-30 and I-1-12.

[31]In **New England Electric System**, Holding Company Act Release No. 18801, 6 SEC Docket 225 (1975), we merely found that the necessary economies and efficiencies had not been shown. Indeed, we indicated that the standards of Section 10(b)(1) did not preclude approval. 6 SEC Docket at 228.

In any event, as explained below, we do not believe that the pool as presently constituted can provide CSOE with the potential economies and efficiencies anticipated by its affiliation with AEP.[32]

C. Localized Management and Effective Regulation

Insofar as the standards of Section 2(a)(29) relating to size are concerned, as Commissioner Caffrey pointed out in dissent in the 1946 Decision, the specific considerations enumerated in the last clause are difficult to apply in a case such as this. The first factor is impairment of "the advantages of localized management." The majority in the 1946 Decision laid some stress on the fact that AEP's system is located in the Middle West and South, but its headquarters are in New York. However, the present-day ease of communication and transportation, as contrasted with that of 1946, makes physical location of management's offices a less important factor in determining what is in the public interest.

Furthermore, even in his 1946 dissent, Commissioner Caffrey noted that the AEP management appeared responsive to local needs, and that the locus of management was not regarded as an obstacle in the 1945 Decision. We see no reason to question AEP's continuing commitment to the Ohio Valley where its activities are centered. In fact, although we are not requiring it, AEP now proposes to move its operating headquarters to

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[32]Even though the pool continues to function, CGE and DPL claim that AEP's proposal will disrupt the evolution of the pool. AEP denies this and asserts that it would be glad to join the pool, thus increasing its potential. CGE and DPL, however, do not appear to welcome AEP as a partner. AEP has proposed to both utilities that, if they so elect, it will participate with them as if it, rather than CSOE, were a participant in the CCD pool. The two utilities and other opponents to the acquisition argue in effect that AEP cannot be trusted since it does not need the pool and would tend to dominate it. The record contains no evidence on this issue. Hence, we must assume that AEP's offer is made in good faith and will be honored. There are two affirmative reasons in support of our assumption. AEP in the past has cooperated with both private and public utilities in building bulk facilities and has been instrumental in setting up the present highly-coordinated transmission system in that region of the United States. Moreover, every utility in the United States, because of the large capital costs of generating equipment, is under financial strain and likely would find cooperation helpful in its future construction program.

Columbus if the application is approved. AEP has also advised us that the present management of CSOE will remain substantially intact.

The second issue, the advantages of efficient operations, is discussed below, under the heading "Efficiencies and Economies." With regard to the third factor, effectiveness of regulation, the Congress was concerned that the holding company device might be used to impede state regulation. That does not seem to be a problem here. CSOE would continue to be subject to regulation by the Ohio Public Utilities Commission, as Ohio Power Company is now. Neither Ohio nor its Utilities Commission appears to be concerned that its regulation will be impaired; they support the application.[33] In sum, examination of the specific concerns set forth in Section 2(a)(29) does not indicate that this application should be denied.

VIII. COMPETITION

Whenever one is required to consider the permissible size of a business enterprise, questions of competition and antitrust inevitably arise. Indeed, the opinion of the administratvie law judge in the instant case seems to view this as, in large measure, an antitrust-type case, controlled by Section 7 of the Clayton Act, which forbids certain acquisitions whose effect "may be substantially to lessen competition, or to tend to create a a monopoly."[34] The language, if not necessarily the holdings, of certain judicial decisions may be thought to support that view.[35] The Act, however, contains its own standards for acquisitions, and the only mention of "competition" is found in its preamble in Section 1(b)(2), which states that "evils result" from the "restraint of free and independent competition" inherent in self-dealing transactions between a holding company and its utility subsidiaries.[36]

We believe that the absence of conventional antitrust standards, such as restraint on competition, in the substantive provisions dealing with acquisitions reflects a deliberate recognition by the Congress that competition in the electric utility industry operates only in somewhat limited areas and under special circumstances. This does not mean that competitive considerations are irrelevant, but it does mean that they are different.[37]

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[33] That Commission, a party to this proceeding, represents that, if it were within its jurisdiction, it would find the present transaction to be in the public interest and approve it.

[34] 15 U.S.C. §18.

[35] The administrative law judge relied heavily on the court's reference to antitrust considerations as bearing upon determinations under Section 10(b)(1) in **Municipal Electric Association** v. **S.E.C.**, 413 F.2d 1052 (C.A.D.C., 1969). That case, however, presented an entirely different issue. A number of investor-owned utilities in New England had joined together to construct a large nuclear generating station which was expected to provide a great deal of low-cost power. A group of municipal utilities sought direct participation in the project but were denied it. They contended that this exclusion would gravely injure their ability to compete. Since this kind of issue, although found to be within the Commission's jurisdiction, is not expressly dealt with in the Act, the court, understandably, relied on antitrust concepts in determining that this exclusion was contrary to the public interest standard of Section 10(b)(1). In the present case, by contrast, the issue is whether a holding company can acquire a utility. This is one of the central issues for which the Act provides specific standards.

[36] We respectfully suggest that the Court of Appeals in **Municipal Electric, supra** note 35, and the Supreme Court in **S.E.C. v. New England Electric System**, 384 U.S. 176, 183 (1966), quoted by the Court of Appeals, have perhaps indulged in some hyperbole, in dicta by citing Section 1(b)(2) for the proposition that "elimination of 'restraint of free and independent competition,'" is "a theme that runs throughout the Act." Section 1(b)(2) refers to the evils which may result when holding companies over-reach their utility subsidiaries in supplying "services, construction work, equipment, and materials."

[37] Indeed, what the Supreme Court recently said in **Gulf States Utilities Company** v. **F.P.C.**, 411 U.S. 747, 759 (1973), about the Federal Power Commission, now the Federal Energy Regulatory Commission, applies with equal force to the S.E.C.:

> "The [Federal Power] Act did not render antitrust policy irrelevant to the Commission's regulation of the electric power industry. Indeed, within the confines of a basic natural monopoly structure, limited competition of the sort protected by the antitrust laws seems to have been anticipated."

See also **F.P.C. v. Conway**, 426 U.S. 271, 279 (1976); **Northern Natural Gas Co. v. F.P.C.**, 399 F.2d 953, 960-61 (C.A.D.C., 1968).

Specifically, each utility company in the AEP system has a monopoly to supply electricity within its designated service area so that retail competition, at least, within that area is foreclosed.[38] This is the normal pattern in the electric utility industry since retail competition between electric companies in the same city or area has been determined by long experience to involve such duplication and inefficiency as to be contrary to the public interest.[39] Rates, moreover, are controlled not by the market place, but by regulatory authorities.

Nonetheless, the opponents to the acquisition argue that there are areas in which electric power companies can compete. Two principal types of competition have been identified in the record as involved in this proceeding, on which there appears to be agreement that Ohio is the relevant market except as otherwise noted. These are referred to as industrial and wholesale competition.

A. **Competition for Sales to Industry**

Competition in this area involves competitive efforts on the part of electric utilities to attract industries which are large users of electricity (such as the aluminum reduction and electric furnace steel industries) into the territory of the particular utility by offering them favorable rates and other services. This type of competition has, of course, not been confined within the boundaries of Ohio. AEP has been very successful in this effort, and it is argued that its acquisition of CSOE would further its potential for such success, to the competitive disadvantage of other electric utilities in the region, such as CGE and DPL. On the other hand, AEP argues that the acquisition will give it no advantages in competition for industry that it does not already have and that such competition for industry as there is comes primarily from the Tennessee Valley Authority, and will not be affected by this case.

This argument centers upon whether or not the CCD pool members are, or could be, effective competitive rivals to AEP for these industrial loads. However, we see no real prospect of viable potential competition between the CCD pool members and AEP in this area. There is no reliable evidence in the record to prove that the CCD pool members are likely to be able to close the critical and long-standing gap between their costs and rates and those of AEP within the calculable future. Moreover, the barriers to entry in this market are formidable. There is no substantial evidence that the CCD members can finance and build sufficient generating capacity in the hopes of competing with AEP in this line of business. AEP, as now constituted, has twice the total generating capacity of the members of the pool, a fact which gives AEP substantial advantages. Other advantages stem from AEP's relatively non-urbanized locations and from its tremendous headstart in this market. In sum, the pool members have at best only some vague hope of attaining competitive status in this market.[40]

In any event, although this form of competition presented a rather live question during the period when the record was being made, the energy problem, sometimes called the "energy crisis," has drastically changed the issues. Competition to encourage the maximum use of electricity no longer comports with public policy, when shortages are widely feared. Such competition would tend to encourage heavy usage at lower than average rates. Hence such competition should not be encouraged.

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[38] There are no franchised areas in Ohio except for those granted by municipalities. But, once a utility serves a particular area, Ohio's so-called "anti-pirating" law comes into play:

> "Whenever a public utility proposes to furnish or furnishes electric energy to a consumer and which consumer is being furnished or was being furnished electric energy by another public utility, the latter public utility may file a complaint with the public utilities commission protesting the furnishing of service by the other public utility . . .. The commission upon finding that the complaining public utility has been furnishing or will furnish an adequate service to such consumer and that the public utility complained against will duplicate facilities of the complainant, shall order the public utility complained against not to furnish electric energy to such consumer." Page's Ohio Rev. Code Ann., Title 49, §4905.261 (1977).

This statute has been held not to apply to a public utility which is owned or operated by a municipal corporation. **Piqua** v. **Public Utilities Commission**, 40 Ohio St. 2d 87, 320 N.E.2d 661 (1974).

[39] Production equipment is extremely expensive and profit margins are small in relation to invested capital.

[40] Even in "classic" antitrust cases, the Supreme Court has consistently stated that "It is to be remembered that §7 [of the Clayton Act] deals in 'probabilities,' not 'ephemeral possibilities'." U.S. v. **Marine Bancorporation, Inc.**, 418 U.S. 602, 622-23 (1974), citing **Brown Shoe Co.** v. **U.S.**, 370 U.S. 294, 323 (1962).

Moreover, in the future, industry may be restricted in its use of electricity, and it may well be that the ability of AEP to supply industry with the electricity it needs efficiently and economically should be encouraged as a contribution to meeting the energy problem, rather than discouraged as an undue competitive advantage. In addition, this type of competition will, in all probability, have the attention of the Department of Energy, which can bring to it a perspective which we lack.

B. Wholesale Competition

The second important kind of competition identified as possible in the Ohio power scene is wholesale competition. This involves the sale of electricity in bulk to other utilities which lack adequate generating facilities of their own.[41] The record indicates that none of the investor-owned utilities in Ohio regularly acquires any significant part of their power supply by purchase. This leaves the rural cooperatives and the municipal systems, discussed earlier in this opinion. As there indicated, the problems of the cooperatives have been resolved through the Buckeye Project, and it does not appear that the acquisition of CSOE would change anything from their viewpoint.

Similarly, the problems encountered by the municipals in their wholesale purchases of bulk power will be removed by their proposed "settlement" with AEP. Our staff contends that this proposal is an improper "red herring" and irrelevant to this proceeding. They point out that the proposal has no direct bearing on the question of whether AEP's proposed acquisition of CSOE meets the standards contained in Sections 10(b)(1) or 10(c)(2) of the Act, and they urge that it be totally disregarded. Technically, at least, they are right. On the other hand, as we have noted above, competitive factors are not specifically referred to in those sections but are raised generally on the issue of public interest and we think that on that general issue we may take note of the offer.

We are well aware that, prior to the municipal/AEP agreement, the staff stressed the vulnerability of the municipals as buyers in the wholesale market as one argument against the AEP/CSOE merger. The proposed settlement changes that precarious situation by relieving the municipals from dependence upon all wholesalers.[42] Furthermore, by providing the municipals with large-scale generating capacity and adequate transmission facilities, the proposal would likely place them in a position to compete with investor-owned utilities, to the extent that competition is possible in this industry at all.[43] As indicated later in this opinion, however, we will need further material with respect to the AEP offer. If this showing is satisfactory, we will be able to conclude that that question of wholesale competition does not prevent approval of the application.

C. Other Alleged Forms of Competition

There are two other forms of competition—interface and yardstick competition—argued to be imperiled by AEP's application. Both strike us as rather esoteric varieties. Interface competition involves customers located along the border between the territories served by CSOE and AEP, who may be influenced by electric rates to settle on one or the other side of the line. There is little if any evidence that this has happened, and we regard that possibility as minimal for the purposes of this case.

Yardstick competition postulates that, if there are several utilities in a particular state, efficiencies and innovations by one may stimulate the efforts of the others, and that the opportunity to compare their performance may be helpful to state regulators. There are, however, five independent investor-owned electric utilities in Ohio aside from CSOE, including not only CGE and DPL, but also such companies as Ohio Edison Company and Cleveland Electric Illuminating

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[41] This activity does not include the frequent practice of electric utilities' buying or selling power to each other to meet emergencies or contingencies or just for occasional convenience, but refers to a regular practice of supplying utilities who are continuously in need of such power.

[42] The Justice Department, as well as CGE and DPL, argues that the municipals have available alternatives to AEP's proposal which would provide them access to bulk power supplies without endangering competition. But we agree with the municipals that it would be an "ill-informed arrogance" for us to decide that competition is better for them than the settlement which they have worked out with AEP.

[43] In any event, as we decided in the section dealing with competition for industrial load, there is no substantial or probative evidence that any of the members of the CCD pool will in the foreseeable future be potential competitors of AEP in this area. We have no reason to believe that their rates for generation plus the costs of transmission to markets without their service areas will be competitive with those of AEP.

Company. There are also numerous rural electric cooperatives and municipal electric systems. We foresee no significant reduction in yardstick competition, nor does the Ohio Public Utilities Commission suggest that there would be any lack of yardsticks.

IX. EFFICIENCIES AND ECONOMIES

Section 10(c)(2) of the Act requires that, in order to approve an acquisition, we must find that it will "serve the public interest by tending towards the economical and efficient development of an integrated public-utility system." We have already concluded that the AEP/CSOE system would be an integrated one. We must now determine whether the acquisition will tend towards its economical and efficient development. Traditionally, the required determination regarding a tendency toward efficiency and economy has been approached by attempting both to identify the opportunities for savings which are likely to result from the acquisition and, to the extent possible, to estimate the dollar amounts.[44] This is a useful approach which has the important benefit of relying on empirical data, rather than on subjective judgments.

The record in this case, however, illustrates some of the limitations and problems inherent in this approach. That approach involves an effort not only to identify but also to quantify the future consequences of an event which has not occurred—here, the inclusion of CSOE in the AEP system. AEP's evidence as to efficiencies and economies consists very largely of the testimony of Mr. Gregory S. Vassell, who was then AEP's vice-president for bulk power supply planning. As the administrative law judge found, Mr. Vassell is "a recognized engineering expert in the bulk power field," and, as the judge also found, was hardly a disinterested witness, and the opponents of the acquisition were able to place in question some of his facts, assumptions and projections, although the staff did not present any expert testimony to contradict his engineering judgments.[45]

We are, however, left with the conviction that substantial savings were shown to be probable. These are attributable to a number of factors. In the first place, the AEP and CSOE systems are not only contiguous but also compatible. The AEP system, as mentioned above, covers a large area which is basically rural and small-town, but with a very substantial industrial load. CSOE is relatively compact and urban. AEP's industrial and home heating business results in peak loads in the winter, while CSOE's urban system peaks in the summer due to the air-conditioning load. They fit together

The evidence indicates that the combined systems will have a winter peak load. Mr. Vassell testified that if the two systems are combined and centrally dispatched, AEP's excess summer generating capacity can assist CSOE in meeting its summer peak, thereby reducing the total system requirements for installed generating capacity below that level otherwise required. He calculated the savings[46] as a result of these reductions at between $39,000,000 and $57,000,000, depending on the cost of new generating capacity.[47]

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[44] See generally **Eastern Gas and Fuel Associates**, 43 S.E.C. 524, 527-35 (1967).

[45] The opponents of the proposal have attacked Mr. Vassell's testimony in various ways and have made some points. Nevertheless, his testimony as a whole has substance. We think that it was strong enough to shift the burden of going forward to AEP's adversaries. They made no attempt to shoulder that burden. Neither our Division of Corporate Regulation nor the Justice Department's Antitrust Division offered any expert engineering testimony to contradict Mr. Vassell's conclusions on the savings.

The staff also contended that some of the savings Mr. Vassell projected might have been accomplished in ways other than the acquisition. These contentions are largely without basis, as we find below.

[46] The savings were calculated in terms of the annual carrying charges (estimated at 14%) associated with the avoidable capital costs of generation.

[47] Both the Division and the Justice Department contend that the savings could be achieved by "diversity exchange of power" agreements without affiliation, i.e., AEP would sell power to CSOE in the summer in exchange for CSOE power in the winter.

Undoubtedly, a diversity exchange is technically feasible and would produce some savings. See Federal Power Commission, 1970 National Power Survey, Part I, I-17-23. But Mr. Vassell's uncontradicted testimony is that the full savings without a loss of reliability margin could be achieved only by the completely unified and integrated operation of the two systems. There must be a very careful following of the hour-to-hour operation of the systems. No decrease in system reliability from any reduction in reserves would result if the two systems are operated as one, because of the flexibility that only an integrated system can give. The Department's argument that Mr. Vassell did not take into account the fact that AEP might not be willing to

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Next, AEP has historically spent between 1/2 mill and 3/4 mill less in fuel costs than CSOE to generate a kilowatt of electricity.[48] The differential is accounted for not only because AEP's costs for raw fuel were lower than CSOE's, but also, as Mr. Vassell testified, from the efficiency of AEP's generating units and the manner in which the units are used.[49] Thus, for example, in 1976, AEP produced a kilowatt-hour of electricity from 9,717 BTU of heat while CSOE required 10,685 BTU to make that same kilowatt-hour. This is a 10% greater efficiency. Since fuel accounts for a very substantial part of the cost of electricity, this differential is significant.[50] This does not mean that the combination will bring CSOE up to AEP's level, nor does AEP contend that it will. Rather as Mr. Vassell testified,

> "If you combine the operation of the two systems then the average energy cost on one system would somewhat increase, the average energy cost in the other system would somewhat decrease, and the net effect would be that you get a saving approximately of a magnitude that would correspond to simply taking the total energy requirements of the higher-cost system and multiplying it by one-half of the energy-cost differential."

This is an expert engineering judgment which seems sound to us, and which we accept.[51]

The savings differential of between 1/2 mill and 3/4 mill at first blush seems insignificant. CSOE, however, generated over 9 billion kilowatt-hours of electricity in the calendar year 1977. If CSOE had been an integral part of the AEP system, it would have saved, based on Mr. Vassell's testimony, at least $2,000,000 in fuel costs alone that year. Moreover, this savings will be a recurring one each and every year if the two systems are amalgamated. Finally, since CSOE's production of electricity will invevitably increase in the future, we may expect that the savings will increase to that extent.

There are other probable savings to which we give weight. As Mr. Vassell testified, the joint AEP/CSOE systems, once fully integrated, will save labor and maintenance costs now associated with several low efficiency CSOE generating units. According to his testimony, central dispatch of the two systems would result in reduced usage by some 60-70% of these units. Mr. Vassell predicted that this curtailed usage would reduce labor and maintenance expenses of these units about 25% of the estimated $8,000,000 annual charge, or about $2,000,000 per year.

Next, CSOE, if affiliated with AEP, can share in the construction of large-scale generating units that it cannot now afford by itself. Generally, as noted above, capital costs per kilowatt are less for large generating units that for small ones. These savings can be extremely significant when a utility builds units exceeding 800 MW instead of building two smaller units.

Moreover, CSOE can achieve savings by utilizing the higher voltage transmission lines available in the AEP system. Mr. Vassell testified that the capital investment to transmit 100 kilowatts of electric power for one mile is $50.00 using 138 kilovolt lines, $12.10 using 345 kilovolt lines, but only $4.00 using 765 kilovolt lines. The proposed acquisition will permit AEP and CSOE to avoid further duplication of bulk transmission lines. CSOE is a relatively compact system whose generating plants are within reasonable distances from its load center. It may not now need the high-voltage transmission system of AEP. But, if CSOE needs additional or new transmission lines from its generators, as part of AEP it can share in the costs of the higher voltage lines, allowing it to transport electricity to its customers more reliably and efficiently. Moreover, to the extent that CSOE is required by environmental considerations to

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absorb additional summer load required by its acquisition of CSOE, without installing additional generators, is without merit for the same general reasons.

[48] Both systems are primarily coal-burning systems. A mill is one-tenth of a cent.

[49] It should be noted, however, that the differential in the fuel component of energy costs experienced by CSOE and AEP in 1974 favored CSOE by 0.739 mills per kilowatt-hour. This apparent change in the position of AEP and CSOE was one of the primary reasons we issued our order of August 21, 1975, soliciting additional briefs. AEP in its supplemental brief stated that the change in the differential was caused by very unusual coal conditions in 1974, forcing AEP to rely on "spot" purchases of coal to a much greater extent than did CSOE. The purchases were made at a substantially higher cost than costs under coal delivery contracts made by AEP which were not honored. No one contradicts this explanation, and it seems reasonable to us. In any event, prices thereafter stabilized and the differential in both 1975 and 1976 favored AEP by substantial margins.

[50] In 1977 CSOE spent over $102 million on fuel.

[51] AEP's opponents offered no engineering testimony to refute it.

place its generators at a substantial distance from its consumers, it will clearly be useful to avail itself of the highest voltage lines available.[52]

Finally, as the administrative law judge found,

> "the record establishes that if CSOE were integrated into the AEP system some savings could be achieved as a result of large scale volume purchasing of significant materials, supplies and equipment (other than major items) . . ."

He, however, found that AEP's estimate of a $2,000,000 per year saving from this source was not substantiated and, therefore, disregarded this saving entirely.[53] We disagree: a saving may not be completely discounted because it cannot be precisely quantified. It seems to us that there should be substantial savings if the two systems are merged.[54] Indeed, both CGE's president and DPL's president (witnesses called by the Division) thought that the CCD pool could achieve economies through volume purchasing.[55]

Some of the anticipated savings may not immediately happen. For example, the claimed savings arising from the compatibility of AEP's load with that of CSOE and the economies in obtaining new generating units may be delayed. CSOE because of lessened demand presently has sufficient generating capacity to handle even its summer load with adequate reserves, and it may not need to build additional generating units in the near future (other than those now under construction).

Yet the underlying economic advantages of the integration of CSOE with AEP remain. While energy developments over the past ten years may have postponed to some degree the opportunity to realize tangible savings in dollars from these advantages, we do not believe that over the long term, those developments have eliminated them. This case, moreover, should not be decided on the basis of short-term considerations or savings. The affiliation of CSOE with AEP is intended to be permanent, insofar as anything is permanent in these times, and we should look to long-term considerations.[56]

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[52]See Page's Ohio Rev. Code Ann., Title 49, §4906.10, (1977) which forbids the Ohio Power Siting Commission from granting a certificate for the construction, operation and maintenance of such facilities unless that Commission finds and determines:

> "(1) The basis of the need for the facility;
>
> "(2) The nature of the probable environmental impact;
>
> "(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
>
> "(4) In case of an electric transmission line, that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability;
>
> ("5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all regulations and standards adopted thereunder; and
>
> "(6) That the facility will serve the public interest, convenience, and necessity."

[53]AEP's vice-president in charge of purchasing testified that CSOE would save 10% of its approximately $20,000,000 in purchasing costs (other than for major equipment), if affiliated with AEP. He based his estimates on an exhibit comparing some 25 items purchased by both AEP and CSOE, which were allegedly similar in nature. The administrative law judge thought the exhibit unreliable. He found that 3 of the 25 items on the exhibit were not identical, that others were purchased from different manufacturers and that others from the same manufacturer had different specifications. As to 7 of the items, CSOE did not even have them under contract as of the relevant date.

[54]AEP buys 5 to 10 times more of the same things than does CSOE.

[55]We also give weight to the fact that the combined AEP/CSOE system will be able to take advantage of the optimum size of generating units in terms of economies of scale but will not require as much reserve capacity as the two individual systems would require.

[56]In addition, the Division challenges alleged savings relating to the use of generators of 800 MW or larger. The Division claims that these "untested generating units will result in higher forced outage rates" than

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There is one other question we must discuss. CSOE, as a member of the pool, can accomplish many of the economies attributable to the acquisition. But there are several reasons why we do not believe the pool is adequate. The record in this case shows that, as the pool is presently constituted, CSOE as a member cannot accomplish a substantial portion of the efficiencies and economies which will result from amalgamation. Among other things, it cannot obtain the fuel savings or those savings which will result from the diversity of load between AEP and CSOE. Moreover, the members of the pool may be more reluctant to commit their assets to joint projects involving maximum size generating units or transmission lines since their loads may not require such large facilities for many, many years. Finally, the members of the CCD pool are relatively small utilities compared to AEP. Although, when acting jointly, they may have the financial capability to buy maximum size generators, one of the three may determine at any time that its interests do not coincide with those of its partners. It may then withdraw from the partnership.[57]

It is not likely that these problems would exist with the combined AEP/CSOE system which will be better able to project its load as an integrated system. The CCD members themselves recognized that their pooling arrangements were insufficient to accomplish the maximum savings. They commissioned studies with a view toward consolidating as an integrated system. We note in this respect that AEP is a highly integrated system with a long history of efficiency and maximization of possible economies.

We recognize that our approach to the subject of efficiency and economy may seem somewhat inconsistent with our statement in the **New England Electric** case[58] that an acquisition of significant magnitude requires a strong showing of resultant economies. We adhere to that general proposition, even though this kind of difficult balancing is not specifically called for by the Act, which literally requires no more than a showing that an acquisition tends towards the economical and efficient development of an integrated system, be it large or small. Moreover, the applicants in the **New England Electric** case made no attempt to establish economies based on either fuel savings or on scale. No municipal proposal was made to satisfy Section 10(b) standards. Finally, the energy crisis was of much less relevance. Where we depart from the teaching of that case, if we do, is to depend less on specific dollar forecasts of future savings and more on the potential for economies presented by the acquisition even where these are not precisely quantifiable.

X. THE CITY OF RICHMOND, INDIANA

Richmond, Indiana (population 44,000) has a municipally-owned electric utility plant which buys power from the Indiana & Michigan Electric Company, an AEP subsidiary. Richmond complains that AEP's wholesale prices are extortionate, that AEP is forcing it to buy more power than it needs, and in later filings that AEP has threatened to stop selling to it altogether. It contends that, by this acquisition, CSOE will be removed as a potential supplier. It also alleges a number of evil

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smaller units. Hence, not only would economies disappear, but AEP would suffer "a reserve penalty of considerable magnitude." There is evidence in the record that the largest available units have experienced greater forced outage rates than smaller units. However, Gregory Vassell, who again gave the only competent engineering testimony on this issue, testified that there is no correlation between unit size and outage rate. He testified that if bigger units were experiencing greater outage rates, it was due largerly to the fact that the larger units were prototypes with new designs. **See**, Federal Power Commission, 1970 National Power Survey, Part I, I-5-2. He concluded that as the industry learned more about these units, the outage rates would come down to those of the smaller units.

We need not rest our conclusions on his testimony, however. Recent AEP experience with large units appears to confirm Mr. Vassell's testimony. Moreover, the electrical industry continues to build large units. And most of the industry appears to agree that capital costs per kilowatt and operating costs per kilowatt-hour generated decline as unit size increases. Indeed, that is the very reason CGE and DPL primarily claim they need CSOE. Hence, we find no reasonable basis to conclude that any of the savings we have found will be adversely affected by the large size of AEP's units.

[57] The future may bring the development of even larger units than the 1300 MW units presently available. **See** Federal Power Commission, 1970 National Power Survey, Part I, I-5-2 and Final Report to Federal Energy Administration Structural Reform in the Electric Power Industry (FEA/G-76-323). Because of its size, AEP could take advantage of such size improvements in technology, whereas it is unlikely that the members of the CCD pool, unless their loads grow at a rate greater than anticipated, could avail themselves of such large-scale units, even in the next ten years.

[58] **New England Electric System**, Holding Company Act Release No. 18801 (February 4, 1975), 6 SEC Docket 225, 228 (1975).

practices by AEP which it claims reflect AEP's monopoly power which will be enhanced by the proposed acquisition. Finally, it demands a municipal deal for the Indiana municipals.

Richmond sought to prove AEP's evil tendencies long after the record had been closed. At that time it asked that the hearings be reopened so as to enable it to tell its story.[59] Since this case had already been pending for some time, and since Richmond had been or should have been well aware of its pendency from the very outset,[60] we denied that request.[61] However, we did provide Richmond an opportunity to become a party in the post-hearing proceedings where it adopted the position under the antitrust laws and under Section 10(b)(1) of the Holding Company Act that the Justice Department, our own staff, CGE and DPL had already stated.

After a review of Richmond's submissions, we adhere to our prior determination that it would be wholly inappropriate to reopen these already protracted proceedings in order to permit Richmond to prove the allegations that it did not choose to make until after the record had been closed. Quite apart from the extreme lateness of the hour, we can conceive of no circumstances in which any evidence offered by Richmond could possibly affect the outcome of this case. Perhaps Richmond has its grievances.[62] But this is not the forum for them.[63] True, its adversary is a registered public-utility holding company. But our control over those companies relates only to their structure, to their intra-system transactions, and to their finances. We have no power over their dealings with their customers, retail or wholesale.[64]

Insofar as a municipal proposal for Indiana municipals is concerned, Richmond itself is too small for a modern massive generator. It would have to share such a generator with others—probably with many others—who have not appeared in these proceedings. In any event, we find no basis to impose a settlement on AEP with the Indiana municipals.

The papers Richmond has submitted in support of its allegations that AEP is threatening to refuse to sell it power do not support its position. Moreover, there is no basis to suggest that CSOE is a potential supplier, and there are many such potential suppliers in Indiana.

Finally, a careful, independent review of the record convinces us that the acquisition will in all probability yield substantial benefits to the 1.2 million people in CSOE's service area and to the many other people served by Ohio's municipally-owned electric systems. On the other hand, Richmond has not shown that the acquisition (as distinguished from AEP's general way of doing business) will inflict any substantial detriment on it. Thus, we give no weight to Richmond's claims.

XI. OTHER MATTERS CONSIDERED

1. The proposed issuance of AEP shares must comply with Section 7 of the Act. The common stock to be issued by AEP will have a par value which, together with the common stock now outstanding, will be the only voting security outstanding and will not be preferred as to dividend or distribution over any other outstanding security. Hence, the provisions of Section 7 are satisfied. We do not find it necessary under Section 7(f) to impose any terms or conditions, and we see no basis for an adverse finding under Section 7(d).

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[59]Richmond filed its notice of appearance and its application for intervention on November 30, 1972. That was four and one-half years after we issued our order directing that an evidentiary hearing be held in this matter. Holding Company Act Release No. 16021 (March 29, 1968). The last witness testified on June 9, 1971, about a year and one-half before Richmond came in and asked us to reopen the hearings.

[60]The Ohio municipals state that back in March of 1970, "they sought the assistance of the municipals of Indiana and Michigan in OMEA's intended intervention, but such assistance was denied." Richmond does not challenge the accuracy of this statement.

[61]**See Middle South Utilities, Inc.**, 44 S.E.C. 532, 533-34 (1971), **affirmed sub nom. City of Lafayette, Louisiana** v. **S.E.C.**, 481 F.2d 1101 (C.A.D.C., 1973).

[62]**Richmond Power and Light of the City of Richmond, Indiana** v. **F.P.C.**, 481 F.2d 490 (C.A.D.C.), in which the Federal Power Commission was directed to institute proceedings to compel AEP to refund substantial sums to Richmond and in which the Court of Appeals characterized Richmond as the victim of a "competitive squeeze" by AEP (481 F.2d at 501) strongly suggests that it does.

[63]Richmond's case belongs at the Federal Energy Regulatory Commission and in the courts.

[64]**See Alabama Electric Cooperative, Inc.** v. **S.E.C.**, 353 F.2d 905 (C.A.D.C., 1965); **City of LaFayette, Louisiana** v. **S.E.C.**, 454 F.2d 941 (C.A.D.C., 1971).

AEP has requested an exemption from the competitive bidding requirements of Rule 50 with respect to the issuance of the stock. Since competitive bidding is obviously not appropriate under the circumstances, our final order will include such an exemption.

2. There are other matters in this proceeding which we need not resolve at this time or on the present record. AEP has consented to reservation of jurisdiction over these matters. Hence we reserve jurisdiction over:

(A) The accounting treatment of the acquisition;[65]

(B) The disposition of one of the subsidiary companies of CSOE;[66]

(C) The fees and expenses proposed to be paid in connection with the acquisition.

3. There is no showing that the laws of the State of Ohio have not been complied with in relation to this acquisition. The Public Utilities Commission of Ohio, a party herein, which has jurisdiction over CSOE and Ohio Power, expressed support for the acquisition, as did the Attorney General of the State of Ohio. It appears therefore to our satisfaction that the acquisition complies with all applicable state laws.

4. There appears to be no basis for any adverse finding pursuant to Section 10(b)(3) of the Act.

XII. CONCLUSIONS

We have found that AEP's application meets the physical and geographical standards of Section 2(a)(29). This finding, which could rarely be made for the systems created in the 1920's, was likewise made as to the AEP system in the 1945 Decision as it then existed and is not seriously questioned here.

We also find, pursuant to Section 10(c)(2), that the acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system for the reasons stated above. We further find that the specific criteria enumerated in the last clause of Section 2(a)(29) appear to be satisfied, particularly given the present state of the art.

With respect to what might be called the tilt against bigness expressed in Section 10(b)(1), we have, as we think proper, considered the present state of the art and its implications for the permissible size of electric utility systems. We have also examined the impact of this acquisition on competitive conditions in the electric utility industry in the relevant area and have concluded that it will not burden or impair competition to an extent which will contravene the public interest standard stated in the Act. We conclude that no adverse finding is called for under Section 10(b)(1).[67]

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[65] AEP proposes to account for the acquisition of CSOE on its books pursuant to Section 257.0-8(a) of the Uniform Systems of Accounts for Public Utility Holding Companies. It would thus record its investment at an amount then equal to the market value of the AEP common stock issued in exchange for the CSOE stock. The Division contended before the administrative law judge that the proposed accounting treatment was improper and not in accordance with sound accounting principles. It contends that the transaction should be recorded on a "pooling of interest" basis. AEP concedes that the Commission in several recent decisions has approved accounting based on this method, but argues that the Commission has never changed its Uniform System of Accounts for Public Utility Holding Companies. It, therefore, believes controlling our decision in **American Power & Light Company**, 21 S.E.C. 121, 134, (1945), where the Commission said:

> "In view of the fact that our Uniform System of Accounts for Public Utility Holding Companies expressly permits holding companies to record investments at cost and does not require that any excess over underlying book value be eliminated immediately or amortized, we will not disapprove the accounting entries proposed in this case."

[66] CSOE owns all the outstanding stock of Simco, Inc. and Colomet, Inc. The Division argues that, in the event the Commission approves the proposed acquisition, it be conditioned upon divestment of Colomet. It claims that Colomet, a real estate subsidiary, has no operating or functional relationship with the operations of retainable utility systems and that retention would not be in the public interest. Hence, it argues that AEP may not acquire Colomet under the standards of Section 10. It makes no similar argument as to Simco. AEP contends that the operations of both companies are reasonably incidental or economically necessary or appropriate to the operations of the resulting company and thus retainable under the standards of Section 11(b)(1) of the Act.

[67] The Department of Justice charges that approval of the acquisition is "likely to trigger other defensive mergers," both in Ohio and throughout the east central

Continued on following page

In that connection, we should further note that the State of Ohio and the City of Columbus believe that this acquisition is in their interest. They conclude that the area served by CSOE will be better served, in terms of reliable service and reasonable cost, if the application is consummated. The record tends to confirm that view. While local preferences cannot control our decisions under the statutory standards, the possibility of significant benefits to the large number of consumers directly affected should weigh fairly heavily in the balance of intangibles here involved. In any event, we do not have here the spectacle of an aggressive holding company thrusting itself upon an unwilling but defenseless community.

We also note that the acquisition will result, through the settlement proposal, in the municipal utilities attaining the advantages of economies of scale and achieving status as an integrated system with likely savings to their customers. Moreover, the proposal represents a satisfactory resolution of the conflicts between private and public power in Ohio and lessens the concentration of control of the utility industry in Ohio by giving the municipals control over the production and transmission of electricity.

Accordingly, we would be prepared to issue an order approving the application were it not for certain matters which should be resolved. These involve, first, the unsettled condition, unavoidable under the circumstances, of AEP's proposed arrangement with the municipal utilities and, secondly, the reasonableness of the consideration proposed to be paid for the acquisition. With respect to the municipals, we believe that we need reasonable assurances that there will in fact be a so-called "Muni-Buckeye" before we accept the offer of settlement. Accordingly, we are constrained to delay the entry of an order granting the application until AEP and the municipals furnish us with:

(1) An executed contract between them that specifies in detail the type and capacity of the generator or generators which the municipals will receive and whether AEP will sell or build the unit or units for the municipals.

(2) An estimate of the cost of the unit or units.

(3) A detailed financial plan explaining to our satisfaction just how the municipals are going to pay for this expensive equipment and supplying us with sufficient reason to believe that the requisite funds will in fact be forthcoming.

Section 10(b)(2) of the Act requires that we find the consideration to be paid fair and reasonable. Of course, this means that the AEP/CSOE exchange ratio must be fair to the exchanging CSOE shareholder. However, that is not the issue. It almost never is in these utility acquisition situations. History shows that the great danger here is not underpayment but overpayment.[68] This is how the empires of old were assembled to the detriment of investors who ultimately wound up with some exceedingly dubious paper, and of consumers from whom the companies tried to extract the wherewithal to service the paper.

Before the administrative law judge, the Division contended that this was an overpayment case because the contemplated 1.3 to 1 exchange ratio was unduly favorable to the CSOE shareholders. The administrative law judge did not reach that issue. The Division suggests that if we should reach it, as we now do, the proceedings ought to be remanded to the administrative law judge for further proceedings before him.

At this juncture, we see no need for a remand, and we hope that it can be avoided. But almost eleven years have now elapsed since the management of the two companies arrived at the exchange ratio. We think that what is important here is not what was fair in 1968, but what is fair in 1978.

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region. As the Department of Justice recognizes, however, either this Commission or the Department of Energy will have to pass upon any future mergers involving other companies and determine whether they are in the public interest. Each case will stand on its own merits. The Department of Justice says this is really not an answer. It says that, if AEP succeeds in this case, the precedent will enable every large utility to acquire smaller neighboring utilities. That is not necessarily so. Each system will not only have to show significant economies, but may have to negate other potential evils not found to be present in this case. The question of size will, as we have already said, play a different role in each case depending on the circumstances.

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[68]Overpayment was the issue in the last AEP acquisition case to come before us. **Ohio Power Company**, 44 S.E.C. 340 (1970). Indeed, it was the only issue there. We resolved it in the company's favor. In that case, however, the consideration was paid in cash. Gross overpayment is seldom found in utility acquisitions made for cash. The temptation to overpay, however, becomes stronger when securities are used.

Accordingly, we expect AEP to submit up-to-date materials with respect to the fairness of either the 1.3 to 1 exchange ratio originally proposed or the altered ratio, if any, that it and CSOE now consider appropriate.

As soon as AEP has filed its supplemental papers, accompanied by proof of service on all parties, we shall enter an order prescribing as expeditious a briefing schedule as the circumstances permit. Briefs submitted in response to that order shall confine themselves to the issues enumerated herein. Further arguments addressed to us about the issues already dealt with in this opinion will serve no useful end.

In view of the foregoing, we are not entering an order at this time.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and KARMEL); Commissioner POLLACK not participating.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 20634/July 21, 1978

In the Matter of

OHIO POWER COMPANY
Canton, Ohio

(70-6049)

ORDER AUTHORIZING REVISED CREDIT ARRANGEMENTS FOR SHORT-TERM BORROWING

Ohio Power Company ("Ohio Power"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder regarding the following proposed transactions.

By order dated October 11, 1977 (HCAR No. 20206), Ohio Power was authorized to issue short-term notes to banks and dealers in commercial paper and demand notes to bank trust departments through December 31, 1978, in a maximum principal amount of $137,000,000 outstanding at any one time. By post-effective amendment Ohio Power requests that the authority granted to it in said order be modified to allow it to issue and sell short-term notes in accordance with the revised credit arrangements it has negotiated with banks, which are described below. The previously approved arrangements concerning the sale of notes to dealers in commercial paper and bank trust departments are not affected by these revised credit arrangements.

It is stated that Ohio Power has lines of credit with 67 banks in an aggregate amount of $305,565,000. For purposes of borrowing, Ohio Power has made arrangements with banks of three classes. Each note to be issued a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed (generally not in excess of 10% of the line of credit and 10% of the amount borrowed). In most cases Ohio Power maintains deposit balances for its operational and financial needs in amounts sufficient to satisfy any compensating balances required with respect to borrowings from such banks. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 90 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. Ohio Power's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay a fee equal to 4% of the bank's prime commercial rate then in effect on the size of the line. The combination of 5% compensating balances and a fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. In addition, Ohio Power must pay interest at the rate of 108.5% of the bank's prime commercial rate then in effect on the borrowings. It is stated that if the balances maintained and the fees paid by Ohio Power with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Ohio Power, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 11.25% on the basis of a prime commercial rate of 9%.

With respect to the Class III banks, Ohio Power has a money market facility at each of two named banks in an aggregate amount of $25,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Ohio Power, but represent

COORDINATION AGREEMENT

among

AMERICAN MUNICIPAL POWER-OHIO, INC.,

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY,

OHIO POWER COMPANY,

and

AMERICAN ELECTRIC POWER COMPANY, INC.

Dated as of May 1, 1979

COORDINATION AGREEMENT

AGREEMENT, dated as of May 1, 1979, among AMERICAN MUNICIPAL POWER-OHIO, INC., an Ohio corporation not-for-profit (AMPO), COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY, an Ohio corporation (CSOE), OHIO POWER COMPANY, an Ohio corporation (OPCO) and AMERICAN ELECTRIC POWER COMPANY, INC., a New York corporation (AEP).

W I T N E S S E T H :

WHEREAS AMPO is a corporation not-for-profit organized and existing under the laws of the State of Ohio to own and operate facilities for the generation, transmission and distribution of electric power and energy, and to furnish technical services, such facilities to be owned and operated, and such services furnished, by AMPO on a cooperative non-profit basis for the mutual benefit of its patrons (AMPO Patrons) such being and to be municipal electric systems owned and operated by municipal corporations of the State of Ohio; and

WHEREAS CSOE is an electric light company, as defined in Section 4905.03 of the Revised Code of Ohio,

organized and existing under the laws of the State of Ohio and is engaged in the generation, transmission and distribution of electric power and energy in said State; and

WHEREAS OPCO is an electric light company, as defined in Section 4905.03 of the Revised Code of Ohio, organized and existing under the laws of the State of Ohio and is engaged in the generation, transmission and distribution of electric power and energy in said State; and

WHEREAS all of the outstanding shares of common stock of OPCO are owned by AEP, a holding company registered as such under the Public Utility Holding Company Act of 1935 (1935 Act); and

WHEREAS AEP applied in 1968 to the Securities and Exchange Commission (SEC) for authority under the 1935 Act to acquire common shares of CSOE and the proceeding (File No. 70-4596; Administrative Proceeding File No. 3-1476) is currently pending before SEC; and

WHEREAS on August 8, 1972, a number of differences between AEP and the Ohio Municipal Electric Association, a corporation not-for-profit organized under the laws of the State of Ohio (OMEA), having not previously been resolved, AEP and AMPO, together with the City of Orrville, Ohio, a municipal corporation (Orrville) and OMEA

submitted an offer of settlement (Settlement Proposal) to SEC requesting that the Commission authorize AEP to acquire common shares of CSOE subject to certain special conditions proposed in the Settlement Proposal to be included in the Commission's order authorizing the acquisition of common shares of CSOE by AEP; and

WHEREAS AMPO and OPCO have, prior to the date of this Agreement, entered into an agreement, dated as of April 1, 1974, as amended and supplemented through the date hereof (AMPO-OPCO Interconnection Agreement), a copy of which, as so amended and supplemented, is attached as Appendix No. 1 hereto, the terms of which contemplate that OPCO may render transmission service to AMPO and may render emergency service, short-term service, limited term service and other types of electric service to AMPO for the benefit of AMPO Patrons, and that AMPO may render emergency service, short-term service, limited term service and other types of electric service to OPCO, the purposes of such agreement being to enable AMPO to achieve, for the benefit of the municipal electric systems in Ohio which are from time to time AMPO Patrons, benefits derived from economies of scale, and the coordination of programs and operations, for the benefit of AMPO Patrons through the services provided under said agreement; and

WHEREAS AMPO and Orrville, an AMPO Patron, also entered into an agreement dated as of June 1, 1974 (the AMPO-Orville Interconnection Agreement), a copy of which is attached hereto as Appendix No. 2 hereto, and the AMPO-OPCO Interconnection Agreement and the AMPO-Orrville Interconnection Agreement were on March 26, 1976 accepted for filing by the Federal Power Commission as rate schedules of OPCO and AMPO, respectively, under the Federal Power Act, such instruments becoming effective as rate schedules under the Federal Power Act on August 28, 1978; and

WHEREAS OPCO has, since the AMPO-OPCO Interconnection Agreement and the AMPO-Orrville Interconnection Agreement became effective, sold quantities of electric power and energy to AMPO pursuant to the AMPO-OPCO Interconnection Agreement and AMPO has in turn resold pursuant to the AMPO-Orrville Agreement quantities of power and energy at wholesale to Orrville for resale by Orville to its consumer customers; and

WHEREAS On July 21, 1978, SEC issued its opinion in the proceeding in File No. 70-4596 (Administrative Proceeding File No. 3-1476) under the 1935 Act wherein it indicated that it would be prepared to issue an order approving AEP's application to acquire common shares of CSOE were it not for certain matters which should be resolved,

including completion of the record in the proceeding by filing with the Commission of a contract which would provide the Commission with reasonable assurance that a "muni-Buckeye project"* would be created for the benefit of electric systems of municipal corporations in Ohio (such systems being herein collectively called the Ohio Municipal Group, and each such municipal system which is at the date of this Agreement or which may hereafter become a member of AMPO being herein called a member municipal corporation or an AMPO Member), so that such systems might have an opportunity to develop and enjoy sufficient and economic power supplies and, through coordination with AEP's system, achieve economies of scale, and reliability of service, of a greater magnitude than would otherwise be available to such AMPO Members; and

WHEREAS CSOE has under construction, in Athens County, Ohio, two fossil-fired steam electric generating units, i.e., its Poston Unit No. 5 and its Poston Unit No.

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* The original Buckeye Project - created for the benefit of rural electric corporations not-for-profit in Ohio which have been purchasing their respective power requirements from Buckeye Power, Inc., with assistance from OPCO and certain other electric light companies, - was authorized by the SEC in its order, issued June 30, 1967 in File No. 70-4497 (Administrative Proceeding File No. 3-1092).

6 (the Poston Units), the proposed characteristics of which are summarized in Appendix No. 3 to this Agreement, the details of which have been communicated to AMPO prior to the execution and delivery of this Agreement, Unit No. 5 being currently scheduled to be placed in commercial operation in 1987 and Unit No. 6 being currently scheduled to be placed in commercial operation in 1990, but which dates of commercial operation might, if the completion of the transactions contemplated by this Agreement were to be assured, be accelerated if AMPO Members, or certain of them, develop an earlier need for the capacity represented by such units; and

WHEREAS the AMPO-OPCO Interconnection Agreement specifically contemplates (i) the transmission from time to time of power and energy from points where bulk transmission facilities of OPCO interconnect with facilities of AMPO, or of AMPO Members, or bulk transmission facilities of other electric systems, to delivery points to be established by the parties, (ii) the supply by one such party to the other party, or for the account of the other party, from time to time of emergency service, short-term power and energy, limited term power and energy, and the other types of power and energy referred to therein, and the operation of the systems of the parties in continuous synchronism during such periods of time as such systems are interconnected

at one or more interconnection points and/or one or more delivery points, and throughout the duration of any transactions scheduled to be effected pursuant to the terms of such agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE ONE

PRELIMINARY STEPS AND PROCEDURES

1.1 AEP, AMPO, CSOE and OPCO shall, forthwith after the execution and delivery of this Agreement, cause this Agreement with the Appendices hereto, including Appendix No. 4 constituting the financial plan of AMPO, to be filed with SEC in the proceeding in File No. 70-4596 (Administrative Proceeding File No. 3-1476) under the 1935 Act, (1) advising SEC that such filing is designed to provide SEC with reasonable assurance that AMPO Members will enjoy the economic benefits of a project of the type referred to by SEC in its opinion dated July 21, 1978, and (2) in the case of AEP and CSOE, upon completion of the record with respect to the proposed exchange offer and the proposed exchange ratio, urging SEC (a) to determine that the material then filed with SEC on behalf of AEP and CSOE

establishes that the exchange ratio is fair to the shareholders of CSOE and to those of AEP, and (b) to determine, insofar as this Agreement involves obligations, duties and rights of CSOE and OPCO, the provisions hereof are in the public interest and do not contravene the applicable provisions of the 1935 Act.

1.2 OPCO and CSOE shall, if SEC shall then authorize AEP to acquire common shares of CSOE on the terms proposed pursuant to Section 1.1 of this Agreement and if AEP shall thereafter acquire, pursuant to such SEC authorization, a number of the outstanding common shares of CSOE equal to at least 80% of the voting power of shares regularly entitled to vote for the election of directors of CSOE, promptly advise AMPO in writing of such acquisition (Notification Date) and the date of such acquisition (Acquisition Date) and that OPCO and CSOE are prepared to proceed with the proposal herein contained that the AMPO Members be afforded the opportunity to develop and enjoy an efficient and economic power supply, and, through coordination with AEP's system, achieve economies of scale and reliability of service of greater magnitude than would otherwise be available to such municipal corporations while, at the same time, eliminating the wasteful duplication of facilities which would be involved in the construction and operation by such municipal systems of bulk transmission facilities of their

own throughout the State of Ohio. AMPO shall, promptly after the Notification Date, request the municipal corporations then constituting the AMPO Members and other municipal corporations to complete and furnish to AMPO in reasonable detail, to the extent not previously furnished to AMPO, information and statistics with respect to the respective electrical facilities owned and operated by such municipal electric systems, the respective amounts of power and energy supplied to customers receiving electric service from such systems, and the anticipated needs of such municipal systems for additional power and energy in future years. Upon receipt of the information and statistics so supplied to AMPO, AMPO shall thereupon promptly provide to OPCO and CSOE the information and statistics it has received and thereupon complete its analysis, in which CSOE and OPCO shall cooperate with AMPO, of such information (a) to determine where and under what circumstances AMPO could reasonably expect to acquire generating facilities in the State of Ohio to meet anticipated needs for power and energy of its then members which they expect will not be supplied by facilities owned or operated by such municipal systems or purchased by such systems from suppliers other than AMPO, and (b) to determine where and when it would be desirable to establish interconnection points and delivery points under the AMPO-OPCO Interconnection Agreement pending the

completion of the arrangements for a Station Agreement and a Power Delivery Agreement contemplated by the terms of this Agreement.

1.3 (a) AMPO shall be entitled, at its election, signified by written notice delivered to AEP, CSOE and OPCO on a date (Election Date) within six calendar months following the Notification Date, to purchase from CSOE (subject to the receipt of any regulatory approvals necessary to enable CSOE to sell and AMPO to purchase) Poston Unit No. 5 or, at its election, Poston Units No. 5 and 6, on an "as is" basis, on a date (Closing Date) determined by AMPO and consented to by CSOE (which consent shall not be unreasonably withheld), which date shall not be later than (A) six months following the last to occur of (i) the Election Date, (ii) the effective date of the proposed amendment to the Ohio Constitution set forth in Appendix 7 hereto and (iii) the effective date of the proposed legislation set forth in Appendix 7 hereto, and (B) the date when the execution and delivery of a Station Agreement and Power Delivery Agreement as contemplated herein shall be completed, unless otherwise agreed to by AMPO and CSOE, such purchase by AMPO to include the generating facilities so to be purchased and such related facilities as are designed to be used in connection with, and easements required for, the operation and maintenance of the generating facilities so

to be purchased. If AMPO's election is to purchase Poston Unit No. 5, rather than Poston Units No. 5 and 6, the initial generating facilities so to be purchased shall include only such land and equipment as shall be necessary for AMPO to own and operate such a single unit, but shall include at the time of the Closing Date all of the common facilities referred to in Appendix No. 3, but CSOE shall be obligated in such event, if it completes and places Poston Unit No. 6 in commercial operation, to pay to AMPO at such date of commercial operation one-half of the costs of construction of such common facilities (plus or minus such amount as shall represent a reasonable adjustment to recognize that the common facilities have been subject to some depreciation but that AMPO has carried the investment during the intervening period if Poston Unit No. 5 shall have been placed in commercial operation prior to Poston Unit No. 6) and AMPO shall transfer to CSOE an undivided one-half interest in such common facilities. If AMPO elects to purchase either Poston Unit No. 5 or Poston Units No. 5 and 6 and if common facilities are used for units in addition to Poston Unit No. 5 or Poston Units No. 5 and 6, appropriate adjustments shall be made for the sharing of costs between CSOE and AMPO in accordance with the use of such common facilities. The price payable by AMPO to CSOE for the generating facilities so to be purchased shall be an amount

in cash which, after provision for all taxes based on, or measured by, net income (without regard to any tax loss carry-forwards, carry-backs, tax credit or the actual amount of CSOE's taxable income or the taxable income of any consolidated group in which it may be participating at the time of such transaction) calculated at the capital gains rate to the extent applicable and otherwise at the maximum rate on taxable income payable by corporate taxpayers, will equal, as of the Closing Date, after deducting such provision, the total cost of construction (including CSOE's accumulated allowances for funds used during construction recorded as a part of CSOE's construction work in progress represented by the facilities so to be purchased except an amount equal to any reduction in income taxes that shall, with respect to the generating facilities so to be purchased, in prior years have resulted from a deduction for interest, or an investment tax credit not subject to recapture, for Federal income tax purposes) incurred by CSOE with respect to the acquisition, construction and installation of such generating and related facilities, the amount of such construction costs to be mutually agreed upon by AMPO and CSOE or, in the absence of such agreement, determined from the accounts which CSOE maintains pursuant to the requirements of the Federal Energy Regulatory Commission (FERC) under the Federal Power Act. In the event of such

election and purchase by AMPO, CSOE shall deliver to AMPO a quitclaim deed transferring such generating and related facilities to AMPO, free and clear of all liens and encumbrances other than liens and encumbrances of the type characterized as "permissible encumbrances" in CSOE's Indenture of Mortgage and Deed of Trust and such easements as shall be reserved to CSOE in connection with the operation of the Poston Station as shall be mutually agreed upon by CSOE and AMPO, and assigning to AMPO all of CSOE's rights under its contracts with manufacturers and construction contractors to the extent applicable to the purchase and installation of the generating facilities so to be purchased, and in connection with such purchase, AMPO shall assume all related obligations of CSOE with respect to such contracts. Under no circumstances, unless otherwise mutually agreed to in writing (which agreement, insofar as it concerns CSOE, CPCO and AEP shall not be unreasonably withheld), shall the Election Date occur, or AMPO be entitled to effect the election provided for herein, on a date subsequent to March 31, 1981 or the Closing Date be later than September 30, 1981.

(b) In the event that for any reason AMPO decides subsequent to the Acquisition Date but prior to the last date on which the Election Date may occur hereunder not to purchase either Poston Unit No. 5 or Poston Units No. 5 and

6, but does believe that it would be in the best interests of AMPO and the AMPO Members to acquire generating facilities for AMPO through the mechanism provided by this Agreement, then AMPO shall so notify CSOE and OPCO in writing prior to the last date on which the Election Date may occur hereunder and OPCO, with the cooperation of CSOE, shall promptly proceed to use its best efforts to locate, and acquire for the account of AMPO (upon reimbursement by AMPO for any expenses incurred on behalf of AMPO as herein provided) a site on which there can be installed, assuming requisite regulatory authorizations are secured, generating facilities which will initially have a rated capacity of not less than 600 MW (net) but not more than 1300 MW (net). The generating facilities, initially to be owned and operated by AMPO, whether or not such facilities constitute (1) Poston Unit No. 5 or Poston Units No. 5 and 6, (2) generating facilities not now being constructed by CSOE or OPCO which AMPO may contract, prior to the Acquisition Date, to purchase from another entity or (3) generating facilities not now under construction at any location to be constructed hereunder by or for the account of AMPO, are herein called the Initial Generating Facilities. The Initial Generating Facilities to the extent they constitute Poston Unit No. 5 or Poston Units No. 5 and 6, shall be designed to have such characteristics, other than those which have already been fixed, as are mutually agreed upon by AMPO,

CSOE and OPCO but which it is expected will be those described in Appendix No. 3. If such Initial Generating Facilities are to be constructed by and on behalf of AMPO and are (x) to be other than facilities purchased by AMPO from some other entity and other than Poston Unit No. 5 or Poston Units No. 5 and 6, and (y) to have an aggregate capability upon completion of construction of approximately 600 MW (net), such Initial Generating Facilities shall be designed to have such characteristics as shall be mutually agreed upon by AMPO and OPCO but which it is expected will be the characteristics described in Appendix No. 5 or if such Initial Generating Facilities are to have upon completion of construction an aggregate capability of more than 600 MW (net) but not more than 1300 MW (net), the characteristics described in Appendix No. 6. If, however, AMPO shall contract to purchase generating facilities from, or to have generating facilities constructed by or on behalf of AMPO by, an entity or entities other than CSOE or OPCO, neither CSOE nor OPCO, nor any affiliate of either, shall need to be involved in discussions with respect to the characteristics of such facilities. CSOE shall not, prior to the earlier of (A) the last date on which the Election Date may occur hereunder and (B) the date on which AMPO shall notify CSOE and OPCO that it has decided not to purchase Poston Unit No. 5 or Poston Units No. 5 and 6, cancel and

finally terminate, as distinguished from postponing, any further construction work of Poston Unit No. 5 or Poston Unit No. 6 without consulting with AMPO and AEP with respect to such action.

1.4 The parties hereto recognize that technological and other factors may necessarily affect the size of the Initial Generating Facilities - if they are not Poston Unit No. 5 or Poston Units No. 5 and 6 - and that it may be necessary to secure in advance of the completion of the Initial Generating Facilities, if they are to be constructed by and/or for the account of AMPO under this Agreement, various siting and other authorizations before construction can be commenced or completed and that the size of the Initial Generating Facilities may also be affected by the size of the site selected therefor and by regulatory requirements affecting or limiting the discharge of pollutants and waste during the course of the operation of the Initial Generating Facilities. It is, however, the objective of the parties hereto (i) that the coordination arrangements herein contemplated will cover the Initial Generating Facilities, whatever their size; (ii) that, in addition to any deliveries of power and energy under other schedules to the AMPO-OPCO Interconnection Agreement, as such Interconnection Agreement or such schedules may be modified from time to time as provided therein, OPCO will, after the Election Date and

during the period prior to the date of initial commercial operation of the Initial Generating Facilities (but in no event - if the Initial Generating Facilities are to be facilities constructed pursuant to this agreement by or for the account of AMPO but are other than Poston Unit No. 5 or Poston Units No. 5 and 6 - for a period longer than that which OPCO shall, pursuant to a reasonable exercise of its judgment, based on its own experience and that of others, advise AMPO on or shortly after the Election Date, should be required to complete the construction of the Initial Generating Facilities), to the extent OPCO has capacity and related energy available for such purpose from the most recently completed generating unit having a capability exceeding 800 MW in Ohio of OPCO, or of its subsidiary, Ohio Electric Company, or if not available from such unit, from other generating facilities of OPCO, supply to AMPO for resale by AMPO to one or more of the AMPO Members power and energy in such amounts as AMPO shall request on not less than six months prior written notice (not exceeding 200 MW in the aggregate) through the scheduling of such quantities of power and the energy related thereto from time to time under the proposed Schedule to the AMPO-OPCO Interconnection Agreement attached as Appendix B hereto, if the same shall be made effective by FERC under the Federal Power Act without suspension or modification

other than insertion of the duration period contemplated herein; (iii) that, to the extent that any of the AMPO Members shall, during the period of the completion of the construction of the Initial Generating Facilities, cancel, terminate or reduce the amount of capacity available to such AMPO Member under power supply arrangements in existence with other utility systems at the date of this Agreement, except for a power supply arrangement for an equal or larger amount of capacity effected by such AMPO Member in substitution for any such arrangement, and except for action reasonably designed to enable such AMPO Member to be in a position to purchase its proportionate share of the capacity available in the Initial Generating Facilities upon reasonably anticipated date(s) of the commercial operation of such Initial Generating Facilities, OPCO shall be relieved of any obligation which it may have undertaken under any such schedule or schedules to the AMPO-OPCO Interconnection Agreement to supply capacity, and energy related thereto, to AMPO during such period; (iv) that, in the event of a delay in the scheduled in service date of the Initial Generating Facilities, AMPO may request power and energy necessary to serve load as to which other arrangements were terminated by one or more of the AMPO Members in reasonable anticipation of the availability of

the Initial Generating Facilities, and OPCO shall use its best efforts to provide such power and energy under the appropriate schedule or schedules to the AMPO-OPCO Interconnection Agreement to the extent it has such power and energy available; and (v) that in no event shall AEP, CSOE or OPCO be obligated under this Agreement to divert any of their personnel from the performance of regular duties or otherwise assist AMPO, or cooperate with AMPO, in the construction and/or acquisition by, or on behalf of, AMPO of facilities which would result in AMPO owning and operating generating facilities in the State of Ohio, or elsewhere, having an aggregate capacity exceeding (unless otherwise mutually agreed upon) the aggregate capacity of the operating steam-electric generating units (exclusive of jet turbine and internal combustion peaking units) owned by CSOE on January 1, 1979 (including for such purpose any undivided ownership interest in any jointly-owned operating generating unit to the extent of such interest); provided, however, that since technological and regulatory factors will or may affect the size of any additional generating facilities which may be owned by AMPO, the parties agree that in determining the size of any additional unit or units, to be constructed by or for the account of AMPO and to be owned and operated by AMPO, AMPO

shall be entitled in its discretion to limit the size of any new unit which it is to own after taking into account the then state of the art in the design and construction of generating facilities, the capacity of available facilities, applicable rules and regulations of governmental agencies and other pertinent engineering, regulatory and technological factors; and provided further, that in no case is it proposed that OPCO will be required to dedicate or transfer to AMPO any generating station site, or any equipment or machinery which OPCO deems, in the exercise of its sole judgment, should be used in supplying loads which OPCO and other members of AEP's system may then be supplying or may expect to supply in future years.

1.5 In the event that it is decided by AMPO and OPCO that the Initial Generating Facilities of AMPO will be facilities other than Poston Unit No. 5 or Poston Units No. 5 and 6, and other than facilities to be acquired by AMPO from others (other than CSOE or OPCO), OPCO shall, if and to the extent requested by AMPO, either directly or through its affiliate American Electric Power Service Corporation (Service Corporation), or others selected by OPCO, use its best efforts, with due regard to its obligations to perform similar services for members of the AEP System, to:

(a) Prepare such drawings, designs, plans and specifications as may be required, and AMPO shall request, with respect to the construction of such Initial Generating Facilities.

(b) Assist AMPO in selecting suppliers who will sell to AMPO equipment and materials comprising parts of such Initial Generating Facilities or provide services or labor with respect to such Initial Generating Facilities. To this end:

(i) OPCO shall, pursuant to AMPO's written directions, prepare specifications for such major contracts as AMPO shall request and OPCO shall determine to be not incompatible with the performance of similar work for its own account, and shall, if similarly requested, subject to the approval and direction of AMPO, act as AMPO's agent in engaging in preliminary discussions with potential suppliers.

(ii) Upon the approval by AMPO of general conditions and specifications for specific contracts, and the making of other decisions with respect to invitations for proposals, OPCO shall prepare forms of definitive bid proposals and furnish them to suppliers previously selected by AMPO.

(iii) Upon the receipt of bids from suppliers, OPCO shall review and evaluate such bids and shall communicate the bids and such evaluations to AMPO for AMPO's final determination with respect thereto.

(iv) If directed to do so by AMPO, OPCO shall seek to resolve any differences or inconsistencies between the general conditions and specifications of AMPO and those of the supplier contained in its bid, but AMPO shall bear the sole responsibility for accepting or rejecting a bid and for the terms and conditions of definitive contracts between AMPO and such suppliers.

(c) Assist AMPO to engage a construction management organization to supervise the construction of such Initial Generating Facilities, which organization may be OPCO or Service Corporation, or another corporation which is a member of AEP's system, which construction management organization, if other than OPCO, shall consult with OPCO and shall inform OPCO of all proposed major changes or material additional expenses relating to such Initial Generating Facilities.

(d) Assist AMPO in providing an accounting department of AMPO at the construction site to provide accounting services and cost analysis.

(e) Prepare for AMPO such periodic reports with respect to the status of construction of such Initial Generating Facilities as the parties shall determine are appropriate in the circumstances.

(f) Provide AMPO with information and recommendations designed to assist AMPO in deciding upon the essential elements of the design of such Initial Generating Facilities and, upon AMPO's decision with respect to such essential elements, OPCO shall assist AMPO in selecting contractors, subcontractors, specialists and consultants who will render labor or services to AMPO in connection with the engineering, design and construction of such Initial Generating Facilities.

(g) Provide information to AMPO on insurance coverage with respect to construction, transportation and operation of such Initial Generating Facilities and the components thereof, and assist AMPO in obtaining such insurance as AMPO, based upon information and recommendations provided by OPCO and its independent evaluation of such information and information otherwise obtained, shall seek to obtain.

(h) Perform such other functions for AMPO in connection with the design, engineering and construction of such Initial Generating Facilities as shall be mutually agreed upon by OPCO and AMPO.

1.6 (a) OPCO, in rendering services under Section 1.5 of this Agreement with respect to the purchase by AMPO of equipment and materials, or the rendition of services to AMPO, shall use its best efforts at the request of AMPO to review or cause others selected by OPCO to review, proposals submitted by third parties to AMPO and furnish such recommendations to AMPO as OPCO believes will be helpful to AMPO in enabling AMPO to purchase such equipment and materials, or to secure such services, on terms which are advantageous to AMPO, it being understood that the final terms of any resulting contract or purchase order shall be the responsibility of AMPO and not of OPCO or any affiliate of OPCO.

(b) AMPO shall obtain insurance covering construction work in progress and risks incidental thereto, naming AMPO, OPCO and any and all contractors, subcontractors, consultants, specialists and others engaged in the construction of such Initial Generating Facilities, as parties insured thereunder as their respective interests may appear. Such insurance shall provide such coverage as is customary in the industry and shall cover, among other things, claims for damage because of bodily injury, illness, disease or death, and claims for damage to or destruction of property, including loss or use thereof.

(c) AMPO shall make such arrangements in the contracts and agreements which it enters into for the manufacture and installation of equipment and the rendering

of labor and other services by contractors and subcontractors as shall be necessary for the initiation, maintenance and supervision of appropriate safety precautions and programs in connection with the construction of such Initial Generating Facilities and to that end AMPO shall take all necessary precautions in such agreements and contracts for the safety of, and protection customary in the industry to prevent damages, injury or loss to, all employees or agents of OPCO at the construction site or adjacent thereto or engaged in travel or work related thereto. AMPO shall also arrange in such agreements and contracts for compliance with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property and to protect them from damages, injury or loss, in connection with the work involved in the construction and erection of such Initial Generating Facilities.

(d) AMPO shall, to the extent consistent with practice in the industry, cause any contractor or subcontractor to furnish satisfactory indemnities, warranties and evidence of insurance and workmen's compensation coverage in respect of all work to be performed by such contractor or subcontractor and to provide performance bonds adequate to assure satisfactory completion of such work.

1.7 Because of the fact that AMPO and OPCO each has an individual commercial incentive to bring about the successful construction of efficient and reliable Initial Generating Facilities, and that each desires to preclude the adverse impact upon their mutual objective which would result from the imposition of unreasonable responsibility or liability upon AMPO, CSOE, OPCO, Service Corporation, or their respective employees and agents, with respect to defects, latent or otherwise, in the design, manufacture, construction, installation, or operation of Initial Generating Facilities installed pursuant to Section 1.5 hereof, therefore to that end (unless otherwise mutually agreed upon in writing with respect to assignments which AMPO specifically requests OPCO to perform pursuant to Section 1.5 of this Agreement):

(a) OPCO waives any and all claims for damages or other relief against AMPO, and AMPO waives any and all claims for damages or other relief against CSOE, OPCO, Service Corporation, or any of their employees with respect to any alleged error or omission in the description, design, drawings, designs and plans, recommendations, estimates, inspections, warnings, schedules, studies or other communications related to the Initial Generating Facilities, oral or written; and

(b) Each party shall look solely to persons or corporations other than the other parties hereto or their respective employees for relief upon any claim for responsibility or liability arising out of the design and construction of the Initial Generating Facilities based upon non-merchantability; unfitness for any general or particular purpose; latent or patent defects in design, fabrication, manufacture, inspection, assembly, construction, installation, or operation; incompatibility of elements; negligent or otherwise wrongful acts or omissions of contractors or subcontractors.

1.8 AMPO shall, as OPCO shall from time to time reasonably request, assign at its sole expense one or more engineering representatives for the purpose of, among other things, approving and modifying drawings and plans recommended by OPCO, supervising the work in progress and advising AMPO concerning the status of the construction.

1.9 Any consumers' sales, use or excise taxes validly imposed on purchases of or for the Initial Generating Facilities shall be borne by AMPO.

1.10 OPCO shall submit to AMPO as early as practicable in each month a bill for the cost of the services, including costs incurred by OPCO for services rendered by others to AMPO, during the immediate preceding month. Bills rendered by OPCO to AMPO shall be paid within fifteen days

after the receipt by AMPO thereof, but the bills submitted shall be subject to such subsequent corrections as may be appropriate as a result of audits made for the purpose of verification thereof or otherwise. The costs of OPCO shall include the following classes of items:

(a) Payroll of personnel of OPCO, Service Corporation and others selected by OPCO, for work relating to the design and construction of Initial Generating Facilities, including the cost of social security taxes, unemployment insurance expenses, group life insurance, group hospitalization and medical insurance, pension plan contributions, workmen's compensation and public liability insurance and the cost of other fringe benefits accruing to such employees.

(b) Charges to OPCO by Service Corporation and others selected by OPCO in connection with services furnished.

(c) Other expenses of OPCO, Service Corporation and others selected by OPCO relating to the design and construction of the Initial Generating Facilities.

Without limitation upon the foregoing provisions of this Section, it is understood that (i) OPCO shall be entitled to receive from AMPO full reimbursement, including such reasonable compensation or profit, including compensation for the use of capital, as shall be mutually agreed

upon from time to time by AMPO and OPCO, for all costs and expenses incurred by OPCO for the account of AMPO in connection with the design and construction of the Initial Generating Facilities pursuant to the provisions of this Agreement, and (ii) OPCO shall not under any circumstances be obligated under this Agreement to perform any assignment or task unless, prior to the commencement of such activity, mutual agreement shall have been reached, and provision for payment made, with respect to the basis or bases on which OPCO shall so be reimbursed. In cases where the allocation of an item of cost or expense is made between work performed hereunder and other work, such allocation may be made, unless required to take other action by applicable rule, regulation or order of the Commission under the 1935 Act, by OPCO in accordance with the practices and procedures established and regularly employed by it in allocating expenses between or among other construction projects conducted by it in which it may then be involved.

1.11 In the event that AMPO shall decide to purchase Poston Unit No. 5 or Poston Units No. 5 and 6 on the "as is" basis herein contemplated and shall effect the purchase of such facilities from CSOE prior to the completion of the construction thereof, OPCO and CSOE shall thereafter assist AMPO in the completion of the construction of those parts of such facilities as are to be part of the

Initial Generating Facilities of AMPO in accordance with the principles and procedures specified in the foregoing provisions of this Agreement; provided, however, with respect to activities involved in completion of Poston Unit No. 5 or Poston Units No. 5 and 6 after the Closing Date, the provisions of Section 1.7 of this Agreement shall apply except that nothing herein contained shall be deemed to excuse in such event any liability or obligation of a party hereto to any other party arising out of gross negligence of such party or willful breach by such party of any contractual obligation to any other party hereto.

1.12 The parties hereto agree that provisions, if any, required to be included herein by Executive Order 10925, Executive Order 11246, and/or by §3706.042 and §4115.04 et seq. of the Revised Code of Ohio relating to State minimum wage requirements, and provisions, if any, required to be included herein with respect to the affirmative action policy of the State pursuant to Executive Orders of the Governor of Ohio in effect at the date hereof, shall be deemed to be included herein as if set forth in full herein.

1.13 AMPO, CSOE and OPCO, as parties to this Agreement and as prospective parties to the Station Agreement, agree that, because of the interacting benefits and burdens contemplated by this Agreement and the Station

Agreement, each such party has a duty to each of the other two parties to act fairly with respect to the transactions contemplated by this Agreement and the Station Agreement.

ARTICLE TWO

STATION AGREEMENT AND POWER DELIVERY AGREEMENT

2.1 In the event that it is determined, pursuant to the provisions of this Agreement, that AMPO shall become the owner of Poston Unit No. 5 or Poston Units No. 5 and 6 by purchasing such generating facilities under construction from CSOE as herein provided, CSOE, OPCO and AMPO shall use their best efforts to negotiate mutually agreeable terms of, and then to execute and deliver, a Station Agreement (having a term equal to the anticipated useful life of the generating facilities involved, to be mutually agreed upon prior to the execution and delivery of such Station Agreement, but not more than 50 years) conforming as to its principles (including pricing methods), to the station agreement, as amended, which relates to the Buckeye Project (Buckeye Station Agreement) except that (I) provisions relating to operation, including loading and unloading units, maintenance, scheduled outages, provision for forced outages, uses of various types of fuel, including the use of oil for start-up and flame stabilization purposes, and the

limitation of emissions of pollutants and discharge of wastes and other provisions are to be prepared in the light of (i) the actual technical and operating characteristics of the generating and other facilities which will be involved on this occasion, (ii) changes in the art, (iii) current and prospective regulations involving the environment and the use of various fuels, (iv) the possible need under current and developing regulations for load curtailments, (v) other circumstances involving governmental programs relating to the use and conservation of energy and (vi) the specific terms outlined below in subdivisions (a) through (g) of this Section 2.1, (II) provision will be made to assure that payments to AMPO for power and energy sold and delivered by or for the account of AMPO to AMPO Members will be in amounts sufficient, when added to amounts received from others (including OPCO) than AMPO Members, to pay all costs and expenses of AMPO, whatever the respective loads of the AMPO Members may be so that there will be no need to provide in such Station Agreement for OPCO to purchase any power which is characterized in Sections 1.1 and 10.2 of the Buckeye Station Agreement as surplus capacity, (III) no provision will be made which would obligate OPCO to "bank" any capacity or to supply any power of the type which is characterized in Sections 1.1 and 10.3 of the Buckeye

Station Agreement as Buckeye's Supplementary Power, (IV) provision will be made for minimum capacity reservations by AMPO of percentages of the capacity of Poston Unit No. 5 and, if AMPO shall also purchase Poston Unit No. 6, the capacity of Poston Units No. 5 and 6, in accordance with the schedule annexed hereto as Appendix No. 9, plus such additional percentages of capacity, if any, of Poston Unit No. 5 or Poston Units No. 5 and 6 as shall be reserved by AMPO pursuant to the provisions of subdivision (a) of this Section 2.1, which capacity reservations in each case shall include AMPO's capacity reserve obligation, (V) provision for AMPO's responsibility for generating capacity reserve which shall be 20% of AMPO's capacity entitlement during each of the first three years of operation of the Initial Generating Facilities and shall be adjusted annually during subsequent years on the basis of a formula, mutually to be agreed upon, that takes into account the availability performance of the Initial Generating Facilities during the three calendar years preceding the year for which such capacity reserve is so to be adjusted, and (VI) provision will be made that AMPO's capacity entitlement in the Initial Generating Facilities at any time shall equal that percentage of AMPO's capacity reservation which is equal to the product of (a) one hundred and (b) the ratio of (i) one hundred per cent to (ii) the sum of one hundred per cent

and AMPO's reserve obligation in per cent. The Station Agreement shall provide for:

(a)(i) reservation by AMPO of capacity, in addition to the minimum capacity reservations contemplated by clause (IV) of this Section 2.1, by notice in writing delivered not less than 96 months prior to the time when such additional capacity is to be reserved for AMPO, or such other period as may be mutually agreed upon (it being recognized that, whether or not AMPO elects to purchase Poston Unit No. 5 or Poston Units No. 5 and 6, AMPO may give notice on the Closing Date to apply to all periods within 96 months thereof), and any capacity reserved for AMPO as contemplated by clause (IV) of this Section 2.1 and pursuant to any such notice shall not thereafter be subject to any increase or reduction by AMPO without the written consent by OPCO, and (ii) the payment by AMPO of all of AMPO's costs associated with capacity which AMPO shall reserve in accordance with this Section 2.1 (and the energy associated therewith to the extent taken or availed of by AMPO from time to time during such periods for sale by AMPO at wholesale to customers of AMPO, including AMPO Members), and (iii) the purchase

of and payment from time to time by OPCO, pursuant to the provisions of Appendix 10 hereto, of AMPO's costs associated with the capacity (Contract Excess Capacity) of the Initial Generating Facilities resulting from subtracting for a specified period from the total capacity of the Initial Generating Facilities the amount of capacity reserved for AMPO during such period, including AMPO's contribution to required generating reserves in the Initial Generating Facilities (herein called either AMPO's Capacity Reservation or AMPO Capacity Reservation), provision to be made in such Station Agreement that OPCO shall be entitled to take and avail itself of (1) all of the energy in the Initial Generating Facilities associated with the Contract Excess Capacity and, in addition, (2) all energy which, during any hour in question, shall not be availed of by AMPO pursuant to its capacity entitlement based on its then effective AMPO Capacity Reservation duly reserved by AMPO for sale by AMPO at wholesale to customers of AMPO, including AMPO Members, and all other energy available in such hour in such Initial Generating Facilities;

(b) the supply by OPCO, at its option, in lieu of the payment of that portion of the energy

charge which represents the cost of fuel, of fuel in adequate quantity to provide necessary fuel stocks and quality to generate in the Initial Generating Facilities the energy taken by OPCO which is associated with the Contract Excess Capacity;

(c) the supply by OPCO of Back-up Power from its own generating plants (and/or those of a subsidiary company or other affiliate of OPCO) for the purpose of firming up for AMPO and its AMPO Members such of the capacity as shall have been acquired by AMPO from, or constructed for the account of AMPO by, CSOE or OPCO and is scheduled from time to time for delivery by or on behalf of AMPO to the AMPO Members from the Initial Generating Facilities, the energy associated with such Back-up Power to be supplied to be paid for by AMPO at rates initially specified in the Station Agreement, and from time to time changed in accordance with the procedures to be set forth in the Station Agreement;

(d) the use by OPCO of its best efforts to facilitate the purchase by AMPO from time to time of such supplies of fuel as may be required by AMPO to generate the energy associated with the

capacity in the Initial Generating Facilities scheduled from time to time for delivery by or on behalf of AMPO to AMPO Members;

(e) the supply by OPCO to AMPO from time to time under the AMPO-OPCO Interconnection Agreement of such emergency service, short-term power, limited-term power, and such other types of power and electric service as shall be referred to therein, and as OPCO shall determine is available to it from its own system and from third parties (including any such power made available to OPCO by AMPO through one or more AMPO Members for the benefit of one or more of the other AMPO Members), and as OPCO and AMPO mutually agree shall be sold to AMPO for use by AMPO for the purpose of supplying power required by the AMPO Members and the payment by AMPO to OPCO for the power and electric service so supplied by OPCO of such rates and charges as shall initially be specified in the applicable schedule of OPCO and from time to time thereafter changed in the manner specified in such schedule or in the AMPO-OPCO Interconnection Agreement;

(f) an undertaking by AMPO to cause such of the AMPO Members as shall at any time be interconnected, directly or indirectly, with facilities

of OPCO to take such actions as shall be necessary to provide for the synchronous operation, in conformity with procedures specified from time to time by OPCO, of generating units owned by such participants with the Initial Generating Facilities and with CSOE's and OPCO's generating units; and

(g) such other terms as shall initially be mutually agreeable to OPCO and AMPO and those terms (whether or not mutually agreeable to AMPO and OPCO) which shall from time to time thereafter result from changes, with or without accompanying changes in the terms referred to above in this Article Two, (i) by mutual agreement of OPCO and AMPO or (ii) in the absence of such agreement, by action of regulatory authority having jurisdiction pursuant to applicable provisions of law upon unilateral filings to the extent permitted by law by OPCO or AMPO, as the case may be, of complaints and/or superseding terms, including superseding rates for power and energy supplied by the filing party to the other and power and energy supplied to the filing party by the other (provided, however, that no party to

this Agreement may seek to change AMPO's generating reserve responsibility as provided for in Section 2.1(V) hereof during the first three years of operation of the Initial Generating Facilities), or (iii) by action taken by any regulatory authority or other tribunal specified in the Station Agreement.

2.2 In the event that it is determined, pursuant to the provisions of Section 1.3(b) of this Agreement, that AMPO shall become the owner of Initial Generating Facilities (other than Poston Unit No. 5 or Poston Units No. 5 and 6) to be constructed by or on behalf of AMPO and to have an aggregate capability, upon completion of construction, of not less than 600 MW (net), but not more than 1300 MW (net), OPCO and AMPO shall use their best efforts following the identification, acquisition and approval of the site, and establishment of basic design characteristics of the generating and related facilities) to negotiate mutually agreeable terms of, and then to execute and deliver, a Station Agreement conforming as nearly as practicable in the light of the differences in location, the size of the facilities, the period of construction, and the anticipated date of commercial operation, to the principles and terms outlined in Section 2.1 of this Agreement.

2.3 AMPO, CSOE and OPCO shall also, concurrently with the negotiation of the Station Agreement contemplated by this Agreement, use their best efforts to negotiate mutually agreeable terms of a Power Delivery Agreement, having an effective date coincident with the effective date of the Station Agreement, among AMPO, CSOE, OPCO, and such other electric light companies as desire to enter into such Power Delivery Agreement, such Power Delivery Agreement having a term of ten or more years (but not more than 50 years) and conforming as to its principles to the power delivery agreement which relates to the Buckeye Project (Buckeye Power Delivery Agreement) except (I) that the transmission and delivery charge rate for each year will be determined on the basis of the product of (i) the then current average dollar per kilowatt investment of CSOE and OPCO in transmission and delivery facilities, determined as provided in the Power Delivery Agreement on the basis of the combined OPCO and CSOE internal loads (exclusive of loads supplied directly from generating stations), the total Buckeye load and the AMPO capacity entitlement in the Initial Generating Facilities, and (ii) a then current annual carrying charge rate of CSOE and OPCO, determined in the manner specified in the Power Delivery Agreement, such transmission and delivery charge rate to be subject to annual adjustments, if required, pursuant to a mutually agreeable formula contained in the

Power Delivery Agreement, (II) the transmission and delivery charges to be payable by AMPO will be determined by applying from time to time the transmission and delivery charge rate to AMPO's then current kilowatt capacity entitlement in the Initial Generating Facilities, (III) such adjustments shall be made as are necessary to reflect the inclusion of such electric light companies in Ohio as agree to participate in, and the exclusion of such electric light companies in Ohio as do not agree to participate in, the Power Delivery Agreement, (IV) provision will be made under which, if AMPO shall subsequently acquire generating facilities or an interest therein in addition to the Initial Generating Facilities, delivery of power generated by such facilities will, to the extent practicable, be made to delivery points established and to be established under the Power Delivery Agreement or, if not practicable under the Power Delivery Agreement, CSOE and OPCO will use their best efforts to effect, under the AMPO-OPCO Inter-connection Agreement or otherwise, other arrangements for such delivery, and (V) appropriate recognition will be given in the Power Delivery Agreement to the possibility that transmission services may be rendered from time to time by OPCO under the AMPO-OPCO Interconnection Agreement while, during the same period or periods, transmission and delivery services are being furnished under the Power Delivery Agreement. The Power Delivery Agreement shall provide for:

(a) the delivery by CSOE and OPCO over their transmission facilities of a capacity of 138,000 volts or more (Bulk Transmission Facilities), to points of delivery within the State of Ohio established in the manner mutually agreed upon and set forth in such Power Delivery Agreement, of the power (and the energy associated therewith) to which AMPO shall from time to time be entitled under the Station Agreement for the purpose of delivery to AMPO Members provided that neither CSOE nor OPCO shall in any case be required to establish any such point of delivery where the initial demand at such point of delivery shall be less than 1,500 kilowatts; provided that in no case shall CSOE or OPCO, unless it otherwise elects, be required in establishing any delivery point to provide any additions to its Bulk Transmission Facilities, or to any of its other facilities, including the construction or installation of any connecting span or spans of conductors to the facilities of AMPO, or of any AMPO Member, and provided further that AMPO shall agree in such Power Delivery Agreement to cause AMPO Members to provide at the cost and expense of AMPO, and/or such AMPO Members, such transmission, subtransmission, substation, distribution equipment and other facilities as may be necessary to establish each such delivery point; provided further that, where existing loads are transferred to a newly established delivery point from an existing delivery

point, AMPO shall compensate CSOE or OPCO, as the case may be, for any unamortized investment in its transmission facilities previously used in serving such existing delivery point;

(b) the delivery, in the case of AMPO Members the distribution facilities of which are now directly interconnected with facilities of CSOE or OPCO, by CSOE or OPCO over their existing transmission and distribution facilities to the existing points of interconnection with such distribution facilities of power (and the energy associated therewith) to which AMPO shall from time to time be entitled under the Integration Agreement and which AMPO delivers to such AMPO Members;

(c) the payment by AMPO to CSOE and OPCO for the transmission and delivery of power and energy pursuant to the Power Delivery Agreement - it being an objective of AMPO which CSOE and OPCO agree to use their best efforts to evolve if electrical connections are established, directly or indirectly, between the Initial Generating Facilities and the respective delivery points of the AMPO Members, to provide for a "postage stamp" rate, rather than a series of rates which vary with geographical distances and other factors for such transmission and delivery service - at such rates as shall initially be specified in the Power Delivery

Agreement, and from time to time thereafter changed in the manner specified in the Power Delivery Agreement;

(d) the use by OPCO of its best efforts to consult with, and to cooperate with and advise, AMPO in the development or utilization of a bulk transmission network within the State of Ohio (not involving the wasteful duplication of facilities and consistent with appropriate steps for the protection of man's environment) suitable for the delivery of power and energy to load centers of the Ohio municipal systems and the attainment of economies of scale and low cost, reliable electric service, all to the end that AMPO and its AMPO Members can, throughout the State of Ohio, compete with other electric systems in the State of Ohio for such electric business as is therein subject to competition; and

(e) such other terms as shall initially be mutually agreeable to AMPO, CSOE and OPCO and the participants which then become parties to the Power Delivery Agreement and as shall from time to time thereafter be changed, with or without accompanying changes in the terms referred to in the foregoing provisions of this Section 2.3, (i) by mutual agreement of CSOE, OPCO and AMPO, or (ii) in the absence of such agreement, by action of regulatory authority having jurisdiction pursuant to applicable law upon unilateral filings by CSOE or OPCO of superseding terms, including

superseding rates for the transmission and delivery of power and energy, or upon complaint filed by AMPO, or (iii) by action taken by any regulatory authority or other tribunal specified in the Power Delivery Agreement.

ARTICLE THREE

PROPOSED LEGISLATION AND AMENDMENT TO CONSTITUTION OF OHIO

3.1 Each of the parties hereby agrees that such party will use its best efforts to support and, to the extent permitted by law, urge the adoption in the State of Ohio of an amendment to the Constitution of Ohio and legislation in, or substantially like, the proposed forms of constitutional amendment and legislation set out in Appendix No. 7.

ARTICLE FOUR

MISCELLANEOUS

4.1 The parties hereto recognize that the AMPO-OPCO Interconnection Agreement, this Agreement, the Station Agreement, the Power Delivery Agreement, and any tariff or rate schedule which shall embody or supersede any such instrument or any part thereof, are or may in certain respects be subject to the jurisdiction of SEC, The Public Utilities Commission of Ohio, and FPC, and are subject to such lawful action as any regulatory authority having jurisdicti n

shall hereafter take with respect thereto. The performance of any obligation of any party hereto or thereto shall be subject to the receipt from time to time as required of such authorizations or approvals of regulatory authorities having jurisdiction as shall be required by law. The parties also agree, however, that (1) in connection with any proceeding, however initiated, relating to this Agreement, the Station Agreement or the Power Delivery Agreement, the standards expressed in FPC v. Sierra Pacific Power Co., 350 U.S.348 (1956), and United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), insofar as they might otherwise be deemed to be applicable and to preclude in this instance unilateral filings by any party to such instruments of superseding schedules, shall not apply, and (2) that the parties have bargained at arm's length in good faith and on equal terms for economic benefits and burdens to each party which are closely inter-related and which produce an overall result which is considered by the parties to be just and reasonable and not discriminatory, preferential or otherwise unlawful under any applicable standards of law. In recognition of these two mutually recognized propositions, the parties agree that, if any governmental agency or court having jurisdiction to do so modifies this Agreement in a manner which alters the economic benefits flowing to, or the burdens imposed on, any party, the parties shall forthwith undertake renegotiation of this

Agreement in order to achieve such modifications as are necessary to restore the overall economic benefits and burdens to each party to the levels provided for in this Agreement as originally executed. No party shall be required to renegotiate before the modifications ordered or required by any such agency or court have become binding or effective. If, at any point, any party concludes that such renegotiations have failed to produce, or will fail to produce, the objective of restoring economic benefits and burdens to the levels originally provided for, such party may institute arbitration proceedings in accordance with Section 4.2 hereof, such arbitration being limited to the means by which the restoration of the originally provided for economic benefits and burdens should be accomplished and not to any issues as to whether such restoration should take place.

4.2 Any controversy, claim, counterclaim, defense, dispute, difference or misunderstanding arising out of or relating to this Agreement, or the breach hereof, shall be before three arbitrators all of whom shall be appointed upon application by any party to the arbitration proceeding, and upon written notice to the other parties, to the person who is the senior acting judge of the United States Court of Appeals for the 6th Judicial Circuit, provided, however, that if, for any reason, there shall be no such senior acting judge or if such a senior acting judge shall fail,

within thirty (30) days after such application, to make such appointment, then the three arbitrators shall be appointed by the American Arbitration Association. The arbitration proceeding shall be conducted in accordance with the Rules of the American Arbitration Association then in effect, and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties expressly agree that this provision shall constitute a condition precedent to the institution of any proceeding in any court relating to the subject matter hereof, provided, however, that nothing herein contained shall (a) preclude, or be deemed to preclude, any party to this Agreement from taking action contemplated by this Agreement before, or making such filings with, any regulatory authority having jurisdiction with respect to any term or condition of this Agreement or of the Station Agreement or the Power Delivery Agreement as such party shall deem appropriate, or (b) require, or be deemed to require, any such party to institute, or complete, an arbitration proceeding under this Section 4.2 prior to the taking of such action before, or the making of such filing with, any such regulatory authority or the seeking of judicial review of any decision of such regulatory authority.

4.3 AMPO agrees that it will support OPCO's request to FERC that Service Schedule E, Appendix No. 8 to this Agreement, upon its filing, be permitted to become effective without any suspension or modification.

4.4 The failure of any party hereto to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of its rights hereunder, shall not be construed as a waiver of any such provisions, or the relinquishment of any such rights, but the same shall continue to remain in full force and effect.

4.5 (a) Neither CSOE, OPCO nor AEP shall be held responsible or liable for any loss or damage to AMPO or any AMPO Member on account of its failure to perform any obligation to be performed by it hereunder at any time, caused by Act of God, fire, flood, explosion, strike, civil or military authority, governmental action or inaction, insurrection or riot, enemy attack, malicious mischief, act of the elements, failure of equipment, or any other cause beyond its control; provided, however, that CSOE, OPCO or AEP, as the case may be, shall use its best efforts to resume with utmost dispatch the performance of any obligation hereunder, the performance of which is excused by this subsection.

(b) AMPO shall not be held responsible or liable for any loss or damage to CSOE, OPCO or AEP on account of its failure to perform any obligation to be performed by it hereunder at any time, caused by Act of God, fire, flood,

explosion, strike, civil or military authority, governmental action or inaction, insurrection or riot, enemy attack, malicious mischief, act of the elements, failure of equipment, or any other cause beyond its control; provided, however, that AMPO shall use its best efforts to resume with utmost dispatch the performance of any obligation hereunder, the performance of which is excused by this subsection.

4.6 This Agreement shall not be assigned by any party, except to a successor to substantially all of its assets, property and business, without the prior written consent of the other parties hereto. It is further expressly stipulated and provided that no assignment by any party to any other person or [illegible] of any of the rights or interests of such party under this Agreement shall have the effect of relieving such party from full liability and financial responsibility for performance (both before and after any such assignment) of all the obligations and duties herein provided and imposed upon such party. Subject to the foregoing provisions of this Section, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

4.7 It is understood and agreed by the parties hereto that if any one or more provisions contained herein shall be finally determined by any court of competent

jurisdiction to contravene, or be invalid under, any applicable provision of law, such contravention or invalidity shall not invalidate this Agreement.

4.8 This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein, and the parties agree that it replaces in all respects the special terms and conditions in the Settlement Proposal. If for any reason the Acquisition Date specified in Section 1.2 of this Agreement shall not have occurred before September 30, 1980 then and in that event this Agreement shall, on and after September 30, 1980, terminate. This Agreement shall in any event terminate on the last to occur of the execution and delivery of the Station Agreement and the Power Delivery Agreement and the date of initial commercial operation of the Initial Generating Facilities.

4.9 All notices under this Agreement shall be in writing and, if to AMPO, shall be sufficient in all respects if delivered in person to its President or Executive Manager, or sent by registered mail or certified mail addressed to it at its office at 1500 W. Lane Avenue, P. O. Box 5815, Columbus, Ohio 43221, or at any subsequent address of which AMPO may notify the other parties hereto in writing; if to OPCO or to AEP, shall be sufficient in all respects if delivered in person to the Chairman or the President of either, or sent by

registered mail or certified mail addressed to AEP, at its office at 2 Broadway, New York, New York 10004, Attention of the Chairman, or any subsequent address or addresses of which OPCO or AEP may notify the other parties hereto in writing; and, if to CSOE, shall be sufficient in all respects if delivered in person to its President or sent by registered mail or certified mail addressed to it at its office at 215 North Front Street, Columbus, Ohio 43215, or any subsequent address of which CSOE may notify the other parties in writing.

4.10 Except for Section 1.1, Article 3 and Section 4.3, which shall become effective on the date of execution of this Agreement, this Agreement shall become effective, when the last of the events specified in (a) and (b) below have occurred:

(a) AMPO has been advised by a financial adviser or advisers, or the managing underwriters of a group of investment bankers which propose to manage an offering of securities of AMPO to the public, satisfactory to OPCO, that it would be feasible, in the judgment of such adviser or advisers, for AMPO to secure on reasonable terms, as a result of the completion of the details of the financial plans of AMPO described in Appendix No. 4, the capital necessary to pay for the cost of constructing, and to provide necessary

working capital for the operation of, the Initial Generating Facilities;

(b) an order shall have been issued by SEC under the 1935 Act making the determinations referred to in Section 1.1 of this Agreement and authorizing AEP to acquire common shares of CSOE shall have been issued containing no condition unacceptable to AEP and the time within which any aggrieved person might appeal therefrom shall have expired so that the SEC order shall have become, prior to action thereunder, a final order under the 1935 Act and all other requisite regulatory authorizations shall have been received.

Each party hereto will use its best efforts to take or cause to be taken all action requisite to the end that the foregoing events shall occur and that this Agreement shall become effective as provided in this Section 4.10 at the earliest practical date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized as of the date first above written.

AMERICAN MUNICIPAL POWER-OHIO, INC.

By /s/ William J. Lyren
(Authorized Officer)

COLUMBUS AND SOUTHERN OHIO
ELECTRIC COMPANY

By /s/ Ben T. Ray
(Authorized Officer)

OHIO POWER COMPANY

By /s/ C. A. Heller
(Authorized Officer)

AMERICAN ELECTRIC POWER COMPANY, INC.

By /s/ W. S. White, Jr.
(Authorized Officer)

APPENDIX NO. 1

AGREEMENT

between

AMERICAN MUNICIPAL POWER-OHIO, INC.

and

OHIO POWER COMPANY

Dated as of April 1, 1974

0.01 AGREEMENT, dated as of April 1, 1974, between American Municipal Power-Ohio, Inc. ("AMP-Ohio"), an Ohio corporation not for profit, and Ohio Power Company ("Ohio Power"), an Ohio corporation.

0.02 Ohio Power owns and operates, inter alia, facilities for the generation, transmission and distribution of electric power and energy in the State of Ohio, and is a part of the integrated American Electric Power System. AMP-Ohio does not, at the date of this Agreement, own or operate any facilities for the generation, transmission or distribution of electric power and energy, but has been organized to own and operate facilities for such purpose, and to furnish technical services, and such facilities to be owned and operated, and such services furnished, by AMP-Ohio on a cooperative non-profit basis for the mutual benefit of its Patrons, such Patrons being, and to be electric systems owned and operated by municipal corporation of the State of Ohio.

0.03 Although AMP-Ohio does not, at the date of this Agreement, own or operate any facilities for the generation or transmission of electric power and energy, it proposes from time to time in the future, until such

time as it acquires and/or constructs facilities of its own, to achieve, for the municipal electric systems which are from time to time its Patrons, benefits derived from economies of scale, and the coordination of programs and operations of its Patrons, by providing under this Agreement for (i) the transmission from time to time of quantities of electric power and energy from points where bulk transmission facilities of Ohio Power interconnect with facilities of AMP-Ohio or of Patrons of AMP-Ohio, or with points where bulk transmission facilities of other electric systems, to Delivery Points to be established as provided in this Agreement, (ii) the supply by one of the parties to this Agreement to the other party, or for the account of the other party, from time to time of emergency service, and (iii) the supply by one of the parties to this Agreement to the other party, or for the account of the other party, from time to time of short-term power and energy, and limited term power and energy, on the terms herein provided. Under the foregoing conditions the systems of the Patrons of AMP-Ohio shall,

except as otherwise specifically provided in this Agreement be deemed to be the system of AMP-Ohio, and AMP-Ohio is to take such action as shall be necessary to cause each of the municipal corporations, the electric systems of which are Patrons of AMP-Ohio, to participate in transactions provided for in this Agreement and to so operate their systems as to comply with respect to such transactions with the obligations which AMP-Ohio hereby assumes;

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1.01 As used in this Agreement, the following terms shall have, unless the context specifically requires another meaning, the respective meanings set forth below:

1.01.01 Allowable Inadvertent Power means, at any time in question, the maximum amount of inadvertent power receipts, and the energy associated therewith which either party to this Agreement (each Patron of AMP-Ohio being considered a separate party for such purpose)

may incur without being required to make to the other party the payments specified in Section 4.02 of this Agreement.

1.01.02 AMP-Ohio means American Municipal Power-Ohio, Inc., one of the parties to this Agreement.

1.01.03 Delivery Point means, at any time in question, a Delivery Point to which Ohio Power shall effect delivery of power and energy to AMP-Ohio, or to a Patron of AMP-Ohio for the account of AMP-Ohio, pursuant to any Schedule, or Supplemental Schedule, established pursuant to the provisions of this Agreement, and the Delivery Points shall mean, at any time in question, all of the Delivery Points previously established and then existing for transactions then scheduled under this Agreement.

1.01.04 Interconnection Point means, at any time in question, a point where Bulk Transmission Facilities of Ohio Power interconnect with facilities of Patrons of AMP-Ohio, or, in connection with any transaction then

scheduled under the provisions of this Agreement for the transmission of power and energy by Ohio Power from other electric systems, a point where the Bulk Transmission Facilities of Ohio Power interconnect with bulk transmission facilities of such other electric systems and the Interconnection Points shall mean, at any time in question, all of the Interconnection Points previously established and then existing for transmission transactions then scheduled under this Agreement.

1.01.05 Out-of-pocket cost means, with respect to the supply of energy and/or power under this Agreement, all operating, maintenance, tax, and other expenses incurred, as of the Delivery Points with respect to transactions under this Agreement, and taking into account transmission losses, if any, which would not have been incurred if the energy had not been supplied or the power had not been provided.

1.01.06 Ohio Power means Ohio Power Company, one of the parties to this Agreement.

1.01.07 Patron means, at any time in question a then existing member of AMP-Ohio which is at such time a duly constituted department, board or agency of a municipal corporation of the State of Ohio which owns and operates an electric distribution system within the State of Ohio.

1.01.08 System shall mean (i) with respect to Ohio Power, the transmission facilities of a capacity of 138,000 volts or more (Ohio's Bulk Transmission Facilities) owned and operated by Ohio Power within the State of Ohio and, in addition, in the case of Patrons of AMP-Ohio, the distribution facilities of which are, at the date of this Agreement, directly connected with facilities of Ohio Power, such additional transmission and distribution facilities of Ohio Power as are connected with such distribution facilities of such Patron (to the extent in the case of such additional facilities of Ohio Power that

the capacity of such facilities is not used by Ohio Power to supply customers of Ohio Power other than AMP-Ohio or such Patron) and (ii) with respect to AMP-Ohio, any facilities owned or operated at any time in question by AMP-Ohio which are connected to facilities of Ohio Power and, in addition, all transmission and/or distribution facilities of each Patron of AMP-Ohio which are, for any purpose of this Agreement, connected at the time in question to the System of Ohio, either at an Interconnection Point or at a Delivery Point. AMP-Ohio shall, with respect to all facilities of each Patron constituting at any time in question a part of the System of AMP-Ohio, cause such Patron to so operate such facilities of such Patron, and to make such payments, as to comply in all respects with the obligations which AMP-Ohio assumes pursuant to this Agreement.

ARTICLE 2

INTERCONNECTED OPERATION

2.01 The Systems of the parties shall be operated in continuous synchronism during such periods of time as such Systems are interconnected at one or more Interconnection

Points and/or one or more Delivery Points, and throughout the duration of any transaction scheduled to be effected pursuant to the terms of this Agreement.

ARTICLE 3

SERVICES TO BE RENDERED

3.01 Inasmuch as they may vary from time to time, the specific services to be rendered hereunder, and the terms and conditions applicable thereto, shall be set forth in Schedules, or in Supplemental Schedules, from time to time agreed upon by the parties to this Agreement, each such Schedule or Supplemental Schedule, upon the execution and delivery by the parties to this Agreement of an instrument in writing reflecting such agreement and upon the completion of any action required by or before regulatory agencies having jurisdiction over this Agreement or any transaction contempl by such Schedule or Supplemental Schedule, to become a part this Agreement; provided, however, that nothing contained in Section 3.01 is intended to qualify or modify any of the ter provisions contained in Article 11 or in any Schedule of thi Agreement, nor shall action or agreement pursuant to this Se 3.01 be construed to be a condition precedent to action by a party in accordance with Article 11 or any Schedule of this Agreement, it being the express intention and understanding the parties that any party shall have the right, unilateral to take any action permitted or contemplated by Article 11 any Schedule to this Agreement.

3.02 The following Schedules attached hereto are hereby agreed upon:

Schedule A - Transmission Service

Schedule B - Emergency Service

Schedule C - Short Term Service

Schedule D - Limited Term Service

ARTICLE 4

SERVICE CONDITIONS

Avoidance of Burdens

4.01 Each party shall provide facilities and/or contractual arrangements adequate to serve its own load, including in the case of AMP-Ohio the load of each Patron of AMP-Ohio then participating in one or more transactions under this Agreement, and shall exercise reasonable care to design, construct, maintain, and operate, or to cause to be designed, constructed, maintained and operated, the facilities comprising its System, in accordance with good utility operating practice, in such manner as to avoid imposing any burden on the other party's System through the unauthorized utilization of transmission facilities or otherwise (hereinafter referred to as "Burden"). Any party may install and

stem such relays, disc necting
r equipment as it may deem appropriate
n of its System or to relieve a Burden

tent that it may legally do so, each
nsents that suit may be brought against
performance of its obli tions under this
i) waives all defenses in any such suit
nse that it is not in default in the per-
obligations, and (iii) stipulates that
st it in any such suit shall, in addi-
remedies such judgment may afford,
payment by it to the other party of an
$1.00 multiplied by t number of kilo-
vars and the number of months, if any, of
judgment finds it has imposed; provided,
thout limiting in any way any other
ich either party may have under any
s Agreement, neither party shall bring
e other party seeking such a money judgme
ty shall first notify such other party in
alleged Burden and afford such other part

a reasonable opportunity during a period of not more than 30 days to eliminate such Burden.

Control of Inadvertent Power and Energy

4.02 The parties shall take all steps necessary to minimize inadvertent deliveries and receipts of electric power and energy, it being specifically recognized that either party shall be entitled at any time, and from time to time, to take in this connection action of the type contemplated by Section 4.04 of this Agreement. The parties recognize, however, that, despite their best efforts to prevent it, unscheduled flows of energy may occur. In such event, (unless the parties shall mutually agree that (i) an emergency has occurred, and (ii) a delivery of Emergency Power and Emergency Energy shall be scheduled pursuant to the provisions of Service Schedule B to this Agreement) settlement shall be made by return of a like amount of electric energy within a reasonable period, at times when load conditions in the sender's System are comparable to the load conditions which existed at the time when such event occurred.

In addition, if either party operates its System in such a manner as to incur inadvertent power

receipts, at any time, in excess of 5% of the maximum electric system demand (herein called "Allowable Inadvertent Power") registered on the System of such party (each Patron of AMP-Ohio being considered, for the purpose of this Section 4.02, a separate party) during the period of 12 months immediately preceding the time in question, resulting from the failure of such party to provide sufficient generating capacity either through installation of generating facilities on its own System and/or by contractual arrangements, thereby causing a burden on the generating resources of the other party, the deficient party shall make payments to the burdened party on the basis of the following rates:

Demand Charge:

For each kilowatt in excess of the Allowable Inadvertent Power, plus the kilowatts which equal the Allowable Inadvertent Power, at the rate of $6.00 for each calendar month in which such an excess occurs.

Energy Charge:

For each kilowatt-hour associated with each kilowatt in excess of the Allowable Inadvertent Power, plus those kilowatt-hours associated with the Allowable Inadvertent Power, at the rate of 17.5 mills per kilowatt-hour.

Control of Reactive Power Exchange:

4.03 No party shall be obligated to deliver reactive power for the benefit of any other party. No party shall be obligated to receive reactive power when to do so might introduce objectionable operating conditions on its System Subject to the foregoing, the parties shall establish, through the Operating Committee, from time to time (a) voltage levels to be maintained, and (b) operating procedures for establishing and maintaining an equitable distribution of reactive power generation.

Interruption of Service

4.04 Any service being provided under this Agreement may be interrupted or reduced, (a) by operation of automatic equipment installed for power system

protection, (b) after consultation with the affected party if practicable, at any time that a party deems it desirable for installation, maintenance, inspection, repairs, or replacement of equipment, (c) at any time that in the judgment of the interrupting party such action is necessary to preserve the integrity of, or to prevent or limit any instability on, or to avoid a burd on, its System, or to prevent the inadvertent delivery of power in excess of Allowable Inadvertent Power, or (d at any time that the party receiving such service is in default for more than 45 days in the payment of any bil rendered hereunder. Otherwise each party shall exercis reasonable care to maintain the continuity of all servi provided under this Agreement.

ARTICLE 5

CHARACTERISTICS OF ELECTRIC ENERGY, DELIVERY POINTS, INTERCONNECTION POINTS, METERING POINTS AND METERING

Characteristics of Electric Energy

5.01 All electric energy delivered under th Agreement shall be of the character commonly known as three-phase sixty Hz energy.

Delivery Points

5.02 The parties hereto recognize that, since no Delivery Point has yet been established under this Agreement, and since neither AMP-Ohio nor Ohio Power are now familiar with the characteristics of any load which AMP-Ohio and Ohio Power will mutually agree should be supplied pursuant to the terms of this Agreement, it is agreed that each future Delivery Point shall be established only at a location, and upon terms and conditions, mutually agreed upon in each case by AMP-Ohio and Ohio Power; provided, however, that (i) in no case shall a Delivery Point be established where the initial demand at such point of delivery shall be less than 1500 kilowatts, (ii) in each case, unless otherwise agreed to by Ohio Power, delivery shall be effected from the Bulk Transmission Facilities of Ohio Power, (iii) in each case AMP-Ohio shall, or shall cause the Patron which requires such new Delivery Point to, construct, own and maintain the necessary substation equipment, including such control switching and protective equipment as the established practice of Ohio Power requires at similar locations on its System, and (iv) in no case shall Ohio Power, unless it otherwise elects, be required in establishing any Delivery Point to provide any additions to its Bulk Transmission Facilities, or to any of its other facilities, including the construction or installation

AMP-Ohio shall, or shall cause the Patron which requires such Interconnection Point to, construct, own and maintain the necessary equipment required, in the opinion of Ohio Power, to connect facilities of AMP-Ohio, or such Patron, or another electric system, to the Bulk Transmission Facilities of Ohio Power, and (iii) in no case shall Ohio Power, unless it otherwise elects, be required in establishing such Interconnection Point to provide any additions to its Bulk Transmission Facilities, or to any of its other facilities, including the construction or installation of any substation equipment or any connecting span or spans or conductors from the facilities of AMP-Ohio or from the facilities of any such Patron of AMP-Ohio, or otherwise.

Metering Points

5.04 Electric power and energy delivered under this Agreement shall be measured by metering equipment at such points and voltages as may be agreed upon by the parties.

Metering

5.05 Metering at Interconnection Points and/or Delivery Points shall be compensated for losses from the Interconnection Points, and to the Delivery Points, whenever requested by any party. The timing devices of all meters having such devices shall be maintained in time synchronism as closely as practicable. The meters shall be sealed, and the seals shall be broken only when the meters are to be tested or adjusted. For the purpose of checking the records of the metering equipment installed by any party any other party may install check metering equipment. Metering equipment so installed by one party on the premises of another party shall be owned and maintained by the party installing such equipment. Upon termination of this Agreement the party owning such metering equipment shall remove it from the premises of the other party. Authorized representatives of the parties shall have access at all reasonable hours to the premises where the meters are located and to the records of the meter readings.

Meter Tests

5.06 The metering equipment shall be tested by the owners at suitable intervals and its accuracy of

registration maintained in accordance with good practice. At the request of any party, a special test shall be made, but if less than one percent inaccuracy is found, the requesting party shall pay for the test. Representatives of the parties may be present at all routine or special tests and whenever any readings for purposes of settlement are taken from meters not having an automatic record. If any test of metering equipment discloses an inaccuracy exceeding one percent, the accounts of the parties shall be adjusted for the period, not exceeding 30 days, that such inaccuracy is estimated to have existed. Should any metering equipment fail to register, the amounts of energy delivered shall be estimated from the best available data.

ARTICLE 6

RECORDS

6.01 The parties shall keep such records as may be needed to afford a clear history of all transactions under this Agreement. The originals of all such records shall be retained by the party keeping the records and copies shall be delivered to the other party to this Agreement upon request.

ARTICLE 7

BILLING AND PAYMENT

7.01 Unless otherwise agreed upon, the calendar month shall be the standard period for all settlements under this Agreement. As soon as practicable after the end of each billing period, the parties shall cause to be prepared a statement showing the transactions during such period in such detail as may be needed for settelements under this Agreement.

7.02 All bills under this Agreement shall be rendered by the 10th day of the month next following the period to which they are applicable, or as soon thereaftur as practicable, and shall be due and payable by the 15th day of that month or 10 days after receipt of the bill, whichever is later. Interest on unpaid amounts shall accrue at the then current prime rate per annum of First National City Bank, of New York City, plus 2% from the date due until the date paid.

ARTICLE 8

OPERATING COMMITTEE

8.01 To coordinate operations in order to carry out the terms of this agreement the parties shall

appoint an Operating Committee consisting of two members one of whom shall be appointed by Ohio Power and one by AMP-Ohio. Each party by notice to the other party shall appoint its member and an alternate to act in his absence and may change either by similar notice. The unanimous agreement of its members shall be required for all decisions of the Operating Committee.

ARTICLE 9

LIABILITY

9.01 Each party shall, except as otherwise provided in this Article 9, save harmless the other party from any and all claims, liability, and expense arising out of any bodily injury, death, or damage to property (other than bodily injury, death, or damage t property proximately caused by any such other party or its servants or employees) resulting from the operatic by such indemnifying party of its own System and facil ties (including in the case of AMP-Ohio the facilitie of any Patron of AMP-Ohio) except that Ohio Power sha be responsible for all claims of its own employees, agents, and servants under any workman's compensation law or similar law, and except that AMP-Ohio shall be

responsible for all claims of its own employees, agents and servants, and the employees, agents and servants of its Patrons, under any workmen's compensation law or similar law.

9.02 AMP-Ohio recognizes that, in the special circumstances of this Agreement, since it does not now operate any facilities for the generation, transmission and/or distribution of electric power and energy, special arrangements are warranted to protect Ohio Power, and its customers and the holders of securities of Ohio Power, against any loss, damage or expense which may arise out of any event covered by the foregoing provisions of Section 9.01 of this Agreement, or any transaction for the transmission and/or delivery of power and energy by Ohio Power to AMP-Ohio, or for the account of AMP-Ohio, and to this end AMP-Ohio agrees that Ohio Power shall not be required to connect any of its facilities at any Delivery Point or at any Interconnection Point, or to undertake any transaction of transmission, or sale and delivery, of power and energy under this Agreement unless Ohio Power sha be satisfied that AMP-Ohio, or the Patron for the account

of which a Delivery Point and/or Interconnection Point is to be established, or a transaction is to be scheduled, is financially responsible for the charges which are to be paid by AMP-Ohio, or for its account, to Ohio Power under any of the provisions of this Agreement.

9.03 Each party will use reasonable diligence in furnishing any transmission or electric service to the other party, or for its account, under this Agreement but the supplying party does not guarantee that the supply of electric transmission or other electric service furnished to the other party will be uninterrupted, or that voltage and frequency will be at all times constant. Temporary interruptions of service by either party hereunder to the other party occasioned by fire, strike, casualty, accidents, outages, the making of repairs, replacements, or changes in the facilities of the supplying party, breakdowns of or injuries to facilities of the supplying party or facilities with which facilities of the supplying party are connected, in the sole judgment of the supplying party indicated in order to prevent or limit any instability or disturbance on the electric system of the supplying party, or any electric system interconnected with the supplying party, or which is occasioned by acts of public authorities, or acts of God, shall not, in any of such events

constitute a breach of the obligation of the supplying party under its agreement with the other party, and the supplying party shall not in any such case be liable to the other party for damages resulting from any such interruption of service.

ARTICLE 10

TERM

10.01 This Agreement shall continue, unless terminated earlier in the case specified in clause (ii) below, until December 31, 1978 and thereafter until the earlier of (i) the date when this Agreement shall be terminated as provided in Section 10.02 below, and (ii) the date when Ohio Power shall enter into a Station Agreement, and a Power Delivery Agreement, with AMP-Ohio pursuant to the Settlement Proposal, dated August 8, 1972, submitted by Ohio Municipal Electric Association, the City of Orrville, Ohio and American Electric Power Company, Inc. in the proceeding before the Securities and Exchange Commission in File No. 70-4596 under the Public Utility Holding Company Act of 1935.

10.02 Either AEP-Ohio or Ohio Power may terminate this Agreement on December 31, 1970 or any anniversary of said date by delivering to the other party a written notice (not less than 24 months prior to the date specified for the termination of this Agreement) specifying that this Agreement shall terminate on December 31, 1970 or on a specified anniversary of said date.

10.03 Either party may terminate any Schedule or Supplemental Schedule to this Agreement on any December 31 by delivering to the other party a written notice not less than 12 months prior to the date specified for the termination of said Schedule(s) or Supplemental Schedule(s).

ARTICLE 11

REGULATORY AUTHORITIES

11.01 The parties hereto recognize that this Agreement, and each Schedule and/or Supplemental Schedule to this Agreement, and any tariff or rate schedule which shall embody or supersede either, are in certain respects subject to the jurisdiction of the Federal Power Commission under the Federal Power Act, and are also subject

to such lawful action as any regulatory authority having jurisdiction shall hereafter take with respect thereto. The performance of any obligation of either party hereto shall be subject to the receipt from time to time as required of such authorizations, approvals or actions of regulatory authorities having jurisdiction as shall be required by law.

11.02 Each of the parties hereto agrees to pay to the other party hereto for transmission and electric service furnished to AMP-Ohio by Ohio Power, and, in the case of Ohio Power, for electric service furnished to Ohio Power by AMP-Ohio, or, in either case, electric service furnished for the account of another party and/or the charges specified in Section 4.02 of this Agreement, in accordance with the provisions of this Agreement, or any applicable Schedule or Supplemental Schedule, or any applicable superseding tariff or rate schedule(s) accepted for filing by such regulatory agency or agencies as shall have jurisdiction in the premises, each such Schedule or Supplemental Schedule, and any applicable superseding tariff or rate schedule(s) is incorporated herein by reference thereto, and service

under this Agreement, and/or under any such Schedule or Supplemental Schedule, or any such applicable superseding tariff or rate schedule(s) shall be subject to all of the provisions of this Agreement as the same may be changed or modified by any such Schedule, Supplemental Schedule or superseding tariff or rate schedule(s). It is expressly understood that any party hereto shall be entitled at any time and from time to time, to make application for, or to take other action, to submit for filing to any regulatory jurisdiction in the premises any tariff or rate schedule(s) designed to supersede, in whole or in part, any provision of this Agreement, or of any Schedule or Supplemental Schedule, or of any prior superseding tariff or rate schedule(s), applicable to any transmissi or electric service furnished by Ohio Power, or any electric service furnished by AMP-Ohio, under this Agreement to the other party to this Agreement.

ARTICLE 12

GENERAL

12.01 Any waiver at any time of any rights as to any default or other matter arising hereunder shall not be deemed a waiver as to any subsequent default or matter. Any delay, short of the statutory

period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

12.02 Neither party shall be liable for the failure of the other party to perform its obligations hereunder.

12.03 It is understood and agreed by the parties hereto that if any one or more provisions contained herein shall be finally determined by any court of competent jurisdiction to contravene, or be invalid under, any applicable provision of law, such contravention or invalidity shall not invalidate this Agreement, but this Agreement shall be construed as if not containing such provision or provisions and the rights and obligations of the parties shall be construed and enforced accordingly; provided, however, that no obligation other than those herein provided (except for changes in rates or charges) shall thereby be imposed on any party; and provided further that to the extent that any such provision or provisions shall constitute a part of any effective rate schedule, or terms and conditions thereof, on file with any regulatory agency having jurisdiction such provision or provisions shall remain in full force and

effect (i) unless and until modified by valid final order of such regulatory agency or (ii) unless and until such provision or provisions in such rate schedule, or terms & conditions thereof, shall be finally determined by any court of competent jurisdiction to contravene, or be invalid under, any applicable provisions of law. In the event that an occasion shall arise requiring that this Agreement be construed as if not containing a particular provision or provisions as aforesaid and the effect there shall be to impose on any party an obligation other than those herein provided (except for changes in rates or charges), the parties will negotiate in good faith to provide a substitute for such provision or provisions, but no such substitute shall be binding on either party unless stated expressly in a written document executed and delivered by each of the parties to this Agreement and filed with and accepted for filing by such regulator authorities as shall have jurisdiction.

12.04 This Agreement shall become effective on the date on which the last of the following events shall have occurred:

(a) This Agreement shall have been filed with, and accepted for filing without condition by, the Federal Power Commission under the Federal Power Act as a rate schedule under circumstances

where (x) the Federal Power Commission shall not have suspended this Agreement or any part thereof, and (y) the Federal Power Commission shall have issued an order under the Federal Power Act that all portions of this Agreement shall become effective as a rate schedule under the Federal Power Act on a date not later than ninety days subsequent to the issuance of such order;

(b) The expiration of a period which shall be equal to the longer of (i) the period between the date of the issuance of the order of the Federal Power Commission referred to in clause (a) above and a date sixty days after such date, and (ii) the period between the date of the issuance of such order and the date specified in such order pursuant to clause (a)(y) above;

(c) If the order of the Federal Power Commission referred to in clause (a) shall have been entered in a proceeding under the Federal Power Act in which any party or parties in addition to Ohio Power and AMP-Ohio participated, such order shall have become final and not subject to review, by direct proceedings or otherwise, under the Federal Power Act; and

(d) If proceedings to review the order referred to in clause (a) above shall have been initiated by any party, an order of a court of competent jurisdiction affirming such order in all respects shall have become final and not subject to further review.

Each party hereto will use its best efforts to take or cause to be taken all action requisite to the end that the foregoing events shall occur and this Agreement shall become effective as provided in this Section 12.04 at the earliest practicable date.

12.05 This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered herein except insofar as the Settlement Proposal, referred to in Section 10.01 of this Agreement shall relate to the subject matter of this Agreement. If for any reason one or more of the events specified in Section 12.04 of this Agreement shall not have occurred before December 31, 1974 then and in that event this Agreement shall not thereafter become effective pursuant to any provision of this Agreement or otherwise.

12.06 All notices under this Agreement shall be given to the party for whom it is intended in care

of Ohio Power's general office, in the case of Ohio Power, and in care of AMP-Ohio's general office, in the case of AMP-Ohio, or at such other address as such party shall theretofore have designated to the other.

12.07 The validity and meaning of this Agreement shall be governed by the laws of the State of Ohio.

ARTICLE 13

ASSIGNMENT

13.01 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. This Agreement shall not be assigned by AMP-Ohio or by Ohio Power without the written consent of the other.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be duly executed.

AMERICAN MUNICIPAL POWER-OHIO, INC.

By _____
President

OHIO POWER COMPANY

By _____
Executive Vice President

SERVICE SCHEDULE A

TRANSMISSION SERVICE

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - DURATION

1.1 This Service Schedule, a part of an agreement, dated as of April 1, 1974 (the Agreement) between American Municipal Power-Ohio, Inc. and Ohio Power Company shall become effective on the effective date of the Agreement and shall continue in effect until terminated as provided in the Agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 Ohio Power shall within the limits of the capacity of its bulk transmission facilities, and related facilities, of which Ohio Power shall be the sole judge, without undue interference with service to its customers (customers shall be deemed to include other interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with Ohio Power, including other members of the American Electr

Power System), and to the extent that such transmission does not, in the sole judgment of Ohio Power, impose a burden upon the System of Ohio Power, from time to time, upon (i) written request by AMP-Ohio for the reservation of transmission capacity for a period of not less than 12 consecutive calendar months, (ii) concurrence in such request by Ohio Power, (iii) the execution and delivery of a supplemental Schedule, as provided below, and (iv) concurrence by Ohio Power from time to time in the maximum amount reserved and the duration (not less than 12 consecutive calendar months for any single transmission service) of the service so requested to be reserved, transmit from an Interconnection Point established pursuant to such Supplemental Agreement, to a Delivery Point established pursuant to such Supplemental Agreement, power in an amount up to but not exceeding, the amount reserved, and the energy associated therewith, to AMP-Ohio, or to a Patron of AMP-Ohio for the account of AMP-Ohio. The Interconnection Point from which any such power and energy, after adjustment of losses from such Interconnection Point, shall be transmitted, and the Delivery Point to which such power, and the energy relating thereto, shall be transmitted, shall be established by mutual agreement between the parties to the Agreement, and the respective locations of said Interconnection Point, and said Delivery Point, shall be set forth in a

Supplemental Schedule to the Agreement, which shall also contain the arrangements, and the obligations which AMP-Oh is assuming, either directly or through one or more of its Patronm, in connection with the construction, operation an maintenance of the facilities necessary to provide such Interconnection Point and such Delivery Point and the sche uling from time to time of transmission between such point

SECTION 3 - COMPENSATION

3.1 AMP-Ohio shall, with respect to transmissi services which shall be reserved during any period of not less than 12 consecutive calendar months (the Reserved Period) under this Schedule, pay to Ohio Power monthly:

3.11 an amount calculated separately for each Interconnection Point equal to the product of (i) $1.00, and (ii) the maximum amount of kilo- watts which shall have been reserved (the Re- served Quantity) for transmission from such Interconnection Point during the Reserved Period; provided, however, that (a) if at any time during said Reserved Period (i) the amount of power and the energy associated therewith, actually received at such Delivery Point, (ii) plus losses thereon from the Interconnection Point for which such transmission service shall be so reserved, shall

exceed (iii) the actual amount of kilowatts delivered at said Interconnection Point, the excess of such kilowatts, and the energy related thereto, shall be deemed to be, and, if in excess of Allowable Inadvertent Power, shall be paid for by AMP-Ohio as, inadvertent power under Section 4.02 of the Agreement of which this Schedule is a part; and provided further that, if at any time during said Reserved Period (x) the actual amount of kilowatts delivered at said Interconnection Point shall exceed the Reserved Quantity at such interconnection Point, and (y) the amount actually received at said Delivery Point at such time, plus the losses thereon from such Interconnection Point, shall exceed the Reserved Quantity at such Interconnection Point, the excess of such kilowatts, and the energy related thereto, actually received at such Delivery Point, plus the losses thereon, over the Reserved Quantity at said Interconnection Point shall be deemed to be, and, if in excess of Allowable Inadvertent Power, shall be paid for by AMP-Ohio as, inadvertent power under

Section 4.02 of the Agreement of which this Schedule is a part;

3.12 there shall be added to any amount calculated pursuant to any of the foregoing provisions of this Section 3.1 an amount in dollars sufficient to reimburse Ohio Power for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based upon or measured by net income) in respect of the total amount payable by AMP-Ohio to Ohio Power pursuant to this Section 3.1 to enable Ohio Power, after provision for such taxes to realize the net amount payable by AMP-Ohio under such provision.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which

might otherwise be effected pursuant to the provisions of the Agreement and this Schedule. AMP-Ohio accordingly agrees that Ohio Power may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as Ohio Power shall consider to be in the best interests of Ohio Power, including action to file any tariff or rate schedule designed to supersede this Schedule. AMP-Ohio also agrees that, in the event of any such filing by Ohio Power, AMP-Ohio hereby (i) waives any requirement of law with respect to the form and content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that AMP-Ohio will not seek a suspension in any such event of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than transactions previously scheduled) need not be undertaken unless in the discretion of Ohio Power as the supplier of transmission service hereunder, it elects so to do, and since AMP-Ohio as the recipient of transmission service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by Ohio Power to AMP-Ohio be effected without delay.

SERVICE SCHEDULE B

EMERGENCY SERVICE

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - DURATION

1.1 This Service Schedule, a part of an agreement dated as of April 1, 1974 (the Agreement), between American Municipal Power-Ohio, Inc. and Ohio Power Company shall become effective on the effective date of this Agreement, and shall continue in effect until terminated as provided in the Agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 In the event of breakdown or other emergency on the System of either party, involving either sources of power or transmission facilities, or both and impairing or jeopardizing its ability to meet the loads of its System, the other party shall upon request deliver electric power and energy (herein called Emergency Power and Emergency Energy) in amounts up to a rate of 10,000 kilowatts per hour in the aggregate for all

Delivery Points and/or Interconnection Points at which such Emergency Power is being so delivered, and such additional amounts as in its sole judgment can be delivered without imposing burdens on its System's operations and without undue interference with service to its customers (customers shall be deemed to include other interconnected systems operated under an agreement with the supplying party), and to the extent that it has electric power and energy available from its own sources or can obtain electric power and energy from interconnected systems which can be supplied without the imposition of a burden upon the System of the supplying party; provided, however, that neither party shall be obligated to deliver Emergency Power and Emergency Energy to the other for a period in excess of forty-eight (48) consecutive hours during any single emergency.

SECTION 3 - COMPENSATION

3.1 Electric energy delivered under Section 2 above shall be settled for either by the return of equivalent energy or, at the option of the party that supplied such energy, by payment of the out-of-pocket cost--such cost being as of the Delivery Point or Delivery Points, as

provided for in the Agreement, taking into account electrical losses incurred from the source or sources of such energy to said Delivery Point or Delivery Points--to the supplying party of generating or supplying such energy plus 10 per cent of such cost; but in no event shall such payment be at a rate less than 17.5 mills per kilowatt-hour for such energy so delivered. In cases where settlement is to be effected by the return of equivalent energy, settlement shall be made by return of a like amount of electric energy within a reasonable period, at times when load conditions in the sender's System are comparable to load conditions at the time when such event occurred.

3.2 Payments made to either party pursuant to this Schedule shall comprise an amount in dollars equal to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse the party entitled to such payments for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect of the total amount paid pursuant to this Section and to enable such party, after provision for such taxes, to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION:

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions of the Agreement and this Schedule. The parties accordingly agree that--particularly since the transactions contemplated by this Schedule are intended to be reciprocal in character when it is in the interests of both parties so to be--either party may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as such party shall consider to be in the best interests of such party, including action to file any tariff or rate schedule designed to supersede this Schedule in its application to such party as a supplier of electric service. Each party also agrees that, in the event of any such filing by one of the parties, the other party hereby (i) waives any requirement of law with respect to the form and/or content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to

the proposed effective date thereof and agrees that the other party will not seek a suspension of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than those previously scheduled) need not be undertaken (except as otherwise provided in Section 2.1 of this Schedule) unless in the discretion of the supplier of electric service hereunder, it elects so to do, and since the recipient of electric service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by one of the parties to another party be effected without delay.

SERVICE SCHEDULE C

SHORT TERM SERVICE

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - DURATION

1.1 This Service Schedule, a part of an agreement dated as of April 1, 1974 (the Agreement), between American Municipal Power-Ohio, Inc. and Ohio Power Company shall become effective on the effective date of the Agreement, and shall continue as provided in the Agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 Either party by giving the other party notice may reserve for periods of not less than one week, i.e., any specified period of seven consecutive days, such electric power (herein called Short Term Power) as the other party may at such time have or may specifically reserve from the system of another company interconnected with such other party and is willing to make available as Short Term Power. The party asked to supply Short Term Power shall be the sole judge as to the amounts and periods that it has or can make

electric power available that may be reserved by the other party as Short Term Power.

2.11 To reserve Short Term Power, the party desiring such power shall specify in its notice to the other party the number of kilowatts, and the period for which it desires to so reserve such power and the desired schedule of delivery of the power so reserved. The party receiving such notice, in a prompt acknowledgment, shall signify the extent of its ability and willingness to comply with the provisions of such notice. In the event that a party proposes to supply Short Term Power in whole or in part from power reserved from the system of another company interconnected with such party, the party proposing to supply such Short Term Power shall specify in its acknowledgment the interconnected company and the amount proposed to be supplied from such reserved power. Any notice or any acknowledgment of such notice that may be given orally initially, if requested by either party, shall be confirmed in writing and such confirmation shall be forwarded not later than the third business day following the day such oral notice is given.

2.12 During the period that Short Term Power has been reserved as above provided the party having agreed to supply such power shall deliver electric energy (herein called Short Term Energy) to the other party at the Delivery Point or Delivery Points, as provided for in the Agreement, upon call and in amounts up to and including the number of kilowatts reserved. However, in the event conditions arise during such period which could not have been reasonably foreseen at the time said power was reserved and in the judgment of the supplying party such conditions would cause the delivery of Short Term Energy to be burdensome to the supplying party or its system, said party has the right to request the other party to reduce its take of such energy to any amount specified and for any portion of such period. The party so requested shall promptly comply with the request of the other party; provided, however, the supplying party shall not be entitled to reduce delivation to less than the amount such supplying party shall receive pursuant to a reservation for such purpose from the system of another company

interconnected with the supplying party's system.

2.13 The Short Term Power billing demand for any period shall be taken as equal to the number of kilowatts reserved for such period as Short Term Power.

SECTION 3 - COMPENSATION

3.1 Payments for the supply of Short Term Power and Short Term Energy shall be based upon the following rates:

3.11 Demand Charge. For the billing demand for each full week, at the rate of

$0.45 per kilowatt per week during the calendar year 1974;

$0.50 per kilowatt per week during the calendar year 1975 and thereafter.

In the event the amount of Short Term Power taken is reduced upon request of the supplying party, the demand charge for the week during which such reduction is made shall be reduced by one-sixth (1/6) of the aforesaid weekly demand charge per kilowatt of reduction for each day (other than Sunday) during which any reduction is in effect. To the above

charge there shall be added for each kilowatt of the reserved Short Term Power that is purchased by the supplying party from the system of another interconnected company, (a) the excess, if any, of the amount paid therefor by the supplying party over the above charge (or, if such amount is less than such charge, minus the deficiency) plus (b) for each week such Short Term Power is reserved, $0.125 per kilowatt, less, for each day (other than Sunday) during any part of which any of such Short Term Power is not received from such other system, $0.021 per kilowatt not received.

3.12 Energy Charge. For the kilowatt-hours of Short Term Energy at a rate per kilowatt-hour equal to the out-of-pocket cost (such cost being as of the Delivery Point or Delivery Points provided for in the Agreement, taking into account electrical losses incurred from the source or sources of such energy to the Delivery Point or Delivery Points) to the supplying party of generating or supplying such energy plus 10 per cent of such cost, unless such energy is

supplied from the system of another interconnected company in which event at a rate of the out-of-pocket cost of supplying such energy plus 15 per cent of such cost.

3.2 Payments made to either party pursuant to this Schedule shall comprise an amount in dollars equal to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse the party entitled to such payments for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect to the total amount paid pursuant to this Section and to enable such party, after provision for such taxes to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions

of the Agreement and this Schedule. The parties accordingly agree that--particularly since the transactions contemplated by this Schedule are intended to be reciprocal in character when it is in the interests of both parties so to be--either party may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as such party shall consider to be in the best interests of such party, including action to file any tariff or rate schedule designed to supersede this Schedule in its application to such party as a supplier of electric service. Each party also agrees that, in the event of any such filing by one of the parties, the other party hereby (i) waives any requirement of law with respect to the form and/or content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that the other party will not seek a suspension of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than those previously scheduled) need not be undertaken unless in the discretion of the supplier of electric service hereunder, it elects so to do, and since the

recipient of electric service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by one of the parties to another party be effected without delay.

SERVICE SCHEDULE D

LIMITED TERM SERVICE

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - DURATION

1.1 This Service Schedule, a part of an agreement dated as of April 1, 1974 (the Agreement), between American Municipal Power-Ohio, Inc. and Ohio Power Company shall become effective on the effective date of the Agreement, and shall continue as provided in the Agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 Either party may arrange to reserve from the other party, for periods of not less than one or more than 12 months, such electric power (herein called Limited Term Power) whenever, in the sole judgment of the party requested to reserve the same, such power is available.

2.11 Prior to each reservation of Limited Term Power, the number of kilowatts to be reserved, the period of the reservation, and the source of the power if the supplying party is in

turn reserving them from the system of another interconnected company shall be determined by the parties. Such determination shall be confirmed in writing.

2.12 During each period that Limited Term Power has been reserved, the party that has agreed to supply such power shall upon call deliver electric energy (herein called Limited Term Energy) up to and including the number of kilowatts then reserved to the reserving party, except when such deliveries would in the judgment of the supplying party have to be interrupted or reduced to preserve the integrity of, or to prevent or limit any instability on its system.

SECTION 3 - COMPENSATION

3.1 Payments for the supply of Limited Term Power and Limited Term Energy shall be based upon the following rates:

3.11 Demand Charge. For the billing demand for each full month, at the rate of

$2.50 per kilowatt per month during the calendar year 1974;

$2.75 per kilowatt per month during the calendar year 1975 and thereafter, plus

for each kilowatt of the reserved Limited Term Power purchased by the supplying party from the system of another interconnected company (a) the excess, if any, of the amount paid therefor by the supplying party over the charge therefor under Section 3.11 of this Service Schedule (or, if such amount is less than such charge, minus the deficiency) plus (b) for any month such Limited Term Power is reserved $0.55 per kilowatt.

3.12 Energy Charge. For the kilowatt-hours of Limited Term Energy at a rate per kilowatt-hour equal to the out-of-pocket cost (such cost being as of the Delivery Point or Delivery Points provided for in the Agreement, taking into account electrical losses incurred from the source or sources of such energy to the Delivery Point or Delivery Points) to the supplying party of generating or supplying such energy plus 10 per cent of such cost, unless such energy is supplied from the system of another interconnected company in which event at a rate of the out-of-pocket cost of supplying such energy plus 15 per cent of such cost.

3.2 Payments made to either party pursuant to this Schedule shall comprise an amount in dollars equal to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse the party entitled to such payments for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect to the total amount paid pursuant to this Section and to enable such party, after provision for such taxes to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions of the Agreement and this Schedule. The parties accordingly agree that--particularly since the transactions contemplated by this Schedule are intended to be reciprocal in character when it is in the interests of both parties so to be--either party may

at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as such party shall consider to be in the best interests of such party, including action to file any tariff or rate schedule designed to supersede this Schedule in its application to such party as a supplier of electric service. Each party also agrees that, in the event of any such filing by one of the parties, the other party hereby (i) waives any requirement of law with respect to the form and content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that the other party will not seek a suspension of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than those previously scheduled) need not be undertaken unless in the discretion of the supplier of electric service hereunder, it elects so to do, and since the recipient of electric service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by one of the parties to another party be effected without delay.

SUPPLEMENT

Dated as of

August 1, 1978

to

Agreement

Dated April 1, 1974

between

AMERICAN MUNICIPAL POWER-OHIO, INC.

AND

OHIO POWER COMPANY

FIRST REVISED SERVICE SCHEDULE C - SHORT TERM SERVICE

FIRST REVISED SERVICE SCHEDULE D - LIMITED TERM SERVICE

Dated: August 1, 1978

FIRST REVISED SERVICE SCHEDULE C

SHORT TERM SERVICE
(Dated as of August 1, 1978)

Under Agreement dated as o April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - EFFECT AND DURATION

1.1 This Service Schedule supersedes Service Schedule C attached to the agreement dated as of April 1, 1974 between American Municipal Power-Ohio, Inc. and Ohio Power Company (said agreement, as supplemented by letter agreement dated April 24, 1975 being hereinafter referred to as "the Agreement"). This Service Schedule shall become effective on September 1, 1978, and shall continue as provided in the Agreement.

SECTION 2- SERVICES TO BE RENDERED

2.1 Either party by giving the other party notice may reserve for periods of not less than one week, i.e., any specified period of seven consecutive days, such electric power (herein called Short Term Power) as the other party may at such time have or may specifically reserve from the system of another company interconnected with such other party and is willing to make available as

Short Term Power. The party asked to supply Short Term Power shall be the sole judge as to the amounts and periods that it has or can make electric power available that may be reserved by the other party as Short Term Power.

2.11 To reserve Short Term Power, the party desiring such power shall specify in its notice to the other party the number of kilowatts, and the period for which it desires to so reserve such power and the desired schedule of delivery of the power so reserved. The party receiving such notice, in a prompt acknowledgment, shall signify the extent of its ability and willingness to comply with the provisions of such notice. In the event that a party proposes to supply Short Term Power in whole or in part from power reserved from the system of another company interconnected with such party, the party proposing to supply such Short Term Power shall specify in its acknowledgment the interconnected company and the amount proposed to be supplied from such reserved power. Any notice or any acknowledgment of such notice that may be given orally initially, if requested by either party, shall be confirmed in writing and such confirmation shall be

forwarded not later than the third business day following the day such oral notice is given.

2.12 During the period that Short Term Power has been reserved as above provided the party having agreed to supply such power shall deliver electric energy (herein called Short Term Energy) to the other party at the Delivery Point or Delivery Points, as provided for in the Agreement, upon call and in amounts up to and including the number of kilowatts reserved. However, in the event conditions arise during such period which could not have been reasonably foreseen at the time said power was reserved and in the judgment of the supplying party such conditions would cause the delivery of Short Term Energy to be burdensome to the supplying party or its system, said party has the right to request the other party to reduce its take of such energy to any amount specified and for any portion of such period. The party so requested shall promptly comply with the request of the other party; provided, however, the supplying party shall not be entitled to reduce deliveries to less than the amount such supplying party shall receive pursuant to a reservation for such purpose from the system

of another company interconnected with the supplying party's system.

2.13 The Short Term Power billing demand for any period shall be taken as equal to the number of kilowatts reserved for such period as Short Term Power.

SECTION 3- COMPENSATION

3.1 Payments for the supply of Short Term Power and Short Term Energy shall be based upon the following rates:

3.11 Demand Charge. For the billing demand for each full week, at the rate of

$0.60 per kilowatt per week.

In the event the amount of Short Term Power taken is reduced upon request of the supplying party, the demand charge for the week during which such reduction is made shall be reduced by one-sixth (1/6) of the aforesaid weekly demand charge per kilowatt of reduction for each day (other than Sunday) during which any reduction is in effect. To the above charge there shall be added for each kilowatt of the reserved Short Term Power that is purchased by the supplying party from the system of another interconnected company, (a) the excess, if any, of the amount

paid therefor by the supplying party over the above charge (or, if such amount is less than such charge, minus the deficiency) plus (b) for each week such Short Term Power is reserved, $0.15 per kilowatt, less, for each day (other than Sunday) during any part of which any of such Short Term Power is not received from such other system, $0.025 per kilowatt not received.

3.12 Energy Charge. For the kilowatt-hours of Short Term Energy at a rate per kilowatt-hour equal to the out-of-pocket cost (such cost being as of the Delivery Point or Delivery Points provided for in the Agreement, taking into account electrical losses incurred from the source or sources of such energy to the Delivery Point or Delivery Points) to the supplying party of generating or supplying such energy plus 10 per cent of such cost, unless such energy is supplied from the system of another interconnected company in which event at a rate of the out-of-pocket cost of supplying such energy plus 15 per cent of such cost.

3.2 Payments made to either party pursuant to this Schedule shall comprise an amount in dollars equal to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse the party entitled to such payments for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect to the total amount paid pursuant to this Section and to enable such party, after provision for such taxes to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions of the Agreement and this Schedule. The parties accordingly agree that--particularly since the transactions contemplated by this Schedule are intended to be reciprocal in character when it is in the interests of both parties so to be--either party may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as such party shall consider

FIRST REVISED SCHEDULE D

LIMITED TERM SERVICE
(Dated as of August 1, 1978)

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - EFFECT AND DURATION

1.1 This Service Schedule supersedes Service Schedule D attached to the agreement dated as of April 1, 1974 (the Agreement), between American Municipal Power-Ohio, Inc. and Ohio Power Company (said agreement, as supplemented by letter agreement dated April 24, 1975 being hereinafter referred to as "the Agreement"). This Service Schedule shall become effective on September 1, 1978, and shall continue as provided in the Agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 Either party may arrange to reserve from the other party, for periods of not less than one or more than 12 months, such electric power (herein called Limited Term Power) whenever, in the sole judgment of the party requested to reserve the same, such power is available.

2.11 Prior to each reservation of Limited Term Power, the number of kilowatts to be

to be in the best interests of such party, including action to file any tariff or rate schedule designed to supersede this Schedule in its application to such party as a supplier of electric service. Each party also agrees that, in the event of any such filing by one of the parties, the other party hereby (i) waives any requirement of law with respect to the form and/or content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that the other party will not seek a suspension of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than those previously scheduled) need not be undertaken unless in the discretion of the supplier of electric service hereunder, it elects so to do, and since the recipient of electric service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by one of the parties to another party be effected without delay.

reserved, the period of the reservation, and the source of the power if the supplying party is in turn reserving them from the system of another interconnected company shall be determined by the parties. Such determination shall be confirmed in writing.

2.12 During each period that Limited Term Power has been reserved, the party that has agreed to supply such power shall upon call deliver electric energy (herein called Limited Term Energy) up to and including the number of kilowatts then reserved to the reserving party, except when such deliveries would in the judgment of the supplying party have to be interrupted or reduced to preserve the integrity of, or to prevent or limit any instability on its system.

SECTION 3 - COMPENSATION

3.1 Payments for the supply of Limited Term Power and Limited Term Energy shall be based upon the following rates:

3.11 Demand Charge. For the billing demand for each full month, at the rate of

$3.25 per kilowatt per month; plus

for each kilowatt of the reserved Limited Term Power purchased by the supplying party from the system of another interconnected company (a) the excess, if any, of the amount paid therefor by the supplying party over the charge therefor under Section 3.11 of this Service Schedule (or, if such amount is less than such charge, minus the deficiency) plus (b) for any month such Limited Term Power is reserved $0.65 per kilowatt.

3.12 Energy Charge. For the kilowatt-hours of Limited Term Energy at a rate per kilowatt-hour equal to the out-of-pocket cost (such cost being as of the Delivery Point or Delivery Points provided for in the Agreement, taking into account electrical losses incurred from the source or sources of such energy to the Delivery Point or Delivery Points) to the supplying party of generating or supplying such energy plus 10 per cent of such cost, unless such energy is supplied from the system of another interconnected company in which event at a rate of the out-of-pocket cost of supplying such energy plus 15 per cent of such cost.

3.2 Payments made to either party pursuant to this Schedule shall comprise an amount in dollars equal

to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse the party entitled to such payments for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect to the total amount paid pursuant to this Section and to enable such party, after provision for such taxes to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions of the Agreement and this Schedule. The parties accordingly agree that--particularly since the transactions contemplated by this Schedule are intended to be reciprocal in character when it is in the interests of both parties so to be--either party may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as such party shall consider to be in the best interests of such party, including action to file any tariff or rate schedule designed to

supersede this Schedule in its application to such party as a supplier of electric service. Each party also agrees that, in the event of any such filing by one of the parties, the other party hereby (i) waives any requirement of law with respect to the form and content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that the other party will not seek a suspension of more than one day subsequent to the proposed effective date thereof--all to the end, since transactions under this Schedule (other than those previously scheduled) need not be undertaken unless in the discretion of the supplier of electric service hereunder, it elects so to do, and since the recipient of electric service hereunder need not receive such service unless it elects so to do, that changes and modifications of this Schedule applicable to service to be supplied by one of the parties to another party be effected without delay.

APPENDIX 2

AGREEMENT

between

AMERICAN MUNICIPAL POWER-OHIO, INC.

and

THE CITY OF ORRVILLE, OHIO

Dated as of June 1, 1974

C[illegible] AGREEMENT, dated as of June 1, [illegible], between American Municipal Power-Ohio, Inc. ("AMP-Ohio"), an Ohio corporation not for profit, and The City of Orrville, Ohio ("Orrville"), a municipal corporation of the State of Ohio.

0.02 Ohio Power Company ("Ohio Power") owns and operates, inter alia, facilities for the generation, transmission and distribution of electric power and energy in the State of Ohio, and as a part of the integrated American Electric Power System. AMP-Ohio does not, at the date of this Agreement, own or operate any facilities for the generation, transmission and distribution of electric power and energy, but has been organized to own and operate facilities for such purpose, to furnish technical services, and such facilities to be owned and operated, and such services furnished, by AMP-Ohio on a cooperative non-profit basis for the mutual benefit of its Patrons, such Patrons being, and to be, municipal systems owned and operated by municipal corporations of the State of Ohio, including Orrville.

0.03 Orrville owns and operates facilities for the generation and distribution of electric power and energy in the State of Ohio, but is not now interconnected with the facilities of any other electric system

in Ohio. Orrville desires to interconnect its electric facilities with those of Ohio Power by constructing approximately eight miles of a 138 kv transmission line from its existing electric generating facilities to the East Wooster substation of Ohio Power with the view of thereafter operating its facilities in parallel with those of Ohio Power.

0.04 AMP-Ohio and Ohio Power have entered into an agreement, dated as of April 1, 1974 (the "AMP-Ohio Power Agreement") pursuant to which Ohio Power proposes to render to AMP-Ohio transmission service on the terms specified in the AMP-Ohio Power Agreement and pursuant to which arrangements can be effected pursuant to which AMP-Ohio may, under the conditions stated in the AMP-Ohio Power Agreement, render emergency service, short-term service and limited-term service to Ohio Power and pursuant to which Ohio Power may, under the conditions stated in the AMP-Ohio Power Agreement, render emergency service, short-term service and limited-term service to AMP-Ohio for the benefit of Patrons of AMP-Ohio, including Orrville.

0.05 AMP-Ohio and Orrville propose by this Agreement to enter into mutually satisfactory contractual arrangements pursuant to which AMP-Ohio will supply, or

cause to be supplied to Orrville, from time to time as mutually agreed upon, emergency service, short-term service and limited-term service and such other service involving a transmission service rendered by Ohio Power pursuant to the AMP-Ohio Power Agreement as shall from time to time be mutually agreed upon by AMP-Ohio and Orrville and under which Orrville may, from time to time, render emergency service, short-term service and limited-term service to AMP-Ohio for the benefit of other Patrons of AMP-Ohio.

0.06 Orrville and Ohio Power propose, pursuant to separate contractual arrangements between Orrville and Ohio Power, dated as of June 1, 1974 (the "Orrville Ohio Power Agreement"), to provide arrangements between Orrville and Ohio Power such as those included in the AMP-Ohio Power Agreement if at any time for any reason the corporate existence of AMP-Ohio should terminate and/or if the AMP-Ohio Power Agreement should terminate;

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

ARTICLE 1

INTERCONNECTION AND OPERATION IN PARALLEL

1.01 Orrville shall proceed, at its own cost

and expense, to take the steps specified in Sections 1.01, 1.02 and 1.03 of Article 1 of the Orrville-Ohio Power Agreement.

ARTICLE 2

POWER TRANSACTIONS

2.01 AMP-Ohio shall supply to and Orrville shall purchase and take from AMP-Ohio, such emergency service, short-term service and limited-term service as shall from time to time be scheduled hereunder by mutual agreement between Orrville and AMP-Ohio, and Orrville shall pay AMP-Ohio for such service the sum of (i) the out-of-pocket cost incurred by AMP-Ohio in providing such service and (ii) 1/10 of a mill per kwh for all categories of service caused by AMP-Ohio to be delivered to Orrville at points of delivery mutually agreed upon by AMP-Ohio and Orrville for all categories of service except for power and energy occasioned by inadvertent flows of power and energy. Settlement for inadvertent flows shall be made in accordance with the terms of the AMP-Ohio Power Agreement.

2.02 AMP-Ohio shall provide to Orrville, in addition to the electric service specified in Section 2.01 of this Agreement, such additional service involving the purchase by AMP-Ohio of power and energy from a source other than Ohio Power and the transmission by Ohio Power of such power and energy, less losses thereon, to points of delivery mutually agreed upon between AMP-Ohio and Orrville, and Orrville shall pay AMP-Ohio the sum of (i) the out-of-pocket cost incurred by AMP-Ohio in purchasing power and energy for the account of Orrville (ii) the amount payable by AMP-Ohio to Ohio Power pursuant to the AMP-Ohio Power Agreement for the transmission service rendered by Ohio Power in delivering such power and energy to Orrville, and (iii) an amount equal to 1/10 of a mill per kwh for the energy delivered by AMP-Ohio to Orrville pursuant to such service.

2.03 Orrville shall supply to AMP-Ohio, and AMP-Ohio shall purchase and take, such emergency service, short-term service and limited-term service as shall from time to time be scheduled hereunder by mutual agreement between Orrville and AMP-Ohio for the purpose of enabling AMP-Ohio to supply emergency service, short-term service and limited-term service to Ohio Power pursuant

to the provisions of the AMP-Ohio Power Agreement and [illegible] shall pay to Orrville for power and energy so supplied to AMP-Ohio amounts equal to the amounts payable by Ohio Power to AMP-Ohio pursuant to the AMP-Ohio Power Agreement, for all categories of service except for emergency service and except for power and energy occasioned by inadvertent flows of power and energy. For emergency service AMP-Ohio shall pay to Orrville the amounts calculated on the same basis as if Orrville were the party under the AMP-Ohio Power Agreement supplying emergency power to Ohio Power. Settlement for inadvertent flow shall be made in accordance with the AMP-Ohio Power Agreement.

ARTICLE 3

CHARACTERISTICS OF ELECTRIC ENERGY, DELIVERY POINTS, INTERCONNECTION POINTS, METERING POINTS AND METERING

3.01 Characteristics of Electric Energy. All electric energy delivered under this Agreement shall be of the character commonly known as three-phase sixty Hz energy.

3.02 Delivery Points. The parties hereto recognize that, since no Delivery Point has yet been

established under this Agreement, and since neither AMP-Ohio nor Orrville are now familiar with the characteristics of any load which AMP-Ohio and Orrville will mutually agree should be supplied pursuant to the terms of this Agreement, it is agreed that each future Delivery Point (which shall be at a point where the electric facilities of Orrville interconnect with those of Ohio Power) shall be only at a location, and upon terms and conditions, mutually agreed upon in each case by AMP-Ohio and Orrville; provided, however, that (i) in no case shall a delivery point be established where transactions to be scheduled for such point of delivery will be less than 1500 kilowatts, (ii) in each case, unless otherwise agreed to by Ohio Power under the AMP-Ohio Power Agreement, delivery shall be effected from the Bulk Transmission Facilities, as defined in the AMP-Ohio Power Agreement, of Ohio Power, (iii) in each case Orrville will construct, own and maintain the necessary substation equipment, including such control switching and protective equipment as the established practice of Ohio requires at similar locations on its system and (iv) in no case shall AMP-Ohio, unless it otherwise elects with the consent of Ohio Power be required in establishing any point of delivery to provide any

additions to the Bulk Transmission Facilities of Ohio Power or to any of the other facilities of Ohio Power, or to any of the facilities of AEP-Ohio, including the construction or installation of any connecting spans or spans of conductors to the facilities of Orrville.

3.03 Metering Points. Electric power and energy delivered under this Agreement shall be measured by metering equipment at such points and voltages as may be agreed upon by the parties.

3.04 Metering. The timing devices of all meters having such devices shall be maintained in time synchronism as closely as practicable. The meters shall be sealed, and the seals shall be broken only when the meters are to be tested or adjusted. For the purpose of checking the records of the metering equipment installed by any party any other party may install check metering equipment. Metering equipment so installed by one party on the premises of another party shall be owned and maintained by the party installing such equipment. Upon termination of this Agreement the party owning such metering equipment shall remove it from the premises of the other party. Authorized representatives of the parties shall have access at all reasonable hours to the premises where the meters are located and to the records of the meter readings.

3.03 Meter Tests. The metering equipment shall be tested by the owners at suitable intervals and its accuracy of registration maintained in accordance with good practice. At the request of any party, a special test shall be made, but if less than one percent inaccuracy is found, the requesting party shall pay for the test. Representatives of the parties may be present at all routine or special tests and whenever any readings for purposes of settlement are taken from meters not having an automatic record. If any test of metering equipment discloses an inaccuracy exceeding one percent, the accounts of the parties shall be adjusted for the period, not exceeding 30 days, that such inaccuracy is estimated to have existed. Should any metering equipment fail to register, the amounts of energy delivered shall be estimated from the best available data.

ARTICLE 4

RECORDS

4.01 The parties shall keep such records as may be needed to afford a clear history of all transactions under this Agreement. The originals of all such records shall be retained by the party keeping the records and copies shall be delivered to the other party to this Agreement upon request.

ARTICLE 5

BILLING AND PAYMENT

5.01 Unless otherwise agreed upon, the calendar month shall be the standard period for all settlements under this Agreement. As soon as practicable after the end of each billing period, the parties shall cause to be prepared a statement showing the transactions during such period in such detail as may be needed for settlements under this Agreement.

5.02 All bills under this Agreement shall be rendered by the 10th day of the month next following the period to which they are applicable, or as soon thereafter as practicable, and shall be due and payable by the 15th day of that month or 10 days after receipt of the bill, whichever is later. Interest on unpaid amounts shall accrue at the then current prime rate per annum of First National City Bank, of New York City, plus 2% from the date due until the date paid.

ARTICLE 6

LIABILITY

6.01 Each party shall, except as otherwise provided in this Article 6, save harmless the other party

from any and all claims, liability, and expense arising out of any bodily injury, death, or damage to property (other than bodily injury, death, or damage to property proximately caused by any such other party or its servants or employees) resulting from the operation by such indemnifying party of its own System and facilities (including in the case of AMP-Ohio the facilities of any Patron of AMP-Ohio other than Orrville) except that AMP-Ohio shall be responsible for all claims of its own employees, agents, and servants, and the employees, agents and servants of its Patrons, other than Orrville, under any workmen's compensation law or similar law, and except that Orrville shall be responsible for all claims of its own employees, agents and servants, under any workmen's compensation law or similar law.

6.02 Each party will use reasonable diligence in furnishing any transmission or electric service to the other party, or for its account under this Agreement but the supplying party does not guarantee that the supply of electric transmission or other electric service furnished to the other party will be uninterrupted, or that voltage and frequency will be at all times constant. Temporary interruptions of service by either party hereunder to the other party occasioned by fire, strike, casualty, accidents, outages, the making of repairs, replacements, or changes

in the formation of the supplying party, breakdowns of or injuries to facilities of the supplying party or facilities with which facilities of the supplying party are connected, in the sole judgment of the supplying party indicated in order to prevent or limit any instability or disturbance on the electric system of the supplying party, or any electric system interconnected with the supplying party, or which is occasioned by acts of public authorities, or acts of God, shall not, in any of such events, constitute a breach of the obligation of the supplying party under its agreement with the other party, and the supplying party shall not in any such case be liable to the other party for damages resulting from any such interruption of service.

ARTICLE 7

TERM

7.01 This Agreement shall, unless otherwise agreed by the parties hereto, be coterminous with the Sup-Ohio Power Agreement.

ARTICLE 8

REGULATORY AUTHORITIES

8.01 The parties hereto recognize that this Agreement, and any tariff or rate schedule which shall

embody or supersede this Agreement, are in certain respects subject to the jurisdiction of the Federal Power Commission under the Federal Power Act, and are also subject to such lawful action as any regulatory authority having jurisdiction shall hereafter take with respect thereto. The performance of any obligation of either party hereto shall be subject to the receipt from time to time as required of such authorizations, approvals or actions of regulatory authorities having jurisdiction as shall be required by law.

8.02 Each of the parties hereto agrees to pay to the other party hereto for electric service in accordance with the provisions of this Agreement, or any applicable superseding tariff or rate schedule(s) accepted for filing by such regulatory agency or agencies as shall have jurisdiction in the premises, and any applicable superseding tariff or rate schedule(s) is incorporated herein by reference thereto, and service under this Agreement, or any such applicable superseding tariff or rate schedule(s) shall be subject to all of the provisions of this Agreement as the same may be changed or modified by any such superseding tariff or rate schedule(s). It is expressly understood that any party hereto shall be entitled, at any time and from time to time, to make application for, or to take

other action, to submit for filing to any regulatory jurisdiction in the premises any tariff or rate schedule(s) designed to supersede, in whole or in part, any provision of this Agreement, or of any superseding tariff or rate schedule(s), applicable to any electric service furnished by AMP-Ohio, or any electric service furnished by Orrville, under this Agreement to the other party to this Agreement.

ARTICLE 9

GENERAL

9.01 Any waiver at any time of any rights as to any default or other matter arising hereunder shall not be deemed a waiver as to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

9.02 Neither party shall be liable for the failure of the other party to perform its obligations hereunder.

9.03 It is understood and agreed by the parties hereto that if any one or more provisions contained herein shall be finally determined by any court of competent jurisdiction to contravene, or be invalid under, any applicable provision of law, such contravention or

invalidity shall not invalidate this Agreement, but this Agreement shall be construed as if not containing such provision or provisions and the rights and obligations of the parties shall be construed and enforced accordingly; provided, however, that no obligation other than those herein provided (except for changes in rates or charges) shall thereby be imposed on any party; and provided further that to the extent that any such provision or provisions shall constitute a part of any effective rate schedule, or terms and conditions thereof, on file with any regulatory agency having jurisdiction such provision or provisions shall remain in full force and effect (i) unless and until modified by valid final order of such regulatory agency or (ii) unless and until such provision or provisions in such rate schedule, or terms and conditions thereof, shall be finally determined by any court of competent jurisdiction to contravene, or be invalid under, any applicable provisions of law. In the event that an occasion shall arise requiring that this Agreement be construed as if not containing a particular provision or provisions as aforesaid and the effect thereof shall be to impose on any party an obligation other than those herein provided (except for changes in rates or charges), the parties will negotiate in good faith to

provision as substitute for such provision or provisions, but no such substitution shall be binding on either party unless agreed expressly in a written document executed and delivered by each of the parties to this Agreement and filed with and accepted for filing by such regulatory authorities as shall have jurisdiction.

9.04 This Agreement shall become effective on the date on which the last of the following events shall have occurred:

(a) This Agreement shall have been filed with, and accepted for filing without condition by, the Federal Power Commission under the Federal Power Act as a rate schedule under circumstances where (x) the Federal Power Commission shall not have suspended this Agreement or any part thereof, and (y) the Federal Power Commission shall have issued an order under the Federal Power Act that all portions of this Agreement shall become effective as a rate schedule under the Federal Power Act on a date not later than ninety days subsequent to the issuance of such order;

(b) The expiration of a period which shall be equal to the longer of (i) the period between the date of the issuance of the order of the

Federal Power Commission referred to in clause (a) above and a date sixty days after such date, and (ii) the period between the date of the issuance of such order and the date specified in such order pursuant to clause (a)(y) above;

(c) If the order of the Federal Power Commission referred to in clause (a) shall have been entered in a proceeding under the Federal Power Act in which any party or parties in addition to AMP-Ohio and Orrville participated, such order shall have become final and not subject to review, by direct proceedings or otherwise, under the Federal Power Act; and

(d) If proceedings to review the order referred to in clause (a) above shall have been initiated by any party, an order of a court of competent jurisdiction affirming such order in all respects shall have become final and not subject to further review.

Each party hereto will use its best efforts to take or cause to be taken all action requisite to the end that the foregoing events shall occur and this Agreement shall become effective as provided in this Section 9.04 at the earliest practicable date.

9.05 All notices under this Agreement shall be given to the party for whom it is intended in care of AMP-Ohio's general office, in the case of AMP-Ohio, and in care of Orrville's general office, in the case of Orrville, or at such other address as such party shall theretofore have designated to the other.

9.06 The validity and meaning of this Agreement shall be governed by the laws of the State of Ohio.

ARTICLE 10

ASSIGNMENT

10.01 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. This Agreement shall not be assigned by AMP-Ohio or by Orrville without the written consent of the other.

IN WITNESS WHEREOF, American Municipal Power-Ohio, Inc. by John C. Eagle, its President, duly authorized by Resolution of said American Municipal Power-Oh. inc., passed on the 27th day of June, 1974 and the City of Orrville, Ohio, by Gordon R. Hostetler its Mayor, duly authorized by Ordinance #26-74 of said city, passed on the 27th day of June 1974, have hereunto set their hands this date. July 10, 1974

Witness:

AMERICAN MUNICIPAL POWER-OHIO,

By John C. Eagle
President

THE CITY OF ORRVILLE, OHIO

City Clerk

By
Authorized Officer

Summary of Characteristics of Poston Unit No. 5 and Poston Unit No. 6

1. General

Poston Units No. 5 and No. 6 will be located at the existing E. M. Poston Generating Station of CSOE in York Township, Athens County, Ohio, approximately 5 miles northwest of Athens and one mile south of the Hocking River on Hamley Run. At the E. M. Poston Generating Station CSOE is presently operating four generating units; Units 1 and 2 having a nominal rating of 40 MW each and Units 3 and 4 having a nominal rating of 60 MW each.

In general, the design characteristics of the proposed Units No. 5 and No. 6, with a nominal net rating of 400 MW each, will be similar to those of the Conesville Units No. 5 and No. 6 of CSOE, with certain modifications related to considerations of the specific site conditions and fuel requirements.

The information herein provided is intended to describe the conceptual design of the proposed Units No. 5 and No. 6, subject to modifications as required in the course of detailed design.

2. Steam Generator

The Combustion Engineering steam generators will, in each case, have a single furnace firing pulverized coal

designed to burn a wide range of coals, particularly Eastern and Ohio high sulphur coal. The units are designed for operation at subcritical steam pressures with rated superheater outlet conditions of 2,500 psig at 1000°F. with single reheat to 1005°F. The steam generator in each case is to be rated at 2,855,000 lbs/hour and designed for variable pressure operation, rapid daily start-up following overnight shut-down, and balanced draft furnace operations.

In addition, each unit is specified to be capable of generating steam for a continuous period of twenty-four (24) hours at a rate of 3,160,000 lbs/hour at a projected pressure of 2,620 psig and 1005°F. superheater outlet and 1005°F. reheater outlet.

3. Pulverizers

Each unit will utilize 5 CE-Raymond 943-RP pulverizers, each having a rated capacity of 53.4 tons per hour, based on coal having a grindability index of 50, and a total moisture content of 11.03%.

4. Boiler Feed Pump

The boiler feed pump will in each case be a single, full-sized, turbine-driven pump rated at 7,560 GPM and 15,508 BHP at 5850 RPM with a discharge pressure of 2982 psig. The primary steam source for the condensing drive turbine is the LP turbine exhaust; the secondary

steam source is the main steam line. Start-up and shut-down is effected with a single, motor driven pump rated at 800 GPM and 775 BHP at 3600 RPM with a discharge pressure of 1310 psig.

5. Auxiliary Steam Supply

Start-up steam will be supplied by an oil-fired auxiliary boiler rated at 75,000 lbs/hour, with cross-tie piping installed between the unit's auxiliary steam sy m for flexibility purposes. The auxiliary boiler will not be required for start-up of either unit if the other unit is operating.

6. Turbine Generator

Each General Electric main unit turbine will be a tandem-compound, 3600 RPM, two flow machine with single flow HP and IP sections and a double flow LP section. The generator for each unit will be rated at 504 MVA at 0.90 P.F. and 45 psig H_2 pressure while operating at 3600 RPM with output voltage of 22 KV. The gross generator output is specified at 416,421 KW with a gross turbine heat rate of 8160 BTU/KW hr, while operating at the rated boiler conditions. Gross capability while operating at 3,160,000 lbs/hour main steam flow is specified at 453,499 KW with a gross turbine heat rate of 8159 BTU/KW hr.

The thermal cycle includes seven stages of feedwater heating, dual turbine driven I.D. fans and a single turbine driven boiler feed pump for each unit. Each turbine generator unit has been designed for daily start-up following overnight shut-down and variable pressure operation, as is the balance of plant equipment.

7. Generator Step-Up Transformers

The main unit step-up transformers as they are now planned will be rated at 22/138 KV, 490 MVA FOA and 22/345 KV, 490 MVA FOA, respectively.

8. Coal Handling

Provisions will be made to receive and stock rail coal via rotary dumping at 3500 TPH and truck coal via four dump hoppers at 1200 TPH or truck coal only at 2400 TPH. A fully enclosed reclaim from the common station coal pile will include dual 600 TPH systems to a common transfer hopper with individual outlets to Units 1, 2, 3 and 4 (300 TPH), Unit 5 (900 TPH) and Unit 6 (900 TPH).

9. Water Supply

Water requirements for the expanded plant will require a major expansion of the existing well field along the Hocking River. This expansion will include addition of seven horizontal collector wells with a nominal total

capacity of 25,000 GPM. With the existing 3,000 GPM, the total system capacity will be increased to 28,000 GPM. In addition, a new distribution system will be installed between wells, from the wells to the plant and on to a new storage reservoir with 3480 million gallon drawdown capacity.

10. Environmental Controls

Environmental controls will be installed as needed to comply with applicable air and water quality regulations. Major facilities include in each case (1) an electrostatic precipitator with design efficiency of 99.65%; on-site bottom-ash, flyash and scrubber sludge landfill; (2) a round mechanical draft cooling tower, approximately 60 feet high and 260 feet in diameter; (3) a tall (approximately 600 feet) acid resistant brick and mortar-lined stack to disperse gaseous and particulate emissions and minimize ground level concentrations of polutants; (4) wastewater treatment and reclaim facilities; (5) air and water monitoring systems; (6) water supply well field and storage reservoir; and (7) wet SO_2 scrubbers.

11. Cost Estimate

As a result of CSOE's financial restrictions and projections of lower demand in future years, construction on generating units, other than the proposed Zimmer nuclear unit, was slowed down or postponed. Poston Units No. 5 and

No. 6, originally planned for completion in 1983 and 1985, respectively, are now tentatively scheduled to go on line in 1987 and 1990, respectively. No estimate as of May 1, 1979 of the total cost of construction of Units No. 5 and No. 6, based on in-service dates of 1987 and 1990, respectively, is available. CSOE's most recent cost estimate, however, based on the assumption that Unit No. 5 would be placed in commercial operation in May 1986, and Unit No. 6 in May 1987, is that the total cost of Units No. 5 and No. 6 will aggregate approximately $880 million, which amount includes estimated direct costs, indirect costs, CSOE's allowances for funds used during construction, and overheads. Of this total of $880 million, the estimated cost of construction of Unit No. 5, prepared on the basis that expenditures which are common to and which are to be used in the operation of the project as a whole should be included in electric plant in service upon the completion and readiness for service of the first unit, amounts to approximately $533 million.

AMERICAN MUNICIPAL POWER-OHIO, INC.
File No. 70-4596
Administrative Proceeding No. 3-1479

FINANCIAL PLAN FOR THE ACQUISITION
OF THE INITIAL GENERATING FACILITIES
OF AMPO

The Securities and Exchange Commission (SEC) indicated in its Opinion (HCAR No. 20633), issued July 21, 1978 in the above administrative proceeding, that it was prepared to issue an order approving the application by American Electric Power Company, Inc. (AEP) to acquire common shares of Columbus and Southern Ohio Electric Company (CSOE) provided that it received, among other things, assurances that a so-called "muni-Buckeye" arrangement would be evolved and a financial plan explaining how the Ohio municipal electric systems proposed to pay for the generating equipment which would be installed and operated for their benefit and also received sufficient reason to enable it to believe that the requisite funds would be forthcoming.

AMPO

American Municipal Power-Ohio, Inc. (AMPO) is a corporation not-for-profit organized and existing under the laws of the State of Ohio to own and operate facilities for

the generation, transmission and distribution of electric power and energy, and to furnish technical services, such facilities to be owned and operated, and such services furnished, by AMPO on a cooperative non-profit basis for the mutual benefit of its patrons, such patrons being and to be municipal electric systems owned and operated by municipal corporations of the State of Ohio.

Interconnection Agreement

AMPO is a party to and has participated in the above proceeding involving the proposed acquisition of common shares of CSOE by AEP. AMPO joined with AEP, the City of Orrville, Ohio (Orrville) and the Ohio Municipal Electric Association (OMEA) in submitting on August 8, 1972 to SEC an offer of settlement requesting SEC to authorize AEP to acquire common shares of CSOE subject to certain special conditions which it was proposed in the settlement offer would be included in SEC's order authorizing the proposed acquisition. Since that date, AMPO and Ohio Power Company (OPCO), a subsidiary of AEP, which is an electric light company under Ohio law, entered into an interconnection agreement in 1974 the terms of which contemplate that OPCO may render transmission service to AMPO and may render emergency service, short-term service, limited term service and other types of electric service to AMPO for the benefit of

municipal electric systems in Ohio which are members of AMPO and that AMPO may render emergency service, short-term service, limited term service and other types of service to OPCO, the purpose of such interconnection agreement being to enable AMPO to achieve, for the benefit of the municipal electric systems in Ohio which are from time to time members of AMPO, benefits derived from economies of scale, and a coordination of programs and operations. Electric service has, during the intervening period, been supplied by OPCO to AMPO and AMPO has in turn sold power and energy at wholesale to the municipal electric system of Orrville.

Coordination Agreement

AEP, CSOE, OPCO and AMPO have, since SEC issued its Opinion in July 1978, engaged in extensive negotiations resulting in the execution and delivery of a coordination agreement, dated as of May 1, 1979, to which this financial plan is an appendix. The coordination agreement, which has been executed by AMPO, CSOE, OPCO and AEP contemplates that it, including this financial plan of AMPO, will be filed with SEC and that AEP, AMPO, CSOE and OPCO will advise SEC that the filing is designed to provide SEC with reasonable assurance that the municipal electric systems which are members of AMPO will enjoy the economic benefits of a project of the type referred to by SEC in its Opinion and that the parties

to the coordination agreement will (a) support the acquisition of common shares of CSOE by AEP and (b) support the adoption of a constitutional amendment in Ohio and the enactment of legislation by the Legislature which will provide for the creation of the Ohio Municipal Wholesale Electric Authority (Authority), a body corporate and politic and a political subdivision of the State of Ohio, as the successor to AMPO. The proposed constitutional amendment and legislation which AEP, CSOE and OPCO have agreed to support are annexed to the coordination agreement.

Municipal Electric Systems in Ohio

The record in the SEC proceedings involving AEP and CSOE indicates that, as of the time the record information was developed, more than 90 municipalities operated electric systems in Ohio and that less than 20 at that time generated all the electricity they needed, 9 generated part of their needs and bought the rest, and 66 distributed power purchased from other electric systems in the State. The record also indicates that the municipal systems owned about 300 miles of transmission lines and approximately 4,000 miles of distribution lines. It was estimated in the proceeding that the aggregate of the generating capacity owned and operated by all municipal distribution systems in Ohio amounted to about 622,000 kilowatts and that the

non-coincident peak demands of the municipal electric distribution systems in Ohio aggregated about 1,000,000 kilowatts.

More recent information, developed in 1978 and 1979 which is in the process of being amplified, indicates that, under more recent conditions, more than 80 of the municipal electric systems were members of OMEA and more than 40 members of AMPO and that almost all of the municipal systems purchased power, either on a total or partial requirements basis, from investor-owned electric utilities in the State, under conditions where the respective service contracts could be terminated in most cases upon relatively short notice, typically one or two year notice requirements.

AMPO's Options

The coordination agreement among AMPO, CSOE, OPCO and AEP contemplates that, if AEP acquires the requisite number of common shares of CSOE, AMPO will be entitled under the coordination agreement to elect to purchase steam electric generating facilities which CSOE is currently constructing in Athens County, Ohio. Another option afforded to AMPO is an election to arrange, in cooperation with AEP and OPCO, for the location of a suitable site in Ohio and the construction of generating facilities of a capacity of not less than 600,000 kilowatts but not more than 1,300,000 kilowatts to

have, if AMPO elects such option, the design characteristics summarized in appendices to the coordination agreement.

Estimated Cost of Facilities

The generating units which CSOE is currently constructing are Poston Unit No. 5 scheduled for commercial operation in 1987 and Poston Unit No. 6 scheduled for commercial operation in 1990, which commercial dates, it is believed, could be accelerated if AMPO elects to purchase the Units under the coordination agreement.

Although no estimate as of May 1, 1979 of the total cost of construction of Poston Units No. 5 and No. 6, based on in-service dates of 1987 and 1990, respectively, is available, CSOE's most recent cost estimate, based on the assumption that such units would be financed, constructed and owned by CSOE and that Unit No. 5 would be placed in commercial operation in May 1986 and Unit No. 6 in 1987, is that the total costs of Units No. 5 and No. 6 will aggregate approximately $880 million; and of such total of $880 million, the estimated cost of construction of Unit No. 5, prepared on the basis that expenditures which are common to and which are to be used in the operation of the project as a whole should be included in electric plant in-service upon the completion and readiness for service of the first unit, amounts to approximately $533 million.

Although the coordination agreement contemplates that AMPO will be entitled to elect, as an alternative to Poston Unit No. 5, or Poston Units No. 5 and No. 6, an arrangement contemplating the construction for the account of AMPO of generating facilities of larger unit size, since such facilities would involve an extended siting and construction schedule and because no site has been yet identified as the possible station location, no estimate of the cost of constructing such facilities has been prepared.

The coordination agreement contemplates that, if AEP acquires common shares of CSOE, AMPO will complete the studies and analysis which are now under way of the power requirements of the Ohio municipal systems and then decide which of the alternative courses it elects to pursue. AMPO believes, however, based on the current projections which are available to it, that if the financing and other arrangements are completed, it will probably elect to purchase from CSOE either Poston Unit No. 5 or Poston Units No. 5 and No. 6. CSOE had incurred accumulated costs of construction with respect to these two units in the total amount of about $30 million as of March 31, 1979 and anticipates that, unless the rate of construction is accelerated, about $3 million of additional construction costs will be incurred for the balance of 1979.

Interim Power Supply

The coordination agreement also contemplates that, during the period between the date on which AMPO acquires the initial generating facilities to be constructed and the initial date of commercial operation of such facilities, AMPO will be afforded an opportunity under its interconnection agreement with OPCO to purchase power, and the energy related thereto, from OPCO in amounts estimated to be sufficient to meet the reasonably estimated load growth needs of AMPO members.

Proposed Financing Arrangements

It is anticipated that the Authority will issue revenue bonds to pay the cost of its ownership interest in the initial generating facilities, including capitalization of interest during construction and the creation of such reserves as may be established in the Authority's power sales contracts with its members and in its bond resolution. The Authority would likely issue both serial and term bonds periodically to pay for its costs of acquisition and construction.

The terms of the financing arrangements contemplated by the joint agency technique generally involve take or pay contracts between the joint agency and the municipal corporations comprising its membership and the creation, to

the extent feasible, of contractual arrangements between the joint agency and other purchasers of power from the joint agency which are designed to provide adequate security for the payment of the principal of and interest on its electric revenue bonds and to assure that interest on the electric revenue bonds will be exempt from Federal income taxation under existing laws and regulations. It is the plan so to structure the contractual arrangements between the Authority and its municipal members, and other purchasers from the Authority, in a manner designed to provide adequate security for the payment of the principal of and interest on its electric revenue bonds and to assure that interest on its electric revenue bonds also will be exempt from Federal income taxation under existing laws and regulations.

If the proposed legislation and constitutional amendment become law in the form attached, AMPO believes that the new body of law in Ohio would resemble law in other states where municipal electric systems have created joint financing agencies and financed generation and transmission facilities through the issuance of tax exempt electric revenue bonds. (Laws with respect to joint entities differ in each of approximately 30 states which permit municipal joint ownership and financing of electric facilities;

there are limitations in the proposed legislation that are not present in the laws of other states, and there are limitations in the laws of other states which do not appear in the proposed legislation in Ohio.) In general, the proposed legislation and constitutional amendment, if duly enacted, appear to provide an adequate framework for financing the initial generating facilities by the Authority.

No assurance can be provided, however, concerning the ultimate feasibility of financing by the Authority of the initial generating facilities prior to creation of the Authority and completion of various contracts referred to in the coordination agreement. AMPO must assume that these contracts will be developed so that necessary assurances will be furnished by AMPO's and the Authority's consultants and counsel, including favorable conclusions by the Authority's consulting engineers that the proposed project is expected to be reasonable and feasible.

In addition, it should be noted that there presently exist several uncertainties which are usual for a proposed joint generating project at this stage of development. These uncertainties include the content of power sales contracts to be entered into between the Authority and its members; actions by the Authority, its members, and various regulatory bodies; actions by the boards of directors and trustees of other parties to the negotiations; future conditions in

the utility industry generally and in the State of Ohio; and conditions in the tax exempt bond market.

Conclusion

It is the belief of AMPO that its plan will enable it to purchase and pay for the facilities which it elects to acquire. It is also AMPO's belief that since, under the coordination agreement, it contemplates meeting the needs of its municipal members for power during the construction period through the purchase of power and energy from OPCO and others, it will have no need of capital requirement to serve the incremental needs of its members for power during the construction period of its initial generating facilities.

AMPO has concluded, based upon extended discussions it has had with the experts, including investment banking firms, it has selected and retained to assist in the development of the coordination agreement and the financing of its initial generating facilities, that the plan outlined above is reasonably designed to provide AMPO on reasonable terms with the funds it will require.

May 22, 1979

APPENDIX NO. 5

Description of 600-MW Generating Unit

1. General

In general, if it is determined to construct a 600-MW generating unit, the unit will duplicate, to the maximum extent feasible, the design features of the Cardinal Unit No. 3. Such duplication will not only assure the excellent performance demonstrated by this design but will also reduce the amount of time required for preengineering work and preparation of engineering and design drawings. In addition, construction of the unit will be substantially aided and savings in installed costs of equipment should be realized.

2. Steam Generator

The steam generator will have a single furnace firing pulverized coal. It should be designed to burn a wide range of coals, including both Eastern and Western low-sulfur coals. It will be designed for operation at supercritical steam pressures with superheater outlet conditions of 3,850 psig at 1010°F, with single reheat to 1000°F. The steam generator, rated at 4,570,000 lbs/hour, will be designed for pressurized furnace operation, continuing AEP's long experience (since 1949) with this feature.

3. Pulverizers

The unit will utilize type MPS-89 pulverizers, each having a nominal capacity of 62 tons per hour. Provision of 6 pulverizers is recommended to insure full load capability using the poorest heat content coals.

4. Boiler Feed Pump

The boiler feed pump will be a single, full-sized, turbine-driven pump rated at 10,912 gpm and 31,500 BHP at 4850 rpm with a discharge pressure of 4,774 psig. The primary steam source for the condensing drive turbine is the IP turbine exhaust; the secondary steam source is the HP turbine exhaust. Steam can also be supplied from an auxiliary boiler for start-up and shut-down periods.

5. Auxiliary Steam Supply

The steam necessary to start-up the unit is provided by an oil-fired auxiliary boiler rated at 300,000 lbs/hour. If additional 600-MW generating units are installed in the plant, cross-tie piping can be installed between the units' auxiliary steam systems to improve plant start-up reliability. Also, to conserve oil, facilities can be provided to permit unit start-up without use of the auxiliary boiler by utilizing steam from the HP turbine exhaust of the operating unit.

6. Turbine Generator

The tandem-compound, four flow machine consists of a 3600 rpm single flow HP turbine, a single flow IP turbine and two double-flow LP turbines. The generator is rated 722 MVA at output voltage of 26 kV and synchronous speed of 3600 rpm. The rotor is hydrogen-cooled, the stator water-cooled. Static excitation is provided.

7. Generator Step-up Transformers

One three phase, oil-filled transformer rated at 24.7/345 kV, 725 MVA FOA is provided.

8. Environmental Controls

Environmental controls as needed to comply with applicable air and water quality regulations will be provided. Major facilities include (1) electrostatic precipitators with design efficiency of 99.7%, on-site bottom-ash disposal facilities and off-site dry fly ash landfill; (2) a hyperbolic cooling tower, approximately 370 feet high and 400 feet in diameter at the cold water basin; (3) a tall (approximately 900 feet) stack to disperse gaseous and particulate emissions and minimize ground-level concentrations of pollutants; (4) waste water treatment facilities; (5) air and water monitoring systems.

Control of SO_2 emissions will most likely require the installation of flue gas desulfurization facilities (scrubbers). A number of alternative processes are being

studied, but a specific process cannot be recommended at this time. None of the AEP System generating units, in service or currently under construction has such facilities installed.

APPENDIX NO. 6

Description of 1300-MW Generating Unit

1. General

In general, if it is determined to construct a 1300-MW generating unit, the unit will duplicate, to the maximum extent feasible, the design features of the latest 1300-MW generating unit then under construction on the AEP System. Such duplication will not only assure the excellent performance demonstrated by this design but will also reduce the amount of time required for preengineering work and preparation of engineering and design drawings. In addition, construction of the unit will be substantially aided and savings in installed costs of equipment should be realized.

The design features of AEP's 1300-MW coal-fired generating units have been described and discussed in technical papers presented to the industry. The design of the proposed 1300-MW units may differ in minor detail from that described in the papers because of site-specific requirements or improvements since incorporated by the equipment manufacturers with AEP's consultation and endorsement.

2. Steam Generator

The steam generator will have a single furnace firing pulverized coal. It should be designed to burn a wide range of coals, including both Eastern and Western

low-sulfur coals. It will be designed for operation at supercritical steam pressures with superheater outlet conditions of 3,845 psig at 1010°F, with single reheat to 1000°F. The steam generator, rated at 9,775,000 lbs/hour, will be designed for pressurized furnace operation, continuing AEP's long experience (since 1949) with this feature.

3. Pulverizers

The unit will utilize type MPS-89 pulverizers, each having a nominal capacity of 62 tons per hour. Provision of 14 pulverizers is recommended to insure full load capability using the poorest heat content coals.

4. Boiler Feed Pump

The boiler feed pump will be a single, full-sized, turbine-driven pump rated at 21,600 gpm and 63,000 BHP at 4160 rpm with a discharge pressure of 4,610 psig. The primary steam source for the condensing drive turbine is the IP turbine exhaust; the secondary steam source is the HP turbine exhaust. Steam can also be supplied from an auxiliary boiler for start-up and shut-down periods.

5. Auxiliary Steam Supply

The steam necessary to start-up the unit is provided by an oil-fired auxiliary boiler rated at 375,000 lbs/hour. If additional 1300-MW generating units are

installed in the plant, cross-tie piping can be installed between the units' auxiliary steam systems to improve plant start-up reliability. Also, to conserve oil, facilities can be provided to permit unit start-up without use of the auxiliary boiler by utilizing steam from the HP turbine exhaust of the operating unit.

6. Turbine Generator

The cross-compound, eight flow machine has a HP turbine shaft consisting of a 3600 rpm double-flow HP turbine and two double-flow LP turbines. The 3600 rpm Intermediate Pressure (IP) turbine shaft consists of the double-flow reheat turbine and two double-flow LP turbines. Each generator is rated 722 MVA at output voltage of 26 kV and synchronous speed of 3600 rpm. The rotors are hydrogen-cooled, the stators water-cooled. Static excitation is provided.

7. Generator Step-up Transformers

Three single phase, oil-filled transformers with an identical spare are provided. Each transformer is rated at 24.6/765 kV, 500 MVA FOA.

8. Environmental Controls

Environmental controls as needed to comply with applicable air and water quality regulations will be provided. Major facilities include (1) electrostatic precip-

itators with design efficiency of 99.7%, on-site bottom-ash disposal facilities and off-site dry fly ash landfill; (2) a hyperbolic cooling tower, approximately 500 feet high and 465 feet in diameter at the cold water basin; (3) a tall (approximately 1000 feet) stack to disperse gaseous and particulate emissions and minimize ground-level concentrations of pollutants; (4) waste water treatment facilities; (5) air and water monitoring systems.

Control of SO_2 emissions will most likely require the installation of flue gas desulfurization facilities (scrubbers). A number of alternative processes are being studied, but a specific process cannot be recommended at this time. None of the AEP System generating units, in service or currently under construction has such facilities installed.

APPENDIX NO. 7
(PART I)

PROPOSED AMENDMENT TO OHIO CONSTITUTION

Article VIII, Section 14:

It is hereby determined to be a proper public purpose for any corporation organized as a corporation not-for-profit under the laws of this State which is subsequently constituted a body corporate and politic, and a political subdivision, of this State, by legislation duly enacted by the General Assembly of this State, to finance, acquire, own by tenancy in common or separately, lease and operate facilities (including land and interests in land) for the generation, transformation and transmission of electric power, and the energy related thereto (but not facilities for the distribution of electric power and energy at retail), and to sell electric power and energy related thereto at wholesale to municipal corporations to provide for present and projected needs of such municipal corporations for internal use and of the retail customers of such municipal corporations and, with respect to electric power and energy which such political subdivision reasonably determines cannot be economically and beneficially utilized to meet such needs, at wholesale to any other electric utilities, public or private (including without limitation

electric light companies and corporations not-for-profit engaged in the generation, transmission and sale of electric power and energy within the State of Ohio), provided that such excess electric power and energy be first made available for a reasonable period for sale at wholesale to the electric utilities operating in this State on terms at least as favorable as shall be made available for sale to electric systems outside the State prior to any sale of any such excess to electric systems without the State; provided, however, that, notwithstanding the provisions of Article XVIII, Section 4 and Section 5, no such political subdivision shall be entitled to acquire by condemnation, or to appropriate through the exercise of the power of eminent domain, either directly, or indirectly through the initial acquisition by and subsequent transfer to such political subdivision by one or more municipal corporations, any property belonging to an electric light company except for the sole purpose of acquiring rights to permit the crossing over or under existing transmission or distribution facilities of such electric light company. Laws may be passed to authorize for such purpose (a) agreements by such a political subdivision with municipal corporations and other electric utilities, public or private, for management, planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, improvement or joint ownership

of such electric power facilities or for the sale at wholesale by such a political subdivision of capacity, output or wholesale electric service from such facilities, on such terms (consistent with this Article VIII, Section 14) as shall be agreed upon, including without limitation agreements by such a political subdivision with municipal corporations for the sale of capacity or output of such facilities requiring payments by municipal corporations therefor from revenues of their municipal electric systems whether or not such payments are conditioned on the availability of such capacity, output or service, and (b) the issuance by such a political subdivision of bonds, unsecured or secured by pledges of such facilities or revenues derived by such political subdivision under such agreements with such municipal corporations and other public or private electric utilities. Laws may also be passed to regulate the siting, and the acquisition and disposition, of facilities by such a political subdivision and the issuance of securities, the maintenance of accounts, and the reporting of the results of operations by such a political subdivision and to permit or require the payment of taxes, or payments in lieu of taxes, by such a political subdivision to governmental bodies of this and other States. Such laws, bonds, agreements, payments and sales shall not be subject to any other sections of Article VIII, to Article XII, Section 6 or 11, or to

Article XVIII, Section 4 or 6 of the Constitution, and any such laws heretofore enacted are hereby validated; provided that although such a political subdivision shall not be subject to the provisions of Article XVIII, Section 6, no provision of this Article VIII, Section 14, or any such law, shall affect the obligations of municipal corporations to comply with the provisions of such Article XVIII, Section 6.

SERVICE SCHEDULE E

GAVIN PLANT POWER

Under Agreement dated as of April 1, 1974

between

American Municipal Power-Ohio, Inc.

and

Ohio Power Company

SECTION 1 - DURATION

1.1 This Service Schedule, a part of an agreement dated as of April 1, 1974 (the Agreement), between American Municipal Power-Ohio, Inc. (AMP-Ohio) and Ohio Power Company (Ohio Power) shall become effective on
and shall continue in effect until
unless otherwise extended by mutual agreement.

SECTION 2 - SERVICES TO BE RENDERED

2.1 Amp-Ohio by giving Ohio Power at least six months' written notice may reserve from Ohio Power, for periods of not less than six consecutive calendar months within the effective period of this Service Schedule as set forth in Section 1 above, electric power (Gavin Plant Power) in any amounts between 10,000 kilowatts and 200,000 kilowatts. Each written reservation to Ohio Power shall specify the number of kilowatts, and the period for which it desires to so reserve such power and the desired schedule of delivery of the power

so reserved.

2.2 During the period that Gavin Plant Power has been reserved, Ohio Power each hour, shall upon call, subject to the provisions of this Agreement, deliver electric energy (Gavin Plant Energy) in amounts up to and including the number of kilowatts then reserved to AMP-Ohio at the Delivery Point or Delivery Points, except when such deliveries would in the judgment of Ohio Power have to be interrupted or reduced to preserve the integrity of, or to prevent or limit any instability on its system.

SECTION 3 - COMPENSATION

3.1 Payments by Amp-Ohio each month for the supply of Gavin Plant Power and Gavin Plant Energy shall be based upon the following rates:

3.11 Demand Charge For each kilowatt of Gavin Plant Power reserved by Amp-Ohio during such month at the rate of $6.00 per kilowatt.

3.12 Energy Charge For each kilowatthour of Gavin Plant Energy supplied by Ohio Power during such month equal to the sum of (1) 1.00 mills and (2) the Unit Cost of fuel consumed at Gavin Plant during such month, or if no fuel shall be consumed at Gavin Plant during such month, then the Unit Cost of fuel consumed at Gavin Plant during the next preceding month when fuel was so consumed, expressed in mills per kilowatthour, multiplied by 1.045 to adjust for losses.

The Unit Cost of fuel consumed at Gavin Plant is defined as the cost of fuel consumed during the month at Ohio Electric Company's (a subsidiary of Ohio Power) General James M. Gavin Plant near Galliopolis, Ohio, reflected in Account 151, as defined in the Uniform System of Accounts prescribed for Public Utilities and Licensees by the Federal Energy Regulatory Commission, as prevailing on April 1, 1979, divided by the net-kilowatt-hours generated at Gavin Plant during such month.

3.2 Payments made by Amp-Ohio pursuant to this Schedule shall comprise an amount in dollars equal to the sum of (a) the amount provided for by subsection 3.1 of this Service Schedule and (b) an amount in dollars sufficient to reimburse Ohio Power for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based on or measured by net income) in respect to the total amount paid pursuant to this Section and to enable Ohio Power, after provision for such taxes to realize the net amount payable as provided in subsection 3.1 above.

SECTION 4 - SPECIAL PROVISION

Each party to the Agreement recognizes that inflationary pressures and cumbersome administrative procedures which are required under some circumstances by statutory provision and/or administrative rule may, unless special precautions are taken, inhibit the parties from effecting interconnections and transactions which might otherwise be effected pursuant to the provisions of the Agreement

and this Schedule. AMP-Ohio accordingly agrees that Ohio Power may at any time and from time to time in the future take such action under the Agreement--including Article 11 thereof--as Ohio Power shall consider to be in the best interests of Ohio Power, including action to file any tariff or rate schedule designed to supersede this Schedule. AMP-Ohio also agrees that, in the event of any such filing by Ohio Power, AMP-Ohio hereby (i) waives any requirement of law with respect to the form and content of filings otherwise applicable to such filing, and (ii) waives any suspension of such superseding tariff or rate schedule of more than one day subsequent to the proposed effective date thereof and agrees that AMP-Ohio will not seek a suspension in any such event of more than one day subsequent to the proposed effective date thereof--all to the end that changes and modifications of this Schedule applicable to service to be supplied by Ohio Power to AMP-Ohio be effected without delay.

SCHEDULE OF MINIMUM CAPACITY RESERVATIONS OF AMERICAN MUNICIPAL POWER-OHIO, INC. IN POSTON UNIT NO. 5 OR POSTON UNITS NO. 5 AND 6

Year of Commercial Operation of Poston Unit No. 5	Minimum Capacity Reservation, Including Generating Capacity Reserve Obligation, of Net Capability of Poston Unit No. 5*	Minimum Capacity Reservation, Including Generating Capacity Reserve Obligation, of Net Capability of Poston Units No. 5 and 6**
1st	25%	25%
2nd	31	31
3rd	37	31
4th	43	37
5th	49	43
6th	55	49
7th	61	55
8th	67	61
9th	73	67
10th	79	73
11th	85	79
12th	91	85
13th	100	92.5
14th	100	95.5
15th and later years	100	100

* Minimum AMPO Capacity Reservation of Net Capability of Poston Unit No. 5 (AMPO's Initial Unit) if AMPO elects to purchase Poston Unit No. 5 but not Poston Units No. 5 and 6.

** Minimum AMPO Capacity Reservation of Net Capability of Poston Units No. 5 and 6 (AMPO s Initial Unit and Additional Unit) if AMPO elects t. purchase Poston Units No. 5 and 6.

PROCEDURE FOR ALLOCATION BETWEEN AMERICAN MUNICIPAL POWER-OHIO, INC. (AMPO) AND OHIO POWER COMPANY (OPCO) OF AMPO'S COSTS APPLICABLE TO ITS INITIAL GENERATING FACILITIES INCLUDING PROCEDURE FOR DETERMINING MONTHLY CHARGE BY AMPO TO OPCO FOR CONTRACT EXCESS CAPACITY

It is the intention of AMPO, CSOE and OPCO that, if AMPO elects to purchase the facilities currently under construction as Poston Unit No. 5 (AMPO's Initial Unit), it may also at the same time elect to purchase the other facilities being constructed as Poston Unit No. 6 (AMPO's Additional Unit), and if the transaction is consummated, construction of AMPO's Initial Unit and AMPO's Additional Unit, if any, will be continued and each of the Units will be placed in commercial operation when completed, and the Initial Unit and the Additional Unit, if any, then will be operated as a single station (AMPO's Station) separate and apart from other generating facilities which CSOE has installed and is operating, or may at a future date install and operate, at the Poston Station.

It will be necessary, in view of the foregoing, for AMPO to maintain a separate set of accounts pursuant to the Uniform System of Accounts (the Uniform System of Accounts) prescribed by FERC (18 CFR, Part 101) under the Federal Power Act - which AMPO agrees to do - in which AMPO's costs and expenses applicable to its Initial Generating Facilities will be recorded in order to permit

allocation between AMPO and OPCO, the amounts so allocated to OPCO to provide the basis on which AMPO will charge and bill OPCO on a monthly basis for Contract Excess Capacity, and for the energy to which OPCO will be entitled under the Station Agreement.

The procedure for the reservation of capacity by or for the account of AMPO (AMPO Capacity Reservation) will result in the determination from time to time of the capacity, including the capacity associated with AMPO's generating capacity reserve obligation, for which AMPO will be financially responsible, which will be expressed in the Station Agreement as a percentage of the capacity, or capability, of AMPO's Station. Subtracting AMPO's Capacity Reservation, at any time in question, from 100%, representing the total capacity of AMPO's Station, will leave, as the remainder, the percentage associated with the Contract Excess Capacity for which OPCO will be financially responsible to AMPO - AMPO and customers of AMPO other than OPCO, including AMPO Members, being and to be financially responsible for the AMPO Capacity Reservation.

Although AMPO, and customers of AMPO other than OPCO, will be responsible for charges and costs under the Station Agreement which are applicable to the AMPO Capacity Reservation, AMPO will, at any time in question, be entitled to schedule as its capacity entitlement for sale,

geothermal energy and energy derived from waste, and (ii) hydroelectric facilities for the generation of electric power, which facilities shall be licensed as a project under Part I of the Federal Power Act or under any legislation enacted in substitution therefor to the extent required thereunder, including water conduits, dams and appurtenant works and structures, power houses and storage reservoirs, or any interest (including an undivided interest as a tenant-in-common or otherwise) in, or right to the capacity or output of, any such facility or facilities, but shall not include (a) any system or facilities for the distribution of electric power and energy at retail, (b) any electric power facilities, other than hydroelectric facilities, located outside the State of Ohio, or (c) any hydroelectric facilities (and related transmission and transformation facilities operated for the sole purpose of connection with transmission facilities located in the State of Onio) located outside the State of Ohio unless located on or adjacent to the Ohio River.

(H) "Municipal corporation" means any municipal corporation of this State which on January 1, 1979 owned and operated under the laws of Ohio facilities for the generation, transmission or distribution of electric power and energy in the State of Ohio.

Section 744.02. (A) The Corporation in conjunction with any municipal corporation or municipal

corporations may create, by means of the Authority Agreement, the Authority as the successor to the Corporation. The municipal corporation or municipal corporations initially entering into the Authority Agreement creating the Authority shall constitute the initial members of the Authority. The Authority Agreement shall be made in accordance with this Chapter and shall be approved by ordinance of the governing body of each municipal corporation which is a party to the Authority Agreement and shall be executed on behalf of such municipal corporation by the official or officials of such municipal corporation designated in such ordinance. No such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipal corporation shall be filed with the executive authority thereof demanding a referendum on such ordinance, i shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of Section 8 of Article XVIII of the Constitution of the State of Ohio as to the submission of the question of choosing a charter commission.

(B) Other municipal corporations, in addition to the municipal corporation or municipal corporations initially creating the Authority, may subsequently become parties to the Authority Agreement and members of the Authority, upon meeting the conditions for membership specified in the Authority

Agreement, by executing a copy of the Authority Agreement, or an appropriate supplement thereto, and agreeing to be bound by its terms. The Authority Agreement shall be approved by ordinance of the governing body of each municipal corporation subsequently becoming a party thereto and a member of the Authority and shall be executed on behalf of each such municipal corporation by the official or officials of such municipal corporation designated in each such ordinance. No such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipal corporation shall be filed with the executive authority thereof demanding a referendum on such ordinance, it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of Section 8 of Article XVIII of the Constitution of the State of Ohio as to the submission of the question of choosing a charter commission.

Section 744.03. (A) The Authority Agreement establishing the Authority as the successor to the Corporation shall specify:

(1) the name of each municipal corporation initially proposing to be a member of the Authority and such other conditions, if any, in addition

to those specified in this Chapter under which other municipal corporations may become members;

(2) the place where the initial principal office of the Authority is to be located;

(3) that the Authority is being created in compliance with the Constitution in order to assist its members in obtaining adequate, reliable and economical sources and supplies of electric power and energy to meet requirements of their inhabitants and customers;

(4) the establishment and organization of the board of directors in which all authority for the management of the affairs of the Authority is vested, including:

(a) the number of directors, their manner of appointment, terms of office and compensation, if any, the procedure for filling vacancies on the board, and the names and addresses of not less than three natural persons who are to be members of the initial board;

(b) the officers of the Authority, the manner of their selection, and their duties;

(c) the quorum and voting requirements for action by the board, which may include weighted voting determined in the manner provided in the Authority Agreement;

(d) provisions for an executive committee of the board of directors, if any, which may administer the business of the board of directors during intervals between the board meetings in accordance with the board's rules, motions or resolutions, including the composition of such executive committee which may be as to afford, in the judgment of the board, fair representation of the member municipal corporations, the terms of office and compensation, if any, of such committee's members and the procedures for filling vacancies on the committee;

(5) the term of the Authority Agreement, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated, provided that the Authority Agreement may not be rescinded or terminated so long as the Authority has bonds or other obligations

outstanding unless provision for full payment of such bonds or other obligations, by escrow or otherwise, has been made under the terms of such bonds or other obligations;

(6) the procedure by which the Authority Agreement may be amended;

(7) provisions for the termination of a municipal corporation's membership in the Authority, provided that all contractual obligations incurred by such municipal corporation while it was a member of the Authority shall continue in full force and effect; and

(8) any other provisions the parties consider appropriate relating to the organization, purposes, powers, administration or dissolution of the Authority consistent with the Constitution and this Chapter.

(B) The Authority created pursuant to this Chapter shall be a body corporate and politic and a political subdivision of the State separate from the municipal corporation or municipal corporations which are parties to the Authority Agreement and members of the Authority. The Authority's powers shall be considered essential governmental functions of this State and in the performance of such functions the Authority shall be deemed to be serving a public purpose

and exercising a part of the sovereign powers of the State, but the Authority shall not be immune from liability by reason thereof.

Section 744.04. (A) The Authority Agreement initially made pursuant to Section 744.03 of the Revised Code shall, prior to its becoming effective, be submitted to the Attorney General, who shall determine whether the Authority Agreement is in proper form and compatible with the Constitution and laws of this State. The Attorney General shall approve the Authority Agreement initially made pursuant to Section 744.03 of the Revised Code unless it does not meet the conditions set forth in this Chapter, in which event the Attorney General shall notify the Corporation and the governing bodies of the municipal corporations executing the Authority Agreement regarding the specific respects in which the proposed Authority Agreement fails to meet such conditions.

(B) Before becoming effective, the Authority Agreement, as approved by the Attorney General, shall be filed with the Secretary of State. The Secretary of State forthwith shall record the Authority Agreement and issue and record a certificate of incorporation. The certificate shall state the fact and date of incorporation of the Authority. Upon the issuance of the certificate of incorporation:

(1) the Authority Agreement shall become effective;

(2) the existence of the Authority as a body corporate and politic and a political subdivision of the State shall begin;

(3) the separate existence of the Corporation shall cease, except that, whenever a conveyance, assignment, transfer, deed or other instrument, or act, is necessary to vest property or rights in the Authority, the officers of the Corporation shall execute, acknowledge and deliver such instruments, and do such acts, and for such purposes the existence of the Corporation and the authority of its officers and directors shall be deemed continued;

(4) the Authority shall thereupon and thereafter possess all the rights, privileges, immunities, powers, franchises and authority of the Corporation, and all properties of every description and every interest therein, and all obligations of or belonging to or due to the Corporation shall thereafter be taken and deemed to be transferred to and vested in the Authority without further act or deed;

(5) the Authority shall thenceforth be liable for all the obligations of the Corporation,

and any claim existing or action or proceeding pending by or against the Corporation may be prosecuted to judgment, with right of appeal as in other cases, or the Authority may be substituted in its place; and

(6) all the rights of creditors of the Corporation shall be preserved unimpaired and all liens upon the property of the Corporation shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the issuance of such certificate of incorporation.

(C) Upon rescission or termination, if any, of the Authority Agreement in accordance with the terms thereof and the provisions of this Chapter, the Authority shall be dissolved and its existence shall terminate.

Section 744.05. The Authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(A) to adopt by-laws for the regulation of its affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(B) to adopt an official seal and alter the same at pleasure, but failure to affix the seal shall not affect the validity of any instrument;

(C) to maintain an office at such place or places within this State as it may determine;

(D) to adopt a fiscal year and alter the same at pleasure;

(E) to sue and be sued in its own name, and to plead and be impleaded;

(F) to receive, administer and comply with the conditions and requirements respecting any gift, grant, donation or appropriation of any property or money;

(G) to acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, tangible or intangible, including an interest in land less than the fee thereof;

(H) to exercise, upon compliance with the laws of this State, the power of eminent domain to acquire property or any interest therein which is necessary or proper for the construction or operation of any electric power facilities, subject, however, to the provisions of Section 744.07 of this Chapter;

(I) to sell, lease, mortgage, exchange, transfer or otherwise dispose of, or to grant options for any such

purposes with respect to, any real or personal property or interest therein;

(J) to acquire, hold, use and dispose of its income, revenues, funds and moneys;

(K) to invest its moneys in such obligations, securities and other investments as the Authority considers prudent, notwithstanding the provisions of any other law relating to the investment of public funds;

(L) to pledge or assign any moneys, fees, charges, or other revenues of the Authority and any proceeds derived by the Authority from the sale of property, insurance or condemnation awards;

(M) to select and appoint agents, to select and employ personnel and to contract with respect thereto;

(N) to conduct any activities authorized by this Chapter through its officers, agents or employees, or contracts with any person or entity;

(O) to employ personnel who shall serve at the pleasure of the board of directors of the Authority, provided, however, that the Authority may bind itself by contract to employ a general manager for a period not exceeding five years;

(P) to borrow money and issue its bonds as hereinafter provided in this Chapter;

(Q) to purchase electric power and energy from, or arrange for the transmission of electric power and energy by, other electric systems within or without the State of Ohio, for the purpose of delivery to electric utilities, upon such terms and for such periods of time as the Authority shall determine;

(R) to operate electric power facilities to generate, transform and transmit electric power and energy, and to sell, upon such terms and for such periods of time as the Authority shall determine, (i) such electric power and energy and related products and services of such electric power facilities, including, without limiting the generality of the foregoing, all or a portion of the capacity and output of one or more specified electric power facilities, and (ii) electric power and energy purchased by the Authority pursuant to division Q of this Section 744.05, at wholesale (a) to municipal corporations to provide for present and projected needs of such municipal corporations for internal use and of the retail customers of such municipal corporations, and (b) with respect to electric power and energy which the Authority reasonably determines cannot be economically and beneficially utilized to meet such needs, to other electric utilities, including without limitation electric light companies and corporations not-for-profit engaged in the generation, transmission and sale of electric power and energy within the State of Ohio, and electric systems without this State;

provided that such excess electric power and energy be first made available for a reasonable period for sale at wholesale to the electric utilities operating in this State on terms at least as favorable as shall be made available for sales to electric systems outside the State prior to any sale of any such excess to electric systems without the State; and such municipal corporations and electric utilities are hereby authorized to purchase electric power and energy sold by the Authority, provided, that nothing in this Chapter shall be construed to authorize the resale at wholesale by municipal corporations of electric power and energy so purchased except as otherwise expressly authorized by law, and provided, further, that nothing in this Chapter shall be construed to authorize the Authority to engage under any circumstances in the distribution of electric power and energy at retail;

(S) to arrange with others for the transmission and delivery of electric power and energy sold by the Authority pursuant to the provisions of this Chapter, and any municipal corporation is hereby authorized to enter into contracts with the Authority for such purpose;

(T) to enter into contractual arrangements, on such terms and for such periods of time as the Authority shall determine, with respect to interconnections and the purchase, sale, delivery, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy, in connection with transactions and arrangements permitted by this Chaper;

(U) jointly or separately to study, plan, finance, acquire, construct, improve, purchase, operate, maintain, use, share costs of, own, lease, sell, dispose of or otherwise participate in electric power facilities or portions thereof or research and development relating thereto and to enter into and perform contracts with respect thereto, including acquisition by purchase, lease or otherwise of completed electric power facilities or electric power facilities under construction; and, in connection with any electric power facilities to be owned or operated jointly with others, to act as agent, or designate one or more of the other participants in such electric power facilities to act as agent, for all of the other participants in connection with the studying, planning, financing, acquisition, construction, operation and maintenance of such electric power facilities and other activities relating thereto; and in carrying out its functions as agent with respect to any such activities, the agent will be governed solely by the laws and rules applicable to such agent as a separate legal entity; provided, however, that nothing herein contained shall excuse or be deemed to excuse such agent from any obligation or liability it may have as a principal; and provided, further, that, notwithstanding Section 4906.13 of the Revised Code, the Authority shall not commence construction of, purchase, or acquire by lease or otherwise, any

electric power facility which is, or upon completion of construction will be, a "major utility facility" as defined in Section 4906.01 of the Revised Code, or any interest in any such electric power facility without the approval of the Commission pursuant to the standards specified in Section 4905.48 of the Revised Code, or sell or lease any electric power facility which is, or on completion of construction will be, a "major utility facility", as defined in Section 4906.01 of the Revised Code, or any interest therein, to any public utility without the approval of the Commission pursuant to division (C) of Section 4905.48 of the Revised Code; and provided further that the surrender or waiver by any such owner of such property of its right to partition such property for a period not exceeding the period for which it is reasonably estimated the property may be used or useful as an electric power facility shall not be invalid and unenforceable by reason of length of such period, or as unduly restricting the alienation of such property;

(V) to contract with any electric utility or any other person or entity for management services in connection with any electric power facilities, or to provide management services to any member of the Authority in connection with its municipal electric system;

(W) to interconnect its electric power facilities with facilities of others in connection with transactions and arrangements permitted by this Chapter;

(X) to procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it considers desirable, and to obtain such insurance to provide such indemnification for its directors, officers, employees and agents as it may deem necessary or appropriate;

(Y) to apply to the appropriate agencies of the State, other states, the United States, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate electric power facilities in accordance with such licences, permits, certificates or approvals;

(Z) to make and execute all contracts and agreements and other instruments necessary or appropriate for the exercise of the powers and functions of the Authority under this Chapter; and

(AA) to do all things necessary, convenient or desirable to carry out the purposes of this Chapter or the powers expressly granted or necessarily implied in this Chapter.

Section 744.06. (A) A municipal corporation may contract to buy power and energy from the Authority required for such municipal corporation's present or future requirements, including all or a portion of the capacity and output of one or more specified electric power facilities,

and may contract with the Authority for power supply planning and development services, on such terms and for such period of time as the Authority and such municipal corporation shall determine. The contract may provide that the municipal corporation shall be obligated to make the payments required by the contract whether or not the electric power facility or electric power facilities involved is or are completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output, capacity or service of an electric power facility, or the power and energy contracted for, and whether or not any seller or sellers of power or energy to the Authority deliver power or energy to the Authority pursuant to contractual arrangements with the Authority, and that the payments under the contract shall not be subject to any reduction whether by offset or otherwise, and need not be conditioned upon the performance or nonperformance of the Authority or another municipal corporation under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output entered into between the Authority and municipal corporations may also provide that if one or more of such municipal corporations default in the payment of its or their obligations with respect to the purchase of such capacity or output, then the nondefaulting municipal corporations shall be required to

accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipal corporation.

(B) Payments by a municipal corporation under a contract with the Authority pursuant to this section shall be made solely from the revenues derived from the ownership and operation of the electric system of the municipal corporation and the obligation of the municipal corporation to make such payments may be secured by a pledge of and lien upon such revenues. The contract may also provide that such payments shall be made as an operating expense of the electric system of the municipal corporation. An obligation under such a contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the municipal corporation or upon the municipal corporation's income, receipts, or revenues, except the revenues of its electric system. A municipal corporation shall be obligated to fix, charge, and collect rates, fees, and charges for electric power and energy and other related services, facilities and commodities, sold, furnished or supplied by such municipal corporation sufficient to provide revenues adequate to meet its obligations under such a contract, and to pay all other amounts payable from or constituting a charge and lien upon those revenues, including amounts sufficient to pay the principal of and

interest on bonds issued by the municipal corporation for purposes related to its electric system.

(C) The Authority may, either at law or in equity, by suit, action, mandamus or other proceedings, enforce and compel the performance of any or all covenants or obligations of a municipal corporation under a contract pursuant to this section to be performed by the municipal corporation or any officer thereof, including the fixing, charging and collecting of rates, fees and other charges. Any pledge made by a municipal corporation pursuant to this section shall be valid and binding from the date the pledge is made. The revenues and any other funds so pledged and then held or thereafter received by such municipal corporation or any fiduciary shall immediately be subject to the lien of the pledge without physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against such municipal corporation without regard to whether such parties have notice thereof. Neither the contract, pledge agreement or trust agreement by which a pledge is created nor any financing statement, continuation statement or other instrument relating thereto need be filed or recorded in any manner. The obligation of a municipal corporation to make payments under such contracts shall not constitute indebtedness, bonded or otherwise, of such municipal corporation for

purposes of Chapter 133 of the Revised Code or the Constitution.

(D) A municipal corporation may furnish the Authority with money derived solely from the ownership and operation of its electric system or facilities and provide the Authority with personnel, equipment, and property, both real and personal. A municipal corporation may also provide services to the Authority.

(E) A municipal corporation may advance or contribute funds derived solely from ownership of its electric system or facilities to the Authority on such terms as may be agreed upon by the Authority and such municipal corporation, and the Authority shall repay the advance or contribution from the proceeds of bonds, operating revenues or other funds of the Authority, together with interest thereon, on such terms as may be agreed upon by the municipal corporation and the Authority.

(F) Any contract made by a municipal corporation with the Authority pursuant to this Section shall be approved by ordinance of the governing body of the municipal corporation and shall be executed on its behalf by the official or officials of the municipal corporation designated in such ordinance. No such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten percentum of the electors of the municipal corporation shall be filed with the executive

authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of Section 8 of Article XVIII of the Constitution of the State of Ohio as to the submission of the question of choosing a charter commission.

Section 744.07. (A) The Authority may, except as otherwise provided in the Constitution and in this Chapter, exercise the power of eminent domain to appropriate any land, rights of way, franchises, easements or other property necessary or proper for the construction or efficient operation of any electric power facility undertaken by it, or access thereto, pursuant to the procedure provided in Sections 163.01 to 163.22 of the Revised Code and subject to division (B) of this Section.

(B) The Authority shall not have the power of condemnation to take or the power to take by eminent domain property belonging to any political subdivision of this State or electric light company, except in the case of an electric light company for the sole purpose of acquiring rights to permit the crossing over or under existing transmission or distribution facilities of such electric light company.

(C) Laws generally applicable to public contracts, including, without limitation, those on hearings, plans,

specifications, forms of contracts, costs, notice and competitive bidding required under Chapters 731 and 735 of the Revised Code or other provision of law, are not applicable to projects of the Authority or to the formation of or any contract with the Authority by a municipal corporation or municipal corporations.

Section 744.08. The Authority is hereby authorized to issue its bonds solely in accordance with the provisions of this Chapter and subject only to the limitations contained in this Chapter in such principal amounts as it considers necessary to provide sufficient funds to carry out any of its corporate purposes and powers, including:

(A) the studying, planning, financing, acquisition, construction, improvement, purchase, operation, maintenance or use of any electric power facility;

(B) the funding or refunding of the principal of, or interest or redemption premiums on, any bonds issued by it whether or not such principal, interest or redemption premiums have become due;

(C) the establishment or increase of reserves to secure or to pay the bonds or any interest or redemption premiums thereon; and

(D) the payment of any other costs or expenses of the Authority incidental to, and necessary or convenient for carrying out, its corporate purposes and powers.

Section 744.09. (A) Except as may be otherwise expressly provided in this Chapter or by the Authority, every issue of bonds of the Authority shall be payable out of any of its revenues, funds, properties or assets subject only to any agreements with the holders of particular bonds pledging any particular revenues, funds, properties or assets. The Authority may issue any types of bonds as it may determine, including bonds as to which the principal, interest and redemption premiums are payable either exclusively from all or a portion of the revenues of the Authority, from one or more of its electric power facilities, from one or more revenue producing contracts or from its revenues generally, and such bonds may be additionally secured by a mortgage or pledge of any or all of its properties or assets, as the Authority shall determine.

(B) Bonds issued by the Authority are hereby made negotiable instruments within the meaning of Chapters 1301 to 1309 of the Revised Code.

(C) Bonds of the Authority issued pursuant to this Chapter shall be authorized by resolution of the Authority, may be issued in one or more series under a resolution, trust indenture or other security agreement, and shall bear such date or dates, mature on such date or dates within fifty years following the date of issuance,

bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, registration and exchange privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or without the State, be subject to such terms of redemption, with or without premium, and contain or be subject to such other terms, not inconsistent with this Chapter, as such resolution, trust indenture or other security agreement may provide.

(D) Bonds of the Authority may be sold at public or private sale for such price and in such manner as the Authority shall determine.

(E) Bonds of the Authority may be issued under this Chapter without obtaining the consent of any department, commission, agency, institution or instrumentality of the State and without any other proceeding or the occurrence of any other conditions or events other than those proceedings, conditions or events which are specifically required by this Chapter; provided that no bonds, payable at periods of more than twelve months after their date of issuance, may be issued to finance the construction, purchase or acquisition of any electric power facility which is, or will upon completion of construction be, a "major utility facility", as defined in

Section 4906.01 of the Revised Code, without the approval of the Commission pursuant to division (A) of Section 4905.40 of the Revised Code; provided that if the Commission approves such construction, purchase or acquisition under division (U) of Section 744.05 of this Chapter such approval shall constitute approval by the Commission of the issuance of such bonds as shall be required by the Authority to finance such construction, purchase or acquisition.

(F) The resolution, trust indenture or other security agreement under which any bonds shall be issued shall constitute a contract with the holders of the bonds and may contain provisions relating to the Authority, one or more of its electric power facilities and the revenues therefrom, the issuance of additional bonds, and such other provisions, as the Authority determines appropriate for the issuance and security of the bonds. Any holder of bonds issued by the Authority under the provisions of this Chapter, and the trustee under any resolution, trust indenture or other security agreement under which any bonds are issued, except as otherwise provided in such resolution, trust indenture or security agreement, may bring suit upon such bonds and may, either at law or in equity, by suit, action, mandamus or other proceedings, which may include the appointment of a receiver to take control of the business

and properties of the Authority, protect and enforce any or all of its rights granted under this Chapter or under such resolution, trust indenture or security agreement, and may enforce and compel the performance of any or all duties and obligations under this Chapter and any or all covenants or obligations under such resolution, trust indenture or security agreement to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges.

(G) Any pledges of revenues, other moneys, revenue producing contracts or properties or any part thereof or interest therein made by the Authority pursuant to this Chapter shall be valid and binding from the time when such pledge is made. The revenues or other moneys or proceeds of any contract so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery or further act required. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority regardless of whether the parties have notice. Neither the resolution, trust indenture or other security agreement nor any financing statement, continuation statement or other instrument relating thereto need be filed or recorded in any manner.

(H) Neither the officials of the Authority nor any person executing bonds shall be liable personally on the bonds, or be subject to any personal liability or accountability by reason of the issuance thereof.

(I) The Authority is authorized to purchase bonds out of any funds available for that purpose. It may hold, pledge, cancel or resell such bonds in accordance with agreements with bondholders.

(J) The principal of, and interest and redemption premiums on, any bonds issued by the Authority, including any amounts payable by virtue of default thereunder, shall be payable solely from the revenues, funds, properties or assets pledged, or available under the terms of such bonds, for their payment, as authorized in this Chapter. The bonds of the Authority shall not be a debt of the State or any member municipal corporation nor constitute a pledge of the full faith and credit of either thereof and neither the State nor any such municipal corporation shall be liable thereon nor in any event shall the principal of, or the interest or redemption premiums on, such bonds be payable out of any revenues, funds, properties or assets other than those of the Authority pledged, or available under the terms of such bonds, for their payment, and such bonds shall so state on their face.

Section 744.10. (A) Bonds issued under this Chapter, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within this State.

(B) The Authority shall be subject to the same tax status and treatment as shall be specified for municipal corporations in the Revised Code, as the same may be amended, except and provided, however, that the Authority shall be subject to the same excise tax on gross receipts derived from sales of electric power and energy and other property under Chapter 5727 of the Revised Code as a rural electric company would be subject in making sales of electric power and energy to a municipal corporation described in Section 5727.03 of the Revised Code; and provided further, that the Authority shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be leviable under the Revised Code, as the same may be amended, as property taxes on such real and tangible personal property if such property were the property of such a rural electric company. Such payments shall be due at such times, and shall bear penalty or interest if unpaid, as in the case of taxes on the property of such a rural electric company. For purposes of such payments in lieu of taxes, computations shall be made each year

showing the amounts at which the property would be valued and assessed, and the property taxes which would be payable, if such property were owned by such a rural electric company. In the absence of agreement on such amounts between the Authority and the tax officials of the taxing district in which such property is located, such computations shall be made by the governmental authorities who would make such computations if the property were owned by a rural electric company. Payments in lieu of taxes to be made hereunder shall be subject to all procedural and substantive provisions of law, including appeals, now and hereafter in effect applicable to the valuation and assessment, and the taxation, of the real and tangible personal property of a rural electric company, and to the payment, collection and abatement of taxes on the property of such a company.

Section 744.11. The Authority is authorized to fix, revise and collect, or to provide by contract for the establishment, revision and collection of, rates, fees and charges for electric power and energy and other services, facilities and commodities furnished or supplied by it or in connection with any of its electric power facilities. For as long as any bonds of the Authority are outstanding and unpaid, rates, fees and charges payable to the Authority by municipal corporations shall

in any event be fixed so as to provide revenues at least sufficient, together with other available funds, to pay all costs and expenses in connection with the acquisition, operation and maintenance of all electric power facilities owned or operated by the Authority, or in which it has any interest, and to pay for all costs and expenses required to pay all necessary repairs, replacements and renewals thereof, to pay when due the principal of, premium if any, and interest on all bonds of the Authority, to create and maintain reserves and to comply with any other terms as may be required by any resolution, trust indenture or other security agreement securing bonds, and to pay any and all amounts which the Authority may be obligated to pay by law or contract.

Section 744.12. Bonds issued under the provisions of this Chapter are hereby made lawful investments of banks, societies for savings, building and loan and savings and loan associations, deposit guarantee associations, trust companies, trustees, fiduciaries, insurance companies, including domestic for life and domestic not for life, trustees or other officers having charge of sinking and bond retirement or other special funds of political subdivisions and taxing districts of this State, the industrial commission, the state teachers retirement system, the public employees retirement system, the public school employees retirement system, and the police and fireman's disability

and pension fund, and are acceptable as security for the deposit of public moneys.

Section 744.13. When the board of directors of the Authority shall by resolution determine that the purposes for which the Authority was established have been substantially fulfilled and that bonds issued and other obligations incurred by the Authority have been fully paid or otherwise provided for, the board of directors may declare the Authority to be dissolved. On the effective date of such resolution, the title to the funds and other properties owned by the Authority at the time of the dissolution shall vest in the member municipal corporations as provided in the by-laws of the Authority or the Authority Agreement.

Section 744.14. (A) The manner of the keeping of the accounts of the Authority shall be subject to the continuing supervision of and regulation by the Commission to the same extent as if the Authority were an electric light company.

(B) The Authority shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the governing bodies of its member municipal corporations and the Commission. The annual report shall set forth a complete operating and financial statement covering the operations of the Authority during

the preceding year, together with an audit of its operations as prescribed in division (C) of this Section.

(C) The Authority shall annually cause an audit of its books of records and accounts by a nationally recognized firm of certified public accountants, and the cost of such audit may be treated as part of the cost of construction of an electric power facility or facilities, or as part of the expense of administration of an electric power facility covered by the audit.

Section 744.15. (A) The provisions of this Chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the Authority, member municipal corporations and others by law; provided, however, that insofar as the provisions of this Chapter are inconsistent with the provisions of any general or special law, administrative order or regulation or any limitation imposed by a corporate or municipal charter, the provisions of this Chapter shall be controlling; and provided further, however, that the Authority shall constitute a "person", as defined in Chapter 4906 of the Revised Code, and shall comply with the provisions of Chapter 4906 prior to the commencement of construction, and during the construction,

by the Authority of any "major utility facility", as defined in said Chapter 4906, unless a certificate shall not be required because of Section 4906.05 of the Revised Code.

(B) Legislative consent is hereby given to the application to the Authority of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, and to the application of regulatory and other laws of other states and of the United States in relation to the acquisition, construction, ownership, leasing, operation and maintenance by the Authority of electric power facilities, including hydroelectric facilities pursuant to the authority granted in this Chapter.

(C) The State does hereby covenant and agree with the holders of any bonds that so long as any bonds of the Authority are outstanding and unpaid the State will not limit or alter the rights vested in the Authority to carry out its purposes or to establish, maintain, revise, charge and collect the rates, fees and charges referred to in this Chapter and to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders until the bonds, together with interest and redemption premiums thereon, interest on any unpaid installment of interest, and all costs and expenses in connection with any action

or proceedings by or on behalf of the bondholders, are fully paid, met and discharged.

Section 744.16. This Chapter, being necessary for the welfare of the State and its inhabitants, shall, except to the extent otherwise required by the provisions of Section 14 of Article VIII of the Constitution, be liberally construed to effect the purposes hereof.

Section 744.17. The provisions of this Chapter are severable, and if any provision hereof shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

Section 744.18. This Chapter shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this Chapter, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

APPENDIX NO. 7
(PART II)

PROPOSED LEGISLATION

OHIO MUNICIPAL WHOLESALE ELECTRIC AUTHORITY

A BILL

To enact Sections 744.01 to 744.18 of the Revised Code to provide for the organization, operation and financing of the Ohio Municipal Wholesale Electric Authority

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That Sections 744.01, 744.02, 744.03, 744.04, 744.05, 744.06, 744.07, 744.08, 744.09, 744.10, 744.11, 744.12, 744.13, 744.14, 744.15, 744.16, 744.17 and 744.18 of the Revised Code be enacted to read as follows:

Section 744.01. The following words as used in Chapter 744 of the Revised Code shall, unless the context otherwise requires, have the following meanings:

(A) "Authority" means the Ohio Municipal Wholesale Electric Authority created pursuant to this Chapter and any successor or successors thereto.

(B) "Authority Agreement" means the written instrument creating the Authority in accordance with this Chapter.

(C) "Bonds" means bonds, notes or other evidences of indebtedness issued by the Authority under this Chapter.

(D) "Commission" means The Public Utilities Commission of Ohio.

(E) "Corporation" means American Municipal Power-Ohio, Inc., a corporation not-for-profit heretofore organized under the laws of the State of Ohio for the purpose of being at all times operated on a cooperative non-profit basis for the mutual benefit of its patrons.

(F) "Electric utility" means any public or private entity organized and existing under the laws of the State of Ohio (including "an electric light company," as defined in Section 4905.03 of the Revised Code) which is engaged in the business of supplying electricity for ultimate use for light, heat or power purposes by consumers within the State of Ohio.

(G) "Electric power facility" or "electric power facilities" means any system or facilities, including real and personal property, for the generation, transmission or transformation of electric power and energy by any means whatsoever, including, without limiting the generality of the foregoing, (i) facilities which are designed to generate electric power and energy including facilities utilizing fuels of any type, solar energy, wind power,

and to sell, to others than OPCO only the portion of the capacity of AMPO's Station as shall result from application of the formula set forth in the footnote below, i.e., an initial capacity entitlement of 83.33% of the percentage of capacity represented by the AMPO Capacity Reservation,* but subject to change as and when the reserve obligation of AMPO is changed under the Station Agreement.

The costs associated with the operation and maintenance of AMPO's Initial Unit (including such costs associated with Capital Additions as provided in subdivision 7 below), and AMPO's Additional Unit (including such costs associated with Capital Additions as provided in subdivision 7 below), if any, including the costs of fuel and fuel handling, will be determined on a monthly basis and allocated between AMPO and OPCO, as under the Buckeye Station Agreement, and the portion thereof allocated to OPCO will be billed by AMPO to OPCO, and promptly paid by OPCO to AMPO, on a monthly basis under the Station Agreement.

OPCO shall pay to AMPO the OPCO Monthly Demand Charge in each month to compensate AMPO for AMPO's fixed

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* AMPO's actual capacity entitlement under the Station Agreement in the capacity of the Initial Generating Facilities at any time shall be a percentage of such capacity equal to that percentage of AMPO's Capacity Reservation which shall be equal to the product of (a) 100% and (b) the ratio of (i) 100% to (ii) the sum of 100% and AMPO's then effective generating reserve obligation percentage.

charges associated with AMPO's Initial Unit (including fixed charges associated with Capital Additions as provided in subdivision 7 below) and AMPO's Additional Unit (including fixed charges associated with Capital Additions provided in subdivision 7 below), if any. Fixed charges associated with AMPO's Initial Unit (including fixed charges associated with Capital Additions as provided in subdivision 7 below) and AMPO's Additional Unit (including fixed charges associated with Capital Additions as provided in subdivision 7 below), if any, will be developed and allocated in such manner as to result in the determination, on a monthly basis, of the AMPO Monthly Carrying Charge.

The AMPO Monthly Carrying Charge, for any month, will equal the sum of (i) the AMPO Initial Unit Monthly Carrying Charge and (ii) the AMPO Additional Unit Monthly Carrying Charge, if any, for such month. The OPCO Monthly Demand Charge for any month shall be equal to the lesser of (A) the product of (a) a factor of 1.1, (b) the then effective OPCO Capacity Ratio and (c) the sum of (i) the AMPO Monthly Carrying Charge and (ii) AMPO's Other Fixed Charges for such month, and (B) 85% of OPCO's Monthly Carrying Charge, such amounts to be determined in the following manner:

1. OPCO Capacity Ratio for any month shall be a percentage equal to 100% minus the percentage which at the time in question equals AMPO's Capacity Reservation.

2. AMPO's Initial Unit Monthly Carrying Charge for any month will be an amount calculated, beginning with the day of the calendar month in which AMPO's Initial Unit shall be placed in commercial operation, as the sum of (i) 1/12th of the product of the AMPO Initial Unit Capital Cost Rate and AMPO's Depreciated Investment in AMPO's Initial Unit, plus (ii) 1/12th of the Initial Unit Annual Depreciation Charge where AMPO's Initial Unit Capital Cost Rate will at any time in question be the weighted actual annual average net interest cost (expressed as an annual rate) of the bonds or other long term debt securities which AMPO issues and sells to pay for the acquisition and construction of AMPO's Initial Unit (including Capital Additions as provided in subdivision 7 below), (a) after giving effect to any debt discount, premium and expense properly chargeable as such under the Uniform System of Accounts, but (b) excluding any bonds or debt securities to the extent that the proceeds of the sale thereof are used for, or applied to, any purpose other than (x) the acquisition and construction of AMPO's Initial Unit and/or (y) the refunding of any bond or debt security issued and sold to pay for the acquisition and construction of AMPO's Initial Unit.

3. OPCO's Monthly Carrying Charge for any month will be an amount equal to the sum of (i) 1/12th of the product of (a) AMPO's Depreciated Investment in AMPO's Initial Unit, (b) OPCO's Capital Cost Rate, and (c) the then

effective OPCO Capacity Ratio, (ii) 1/12th of the product of (a) AMPO's Investment in AMPO's Initial Unit, (b) 2.857%, and (c) the then effective OPCO Capacity Ratio, (iii) OPCO's Other Fixed Charges for such month and (iv) 1/12th of the product of (a) AMPO's Depreciated Investment in AMPO's Initial Unit, (b) OPCO's Income Tax Rate and (c) the then effective OPCO Capacity Ratio.

4. AMPO's Depreciated Investment in AMPO's Initial Unit shall for any month in question be an amount equal to the remainder resulting from subtracting from (x) the total amount (AMPO's Investment in AMPO's Initial Unit) properly chargeable at the date of commercial operation of AMPO's Initial Unit (or in-service date in the case of each Capital Addition pursuant to subdivision 7) to the production plant accounts of the Uniform System of Accounts by AMPO to reflect the cost of acquisition and construction of AMPO's Initial Unit (including Capital Additions as provided in subdivision 7 below), including any amount of allowance on borrowed funds used during construction properly recorded by AMPO in the accounts it maintains pursuant to the Uniform System of Accounts, (y) the amount of accrued depreciation on AMPO's Investment in AMPO's Initial Unit calculated on a straight-line basis at the annual rate of 2.857%, i.e., the Initial Unit Annual Depreciation Charge (which rate shall also be used in any calculation of accrued

depreciation on AMPO's Additional Unit pursuant to subdivision 6) from the date of commercial operation of AMPO's Initial Unit (or in-service date in the case of each Capital Addition pursuant to subdivision 7) to the end of the month preceding the time in question, and adding to the result (z) a provision mutually agreed upon by AMPO and OPCO as a reasonable provision for cash working capital, materials and supplies, and fuel stocks (unless provided by OPCO).

5. AMPO's Other Fixed Charges for any month shall be an amount equal to the total amount of property taxes, or payments in lieu of property taxes, and property insurance, properly recordable by AMPO in Accounts 408 and 924 of the Uniform System of Accounts.

6. AMPO's Additional Unit Monthly Carrying Charge for any month shall, if AMPO shall acquire and complete the construction of AMPO's Additional Unit (including Capital Additions as provided in subdivision 7), be calculated in accordance with the methods and procedures used for calculating AMPO'S Initial Unit Monthly Carrying Charge except that, where applicable, all references to AMPO's Initial Unit shall be deemed to refer to AMPO's Additional Unit and, where applicable, computations after the date of commercial operation of AMPO's Additional Unit shall be commenced as of the date, or related to such date, of commercial operation (or in-service date in the case of

each Capital Addition pursuant to subdivision 7) of AMPO's Additional Unit rather than AMPO's Initial Unit, but without any double counting or duplication of charges.

7. Capital Additions which are properly and reasonably allocable to completions, renewals, additions and replacements will be included (at net cost to the extent not covered by insurance, by amounts recovered from third parties or by net salvage) in AMPO's Initial Unit and in AMPO's Additional Unit for purposes of calculation of amounts to be paid by OPCO to AMPO for Contract Excess Capacity pursuant to provisions to be contained in the Station Agreement. The Station Agreement will provide that no single addition or replacement of a property unit involving an investment reasonably expected to cost more than $500,000 shall be included as a Capital Addition in AMPO's Initial Unit or in AMPO's Additional Unit for purposes of calculation of amounts to be paid by OPCO to AMPO for Contract Excess Capacity without the agreement of OPCO that such Capital Addition is necessary for the efficient or continued operation of AMPO's Initial Unit or AMPO's Additional Unit (which agreement of OPCO shall not be unreasonably withheld).

8. OPCO's Capital Cost Rate shall be determined by the following method:

Description	Total OPCO Capitalization Ratios	Cost Rate	Composite Annual Rate
(a)	(b)	(c)	(b)x(c)=(d)
Long-Term Debt	X_1%	Y_1%	Z_1%
Preferred and Preference Stock	X_2%	Y_2%	Z_2%
Common Equity	X_3%	Y_3%	Z_3%
OPCO's Capital Cost Rate			Z%

OPCO's capitalization ratios (X_1, X_2 and X_3), the average embedded long-term debt cost rate (Y_1) and the average embedded preferred and preference stock cost rate (Y_2) shall be determined from the corporate balance sheet in OPCO's Annual Report on Form 10-K filed with the SEC (or, in the event such Report ceases to be required to be filed by OPCO, such other report to a governmental agency containing OPCO's corporate capital structure) for the end of the calendar year preceding the year in which AMPO's Initial Unit goes into commercial operation. OPCO's common equity cost rate (Y_3) shall be the common equity cost rate allowed by the Public Utilities Commission of Ohio in OPCO's most recent rate proceeding or, in the event that no such common equity cost rate shall have been allowed, or decided, by the Public Utilities Commission of Ohio within a period of five years immediately preceding the time in question, then the average common equity cost rate experienced by OPCO

during the immediately preceding three calendar years, as reflected by its books of account. OPCO's Capital Cost Rate shall remain constant until AMPO's Additional Unit goes into commercial operation. At the time AMPO's Additional Unit goes into commercial operation, OPCO's Capital Cost Rate shall be recomputed in the manner specified above, measuring such cost as of December 31 of the year preceding the date of commercial operation of AMPO's Additional Unit, and OPCO's Capital Cost Rate shall remain constant thereafter for the duration of OPCO's obligation to purchase Contract Excess Capacity from AMPO.

9. OPCO's Income Tax Rate shall be calculated by the following formula:

$$\text{Rate} = \frac{E + P}{1-C} - (E + P)$$

where:

$$C = S + L + P\,(1 - S)\,(1 - L)$$

and where:

E = the composite annual cost rate of OPCO's common equity as calculated pursuant to Section 8 of this Appendix 10, i.e., Z_3

P = the composite annual cost rate of OPCO's preferred and/or preference stock as calculated pursuant to Section 8 of this Appendix 10, i.e., Z_2

S = the Ohio statutory state income tax rate, if any, applicable to OPCO in effect at the time of calculation

L = the composite local income tax rate, if any, applicable to OPCO in effect at the time of calculation

F = the statutory federal income tax rate, if any, applicable to OPCO

10. OPCO's Other Fixed Charge for any month shall be an amount equal to the product of (i) the then effective OPCO Capacity Ratio and (ii) the total amount of property taxes and property insurance which OPCO would have incurred if OPCO were the owner of AMPO's Initial Unit (including Capital Additions as provided in subdivision 7) and AMPO's Additional Unit (including Capital Additions as provided in subdivision 7).

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June 1979, I caused to be served by United States mail (by air mail to all such persons listed more than 500 miles from the point of mailing) postage prepaid or by personal service a copy of the foregoing document upon those persons whose names and addresses are hereinafter set forth:

George A. Fitzsimmons, Esq.
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Washington, D.C. 20549

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The Honorable James A. Rhodes
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State House
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The Honorable William J. Brown
Attorney General of Ohio
State House Annex
Columbus, Ohio 43215

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21433/February 13, 1980

Administrative Proceeding File No. 3-1476

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

Upon the acquisition, AMPO will become entitled, on six months' notice, to reserve between 10 MW and 200 MW from Ohio Power Company's Gavin plant, for the supply of its members. It is proposed that the 1974 interconnection agreement between Ohio Power and AMPO will be amended and filed with the Federal Energy Regulatory Commission, which has jurisdiction over wholesale contracts. Its term, left blank, is to cover the period between the date AMPO acquires generating facilities to be constructed and the date of commercial operation of such facilities. The amount of power which AMPO elects to reserve is to be determined by it in terms of the needs of its members.

As a nonprofit corporation, AMPO's financing will be based essentially on long-term power contracts with the member municipal electric systems, which in turn depend on the credit of the municipalities. A constitutional amendment was passed by the Ohio legislature, subject to ratification in an election this June, that would authorize the organization of a municipal wholesale electric authority. AMPO thus qualified would finance its construction requirements with tax-exempt revenue bonds.

The Department of Justice submitted a brief comment. It is not opposed to the tender offer and states that "implementation of the Coordination Agreement and associated agreements will provide municipal electric systems in Ohio with competitive options not previously available to them." It requests that we retain jurisdiction so that, if the constitutional amendment and implementing legislation should not be adopted, we require AEP to take necessary steps to ensure that the Ohio municipalities gain the intended benefits of the Coordination Agreement.

The Ohio municipalities had opposed the acquisition and later reached a settlement which is now embodied in the Coordination Agreement. They are satisfied that the agreement effectively serves their interests. We find that the Coordination Agreement meets the intent indicated in our earlier opinion. The Coordination Agreement is not conditioned on the proposed legislation.

II. *The Exchange Offer*

Section 10(b)(2) of the Act provides that an application for an acquisition of utility assets or securities should be denied if we find that "the consideration to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earnings capacity of the utility assets underlying the securities to be acquired." In this proceeding the specific issue is whether the proposed exchange of 1.3 shares of AEP common stock for each CSOE share satisfies the statutory standard. This ratio was originally negotiated by the companies in 1968, and the record on this issue has been supplemented, as we have requested. The companies represent that the 1.3 to 1 exchange ratio remains reasonable and is fair to stockholders of both companies. There is adequate support for that conclusion.

The supplemental data submitted to us show that as of December 31, 1978, AEP had outstanding 110,674,765 shares of common stock, CSOE had 16,147,976. Both companies forecast the issue of additional shares in 1979 through dividend reinvestment and employee stock purchase plans. AEP's estimate also allowed for a public offering of its common stock in that year. At December 31, 1979, AEP had outstanding 121,340,747 shares, CSOE 16,345,951. Accordingly, about 21.2 million AEP shares would be issued to acquire all the CSOE common stock, or about 14.9% of the 142.6 million shares outstanding after the exchange, all as of December 31, 1979. Before the exchange offer is made, AEP and CSOE will issue additional shares of common stock under their plans, but these will not be of a magnitude that will affect materially our findings herein.

We note at the outset that the AEP system, like CSOE, is engaged in rendering electric service in a single region, with CSOE close to the geographical center of the AEP system. CSOE differs in that the metropolitan area of a single city dominates its service territory, while the AEP system serves a much larger and less urbanized territory. It means that their profits and risks do not always follow the same course, as shown in Appendix II. This diversity is the primary source of the advantages claimed for the proposed affiliation, and in our earlier decision we have examined at length the economic and technical consequences of incorporating CSOE into AEP's integrated electric system. We have concluded that they would be favorable.

If the CSOE stockholders accept the exchange offer, they will not thereby abandon their interest in CSOE entirely. In substance, the present CSOE shareholders will acquire a 14.9% common stock

interest, through AEP, in all of its operating electric utility companies, including CSOE, while the present AEP shareholders will gain the remaining common equity in CSOE in exchange for 14.9% of their interest in the other operating companies. There will be no other essential change in nature of the investments of either group of shareholders, or of their rank.

The reasonableness of the exchange terms on a comparison of the common stocks in terms of capitalization, income and book values. Pertinent data are set forth in Appendices I to VI attached hereto.

Appendix VI sets forth the capitalization of AEP (consolidated) and of CSOE for the years 1967, 1972, 1975 and 1978. For the utility industry capitalization is also a good indication of relative size. CSOE's capital structure has generally been more conservative than AEP's. At year-end 1978, debit was 51.2% of total capitalization for CSOE; it was 55.7% for AEP. Common equity was 32.9% for CSOE and 31.6% for AEP.[4] CSOE's accounting policies have also been somewhat more conservative than AEP's,[5] but the differences are not significant enough to require restatement of CSOE's accounts to make them wholly consistent with AEP's. They call, though, for a little added weighting in CSOE's favor in reported income and capitalization data.

For the purpose of measuring the fairness of the tender offer, it is appropriate to consider net income of CSOE and its contribution to the net income of the combined system after the acquisition. Such data appear in Appendix I for each of the six years 1973-1978, in some of which net income exceeded 14.9% of combined net income; in others it was less.[6] For the six years, the average was 13.32%, and the ten year average (1969-1978) was 12.41%. Appendix I includes like data in terms of book values, showing a six-year average of 14.27% and a ten-year average of 13.81%. Measured against these averages, an offer of 14.9% of the AEP common stock, under the terms of the exchange, yields a significant advantage to the CSOE stockholder. Appendix II presents comparative data relating the terms of the exchange, 1 share of CSOE for 1.3 AEP shares, to net income, dividends, book value and market prices. They are consistent with the results based on total net income and book values, as noted above.

As Appendix VI indicates, AEP's capitalization has grown 3.77 times between 1967 and 1978, as compared to CSOE's growth of 4.36 times. In the years 1967-1975, AEP common stock has generally sold at market prices relatively higher than the prices for CSOE shares. Periodic sales of new common by both companies thus brought more capital per share for AEP than for CSOE, and the initial CSOE advantage in book value per share gave way in favor of AEP. As shown in Appendix II, at the end of 1967, before the offer, 1.3 shares of AEP represented, in book value, 0.87 of a CSOE share, while at the end of 1975, book value was 1.10. The changes in the three years following are not significant. AEP's reported earnings grew faster than CSOE's from 1967 through 1971. CSOE moved ahead in 1975 but has lost ground in the current period.

Generally, we give little weight to a rise in market value following the announcement of the tender offer.[7] Tender offers normally include a premium over market, which, as a result, affects the market price after the tender offer is announced. But that is not the situation before us. As indicated in Appendix II, 1.3 shares of AEP sold at a substantial premium over one share of CSOE shortly before the proposed tender offer was made public, and market premiums, at greater or lesser percentages, continued thereafter. An exchanging shareholder who hopes to sell his AEP shares would find the prospect of a market premium persuasive and valuable.

Section 9(a)(2) does not demand a mathematical equivalence of values for the terms of the exchange. A voluntary exchange requires some advantages, typically a premium, in order to induce acceptance of the tender offer. Section 10(b)(2) requires only that there be "a fair relationship" to investment and earnings between what is offered and the securities

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[4]For 1967, debt and equity were 51.5% and 36.8%, respectively, for CSOE. They were 55.3% and 31.7% for AEP (consolidated).

[5]See for example, accounting for unbilled revenues, Appendix IV, note b.

[6]In 1978, CSOE's reported earnings declined by 39%. It attributes this decline to a major coal strike, a blizzard of exceptional severity and delays in adjustment of allowed rates.

[7]*Pennzoil Company*, 43 SEC 709, 736-37 (1968).

to be acquired. We find, on the basis of our analysis, the terms of the exchange in this case are within the bounds prescribed by section 10(b)(2), for the shareholders of CSOE and for AEP. In so concluding with respect to AEP, we take also into account the additional cost to AEP as a consequence of the proposed recapitalization of CSOE, as described below. We note, as we have previously found, that substantial benefits may be expected from the integration of CSOE into the AEP system, of which, however measured and considered, about 85% will inure to AEP and its stockholders.

III. *Recapitalization of CSOE*

The reorganization agreement, dated June 30, 1979, as amended, between AEP and CSOE includes some new provisions which relate to CSOE's preferred stock. Under this agreement, CSOE proposes to retire seven of its eight series of preferred stock by repurchase for cash up to $80 million or by exchange for a new preference stock,[8] or both. This proposal is not subject to our approval under the Act.[9] It is an accommodation to AEP, linked to the tax-free exchange upon which AEP's tender offer is predicated. CSOE's proposal to its preferred stockholders and the tender offer of AEP are interdependent, and the repurchase and the exchange with the preferred stockholders will not take place unless the acquisition of the CSOE common stock by AEP is completed and declared effective.

Prior to 1968, when AEP's tender offer was announced, CSOE had outstanding two series of preferred stock.[10] Since 1968, CSOE issued six additional series of preferred stock, and the total preferred stock currently outstanding, including the $40 million series issued in 1978, has an aggregate par value of $158,354,000. Their annual dividend requirements total $13.9 million, representing an effective cost of 8.77%.

Section 368(a)(1)(B) of the Internal Revenue Code of 1954, as amended, requires for a tax-free reorganization an acquisition of at least 80% of the voting stock and 80% of all "other" stock. In the case of CSOE, such "other" stock is its preferred stock. At first, when AEP proposed its tender offer, it was stated that CSOE would redeem its outstanding two series of preferred stock, the redemption price then amounting to $20.5 million.[11] The prospectus for five of the six preferred stock issues sold by CSOE since 1968 stated that, if the CSOE common stock is acquired by AEP under the terms of its tender offer, CSOE will redeem its preferred stock at the redemption prices plus accrued dividends to the date of redemption.[12] This statement was not made in connection with the last series of $40 million. The redemption price for the seven series of preferred stock totals $133.1 million, which includes a $14.8 million redemption premium.

CSOE is now proposing an alternative. It will repurchase each of its series of preferred stock (excluding the last series) at the redemption price for cash up to $80 million with funds borrowed for the purpose. If the requests for cash should exceed $80 million, repurchases will be prorated, and preferred stockholders may receive cash and preference stock. Preferred stockholders may elect to exchange all of their stock, at the applicable redemption price, for the new preference stock. Those who choose neither course will retain their stock, with no change except as to voting rights. Concurrently with the tender offer, the common stockholders of CSOE will be asked to vote on a proposal to confer voting rights on CSOE preferred and preference stock. In AEP's opinion, common stock and voting preferred are a single class for purposes of a tax-free exchange and 80% acceptance by the class so constituted would satisfy

[8]At a meeting of CSOE shareholders on April 24, 1979, a charter amendment was approved which created a new class of preference stock junior to the preferred stock.

[9]An acquisition of the common stock does not generally require the acquisition or retirement of the preferred stock, save in exceptional circumstances. See *Illinois Power Company*, 44 SEC 140, 148-152 (1970); *Michigan Power Co.*, HCAR No. 20569 (June 1, 1978).

[10]These two series, $100 par value per share, have an aggregate par value of about $19.3 million and their redemption price is about $20.5 million. Their dividend rates are $4.25 and $4.65, respectively.

[11]For a summary of pertinent data regarding the preferred stock, see Appendix VII.

[12]Some of the preferred series include as a term of issue a provision that, if it redeems one series of preferred before a specific date, CSOE is required to redeem all other outstanding series the critical date has passed for some of the series but not for others.

the requirements of the Code. On this assumption, acceptances of the tender offer by holders of 88% of the common stock would be sufficient.

The interest rate on the borrowed funds will be determined by negotiations with the lenders. The dividend rate will be fixed in light of current yields about the time the offer is made by CSOE to its preferred stockholders. The Public Utilities Commission of Ohio, by order of October 3, 1979, authorized $80 million in notes and the issue of up to 1,331,400 shares of preference stock,[13] reserving jurisdiction with respect to the dividend rate. The preferred stock series subject to the offer amount to $118,354,000 in par value, and dividend requirements for these series total $10,089,726, an effective aggregate cost of 8.525% annually. CSOE proposes their retirement at the aggregate redemption price of $133,139,960 by repurchase and exchange, as noted, at interest and dividend rates that, in light of current yields and interest costs, are expected to exceed dividend costs on the seven series of preferred stock.

Originally, AEP estimated or assumed, tentatively perhaps, a 10% cost on borrowed funds and yield on the preference stock. This would amount to $13,314,000, compared with $10,090,000 in dividends on the preferred stock series that the loans and preference stock would replace. Since the recapitalization plan is intended to facilitate AEP's tender offer, the difference of about $3.2 million in senior charges, less tax adjustments for interest, must be regarded as an additional cost to AEP under its tender offer, of which incidentally about 15% will be absorbed by the common stockholders of CSOE as stockholders of AEP after the exchange. On the basis of 142.6 million shares of AEP to be outstanding, this decline in CSOE net income represents 2.3 cents per share. Each additional one percent in rates would amount to about $1.33 million in senior charges or 0.9 cents per share (before tax adjustments). In previously concluding that the terms of the exchange under the tender offer met the standards of section 10(b)(2), we have considered these costs to AEP as well.

Section 10(b)(3) provides that we approve an acquisition unless we find that "such acquisition will unduly complicate the capital structure of the holding company system of the applicant...." In the proceeding before us, the applicant is AEP, and the transaction subject to our approval is its acquisition of the CSOE common stock. CSOE's proposal regarding the CSOE preferred stockholders, though not requiring our approval, must be considered by us to determine whether it would produce the complexities described in section 10(b)(3). We find no such statutory complexities.

The following table shows the capitalization of CSOE actual as of December 31, 1978, and pro forma, assuming the issuance of the minimum and maximum amounts of preference stock (in millions):

			Pro Forma			
	Actual	*%*	*Min*	*%*	*Max*	*%*
Notes and current maturities	$ 76	6.0	$ 156	12.4	$ 79	6.3
Long-term debt	570	45.2	570	45.2	570	45.2
	$ 646	51.2	$ 726	57.6	$ 649	51.5
Deferred taxes	42	3.4	42	3.4	42	3.4
Preferred stock	158	12.5	40	3.1	40	3.1
Preference stock	—	—	55	4.2	130	10.3
Common equity	415	32.9	400	31.7	400	31.7
Total	$1,261	100.0	$1,261	100.0	$1,261	100.0

The pro forma (maximum) assumes a full exchange for preference stock, allowing only an addition of about $3 million in short-term debt to pay for fractional shares. This pro forma does not differ much from the actual.[14] The pro forma (minimum) shows a significant increase of debt that includes $80 million for the repurchase of the preferred stock. The increase in short-term debt to 12.5% of pro forma is not excessive. The effect on the consolidated capitalization of AEP is minimal.[15] The increase in short-term debt is in any event temporary and in due time will be refunded by permanent or long-term securities under the standards of the Act. We do not consider the increase in debt, temporary as it is, to be of a magnitude that should bar the acquisition by AEP under section 10(b)(3).

We have considered also the issue of the preference stock in terms of section 10(b)(3) and AEP's proposals as conditions to our approval of its acquisition of the CSOE common stock. The recapitalization of CSOE by the issue of a junior

[13]If all the preferred stock is exchanged, CSOE would issue preference shares at $100 par value per share, paying cash in lieu of fractional shares.

[14]The preference and preferred stock would constitute 13.4% of total capitalization as compared with 12.5% for the preferred stock now outstanding.

[15]See Appendices III and VI.

preferred stock is due to the size of the proposed refunding. It considered $80 million as the maximum it would borrow, and charter coverage limitations precluded issuance of a sufficient amount of its existing class of preferred stock to cover the balance of the refunding. The effect of the new class of preference stock is minimized by conditions: (a) that CSOE will not issue any shares of preference stock in addition to those issued under the offer to its preferred stockholders; (b) that in computing coverages for the issuance of CSOE preferred stock under its charter, there will be added the dividends on the outstanding preference stock;[16] and (c) that within 12 months necessary steps will be taken to have its corporate charter amended to include these conditions.

It is not necessary to consider in detail these conditions at this time. They are sufficient and acceptable for purposes of this proceeding. When these charter amendments are submitted to us pursuant to section 6(a)(2) of the Act, we shall consider these and other amendatory requirements under the standards of section 7(e) of the Act and our Statement of Policy relating to preferred stock. Of course, a sale of preferred stock by CSOE as a subsidiary of AEP is subject to sections 6 and 7 of the Act, whether the proposed charter amendments are then in effect or not.

IV. *Other Matters*

Section 10(c)(1) of the Act provides that we may not approve an acquisition if, among other things, it "...is detrimental to the carrying out of the provisions of section 11...." We have held that the existence of a minority interest is contrary to the standards of section 11(b)(2),[17] and, in the instant case, such detrimental effects may arise if AEP should acquire less than all of the outstanding CSOE common stock. AEP has agreed to file a plan, jointly with CSOE, to retire any such minority interest pursuant to a plan under section 11(e).[18]

The issue of AEP common stock pursuant to its tender offer meets the standards of section 7. Competitive bidding is not appropriate for the issue of shares in an exchange offer of the kind involved in this proceeding. Our order will, therefore, grant an exemption from the competitive bidding requirements of Rule 50.

The solicitation material which AEP proposes to send to CSOE common stockholders in connection with its tender offer is subject to section 12(e) of the Act and the proxy requirements under Rule 62. As the record is incomplete, we shall reserve jurisdiction with respect to such solicitation. A copy of this Supplemental Memorandum and Order should be included with such solicitation material, which shall state that our approval of the exchange offer is not a recommendation that stockholders accept the tender offer. Our approval is only a determination that the exchange satisfies the requirements of the Act. Each CSOE stockholder must decide for himself, after independent consideration of the facts provided to him, whether to tender his shares for exchange.

The common stockholders of CSOE will also be solicited for their proxies in connection with the proposal to grant general voting rights to CSOE's preferred and preference stock. A favorable vote on this proposal will be effective only if, as noted, holders of about 88% of CSOE's common stock accept AEP's tender offer. Since this proposal and AEP's tender offer are thus interrelated, a solicitation in respect of both under a single set of documents and a single form of proxy should be considered. The feasibility of proceeding in this manner under our regulations should be discussed with the Commission's staff, if AEP and CSOE so desire.

AEP proposes to account for the acquisition as a pooling of interests, and this is acceptable. It will record its corporate investment in the CSOE common shares at their book value in CSOE's accounts, and AEP shares issued in exchange will be recorded at the same amount. AEP will credit the appropriate sub-account of its retained earnings account, under the equity method of accounting, with the equity in CSOE's retained earnings of the CSOE common shares acquired. It will credit the par value of the AEP shares issued to its common stock

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[16]It is stated that this extended coverage shall not apply to the issue of preferred stock of an aggregate par value equal to cash paid by CSOE to repurchase preferred stock under its offer, or to preferred stock issued to retire any outstanding series of preferred or preference shares.

[17]*Northeast Utilities*, 42 SEC 963, 968 (1966); *Lynn Electric Company*, 40 SEC 828, 833 (1961).

[18]*Northeast Utilities*, 43 SEC 445 (1967); *American Electric Power Co.*, 43 SEC 942 (1968).

issued account, and the balance, also representing CSOE stated capital, to its other paid in capital account, in accordance with Rule 26(c) under the Act.

The record as to fees and expenses in connection with this proceeding is not complete. We therefore reserve jurisdiction with respect thereto.

In our earlier opinion, we reserved jurisdiction to consider the acquisition as it relates to Colomet, Inc., a nonutility subsidiary of CSOE. This reserved jurisdiction is hereby continued.

On the basis of the foregoing findings and conclusions:

IT IS ORDERED that the Application Declaration, as amended, of AEP to acquire, by tender offer, the common stock of CSOE in exchange for common stock of AEP be, and it hereby is, granted and permitted to become effective forthwith, subject to Rule 24 and the commitments and undertakings noted heretofore; and

IT IS FURTHER ORDERED that the issue of AEP common stock pursuant to its tender offer be, and it hereby is, exempt from the competitive bidding requirements of Rule 50; and

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to (a) the solicitation of CSOE common stockholders under the tender offer pursuant to Section 12(e) of the Act and Rule 62; and (b) fees and expenses incurred in this proceeding; and

IT IS FURTHER ORDERED that the jurisdiction reserved with respect to Colomet, Inc., be, and it hereby is, continued.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX I

COLUMBUS & SOUTHE'N OHIO ELECTRIC—AMERICAN ELECTRIC POWER COMPANY
ANALYSIS OF EARNINGS AND COMMON EQUITY
(In Millions)

Year	CSOE Net Income After Preferred Div (a)	AEP—CSOE Combined Net Income After Pref (a+b)	(a)/(a+b) = %	CSOE Common Equity (c)	AEP—CSOE Combined Common Equity (c+d)	(c)/(c+d) = %
1973 =	$22	$197	11.17%	$192	$1.516	12.66%
1974 =	$16	$193	8.29%	$193	$1.715	11.25%
1975 =	$36	$226	15.93%	$267	$1.976	13.51%
1976 =	$46	$276	16.67%	$356	$2.309	15.42%
1977 =	$44	$279	15.77%	$422	$2.623	16.09%
1978 =	$27	$263	10.27%	$415	$2.790	14.87%
6 Years (1973-1978) =	$191	$1.434	13.32%	$1.845	$12.929	14.27%
10 Years (1969-1978) =	$249	$2.006	12.41%	$2.394	$17.332	13.81%

SOURCE: Form 10-K for AEP and CSOE, Moody's Public Utility Manual

APPENDIX II

COMPARISON OF 1.3 AEP COMMON SHARES WITH ONE CSO COMMON SHARE AT THE END OF EACH CALENDAR YEAR

Reported earnings per	*1967*	*1968*	*1969*	*1970*	*1971*	*1972*	*1973*	*1974*	*1975*	*1976*	*1977*	*1978*
1.3 AEP shares	2.60	2.73	2.86	2.99	3.09	3.24	3.54	2.50**	3.07	3.29	3.12	2.94
1.0 CSO share	2.55	2.49	2.59	2.42	2.13	2.65	2.97	2.04	3.60	3.71	3.05	1.73
AEP as percent of CSO	1.02	1.10	1.10	1.24	1.45	1.22	1.19	1.23	0.85	0.89	1.02	1.70
Dividends per												
1.3 AEP shares	1.90	2.00	2.07	2.15	2.21	2.29	2.40	2.57	2.60	2.62	2.70	2.77
1.0 CSO share	1.54	1.64	1.72	1.76	1.80	1.84	1.92	1.96	1.98	2.08	2.23	2.32
AEP as percent of CSO	1.23	1.22	1.20	1.22	1.23	1.25	1.25	1.31	1.31	1.26	1.21	1.19
Book value per												
1.3 AEP shares	17.36	18.19	19.96	21.58	23.45	24.40	26.16	27.17	26.73	27.26	27.79	27.90
1.0 CSO share	19.96	20.79	21.64	22.20	22.82	23.80	24.95	25.03	24.31	25.46	26.33	25.69
AEP as percent of CSO	0.87	0.87	0.92	0.97	1.03	1.03	1.05	1.09	1.10	1.07	1.06	1.09
Year end market prices per												
1.3 AEP shares	48.75	49.08	39.16	37.05	39.49	39.00	32.50	18.69	27.30	33.15	31.69	27.46
1.0 CSO share	37.00	44.25	29.75	28.38	27.50	28.38	24.16	12.25	23.00	27.00	26.75	21.00
AEP as percent of CSO	1.32	1.11	1.32	1.31	1.44	1.37	1.35	1.53	1.19	1.23	1.18	1.31

**Prices of January 19, 1968, immediately before announcement of proposed tender, used

**Excludes 1974 accounting revision, 58¢ per share.

APPENDIX III

CONSOLIDATED BALANCE SHEET
DECEMBER 31, 1978
(in millions)

	CSOE*	Recapitalization a	CSOE Pro Forma 12-31-78	AEP Consolidated	Combined Pro Forma	Capitalization Percent
Utility Plant—net						
Generation			$507	$2,193b	$3,700	
Transmission			180	1,043	1,223	
Distribution			254	935	1,189	
General			25	94c	119	
Held for future use			3	115d	118	
			$969	$5,380	$6,349	
Construction in progress			243	980	1,223	
Mining plant			26	363	389	
Other coal property			—	185	185	
Miscellaneous property			5	72	77	
Investments e			1	5	6	
Excess cost of subsidiaries			—	48	48	
Plant and investments f			$1,244	$7,033	$8,277	
Current assets			89	791	880	
Deferred debits			27	239	266	
Assets		(no change)	$1,360	$8,063	$9,423	
Accruals and accounts payable	$96	$—	$96	$494	$590	—
Notes and current maturities	76	80	156	549	705	8.0
Long-term debt	570	—	570	3,637	4,207	47.9
Operating reserves and other	3	—	3	48	51	—
Liabilities and reserves	$745	$80	$825	$4,728	$5,553	55.9
Deferred taxes and tax credits	42	—	42	309	351	4.0
Preferred stock—operating companies	158	(118)	40	651	691	7.9
Preference stock	—	53	53	—	53	0.6
Common equity	415	(15)	400	2,375	2,775	31.6
	$1,360	$0	$1,360	$8,063	$9,423	100.0

*Including Simco Inc. (mining) and Colomet, Inc. (real estate), wholly-owned, except for a $5,417,000 Simco installment note guaranteed by CSOE.

[a] Assuming 100% tender of eligible CSOE preferred stock, and election of maximum cash payment. To the extent preferred is not tendered, the pro forma outstanding preferred will be larger and the new securities and the premium will be smaller. If less cash is elected, the amount of borrowing will be reduced and the amount of preference stock increased. No adjustment has been made for the subsequent refunding of the borrowings.

[b] Includes approximately $43 million of nuclear fuel.

[c] Includes about $3 million of electric plant acquisition adjustments being amortized. CSOE completed amortization of its acquisition adjustments in 1978.

[d] Includes about $95 million of completed construction in the process of being placed into service.

[e] Principally investment of both companies in Ohio Valley Electric Corp. The AEP system has a 37.2% and CSOE a 4.3% participation, the balance being owned by other utility companies.

[f] Based on state regulatory policies, neither system has capitalized long term leases. Leases capitalizable under current general accounting standards are identified as follows:

	CSOE	AEP	TOTAL
Nuclear Fuel	$	$143	$
Coal mining & transportation		135	
Real estate		31	
Other		78	
Total	28	$387	415
Less amortization	(6)	(135)	(141)
Net leases	$22	$252	$274
Lease obligations	$23	$276	$299

APPENDIX IV

AEP Consolidated	1973	1974	1975	1976*	1977*	1978
KWH sold (in millions)	74,912	75,858	76,917	84,913	81,865	85,932
Operating revenues	$979	$1,333	$1,625	$1,833	$2,029	$2,389
Operating expenses:						
Fuel	$289	$571	$698	$753	$833	$1,092
Other operations	164	183	184	192	226	208
Maintenance	74	87	82	103	136	163
Depreciation	115	128	156	180	185	204
Taxes—non income	63	73	91	104	129	145
Income taxes	(14)	(12)	9	29	48	51
Operating expenses	$691	$1,030	$1,220	$1,361	$1,557	$1,863
Operating income	$288	$303	$405	$472	$472	$526
Other income—net	10	4	3	6	7	3
AFUDC—gross [a]	88	119	82	69	95	95
Interest—gross [a]	(187)	(259)	(262)	(273)	(296)	(335)
Preferred dividends	(25)	(31)	(38)	(44)	(46)	(52)
Consolidated income, after subsidiary preferred dividends	$174	$136	$190	$230	$235	$236
Accounting adjustment [b]		41				
		$177				

* As restated in 1978 10-K. The restatement reflected the outcome of certain rate cases, but had a relatively small net effect.

[a] AFUDC includes the portion credited to fixed charges and, in 1978, the related tax adjustment.

[b] In 1974, the system commenced recording revenue when service was rendered rather than on the later billing date, and deferring additional fuel costs until the time permitted for inclusion of such costs in the member companies energy adjustment clauses for rate purposes. The non recurring adjustment reflected the changes in accounts receivable and deferred charges, and related tax accounts, to make them consistent with the new accounting procedures.

APPENDIX V

CSO	1973	1974	1975	1976	1977	1978
KWH sold (in millions)	7[illegible]6	7,767	7,851	8,133	8,727	8,624
Operating revenues	$158	$189	$259	$280	$320	$3[illegible]
Operating expenses:						
Fuel & purchased power	$36	$62	$88	$90	$99	$131
Other operations	28	32	35	43	53	66
Maintenance	15	16	20	25	25	34
Depreciation	19	21	23	24	31	36
Taxes—non income	17	20	21	24	29	32
Income taxes	3	(4)	11	7	7	1
Operating expenses	$118	$147	$198	$213	$244	$300
Operating income	$40	$42	$61	$67	$76	$66
Other income (incl. coal operations)	1	—	2	3	—	1
AFUDC—gross [a]	6	8	14	24	22	23
Interest—gross	(21)	(29)	(35)	(40)	(44)	(51)
Preferred dividends	(4)	(5)	(6)	(8)	(10)	(12)
Net income after preferred dividends	$22	$16	$36	$46	$44	$27

[a] Includes AFUDC credited to fixed charges, and, in 1978, related tax adjustment.

APPENDIX VI

Capitalization	Amounts (in millions)				Percentages			
AEP Consolidated	1967	1972	1975	1978	1967	1972	1975	1978
Long-term debt	$1,050	$2,280	$3,088	$3,637	52.6	54.9	51.7	48.4
Bank loans & current maturities	52	248	463	550	2.7	6.0	7.8	7.3
Debt	$1,102	$2,528	$3,551	$4,187	55.3	60.9	59.5	55.7
Deferred taxes	158	149	182	310	7.9	3.6	3.0	4.1
Preferred stock	101	358	533	651	5.1	8.6	8.9	8.6
Common & paid-in capital	429	744	1,218	1,794	31.7	26.9	28.6	31.6
Retained earnings	204	373	489	580	*	*	*	*
Total	$1,994	$4,152	$5,973	$7,522	100.0	100.0	100.0	100.0
CSOE								
Long-term debt	$133	$257	$447	$570	46.0	47.3	51.1	45.2
Bank loans & current maturities	16	49	36	76	5.5	9.0	4.1	6.0
Debt	$149	$306	$483	$646	51.5	56.3	55.2	51.2
Deferred taxes	14	23	31	42	5.0	4.2	3.5	3.3
Preferred stock	19	53	93	158	6.7	9.8	10.7	12.5
Common & paid in capital	48	78	159	286	36.8	29.7	30.6	32.9
Retained earnings	59	84	108	129	*	*	*	*
Total	$289	$544	$874	$1,261	100.0	100.0	100.0	100.0

*Retained earnings included in common equity

APPENDIX VII

COLUMBUS & SOUTHERN OHIO ELECTRIC
PREFERRED STOCK
(000 omitted)

Dividend Rate	Year of Issue	Par	Redemption Price		Annual Dividend	
			Rate	Amount	Present	10 [illegible]
$ 4.25	1945	$10,359	$110	$11,395	$440	$1,139
$ 4.65	1952	8,995	101	9,085	419	909
$10.00	1970	18,000	109.5	19,710	1,800	1,971
$ 7.52	1972	16,000	108	17,280	1,203	1,728
$ 8.52	1974	20,000	108	21,600	1,704	2,160
$10.52	1975	20,000	115	23,000	2,104	2,300
$ 9.68 a	1976	25,000	124.28	31,070	2,420	3,107
		$118,354		$133,140	$10,090	$13,314
$ 9.50	1978	40,000	120	NA	3,800	3,800
		$158,354			$13,890	$17,114
Premium		14,786				
		$173,140				
Less cash--maximum		(80,000)		(80,000)		— b
		$113,140		$53,140		

[a] Actually $25 shares, with dividend of $2.42 and call price $31.47.

[b] Interest charges would replace up to $8 million of preferred dividends.

[c] Actual dividend rate to be fixed at time of offer. 10% used tentatively by applicant for purpose of comparison.

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of AMERICAN ELECTRIC POWER COMPANY, INC. COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY	APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION TO ENFORCE PROVISIONS OF A PLAN PURSUANT TO SECTIONS 11(e) AND 18(f) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 C -2-80-939

TO THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

CIVIL ACTION NO. _____

The Securities and Exchange Commission, by its attorneys, respectfully states:

1. This action arises under the Public Utility Holding Company Act of 1935 ("Act") (49 Stat. 803 (1935), 15 U.S.C. Section 79a et seq.), as hereinafter more fully appears. Pertinent provisions of the Act are reproduced in Exhibit A.

2. American Electric Power Company, Inc. ("AEP"), incorporated in New York, is a public utility holding company registered as such with the Securities and Exchange Commission ("Commission") pursuant to the Act.

3. On February 13, 1980, the Commission authorized AEP to acquire the outstanding common stock of Columbus and Southern Ohio Electric Company ("CSOE"), a public utility company incorporated in Ohio, through a tender offer of 1.3 shares of AEP common for each common share of CSOE.

4. The Commission's Supplemental Memorandum and Order of February 13, 1980, approving AEP's acquisition of CSOE (Holding Company Act Release No. 21433), stated that AEP had agreed to file a plan, jointly with CSOE, pursuant to Section 11(e) of the Act to retire any publicly-held minority interest that remained after the tender offer.

5. Through October 31, 1980, AEP had acquired 16,096,366 shares, or 98.1%, of the 16,410,426 outstanding shares of common stock of CSOE, pursuant to the tender offer. AEP and CSOE have filed a plan under Section 11(e) for the retirement of the remaining 314,060 publicly-held shares, or 1.9%, of CSOE's common stock. A copy of the plan, as amended, is attached as Exhibit B.

6. The plan provides for the issuance by AEP of shares of its common stock, par value $6.50 per share, through an exchange agent, in exchange for

the publicly-held shares of CSOE's common stock on the basis of 1.3 shares of AEP common stock for each share of CSOE common stock.

7. On July 15, 1980, the Commission issued a Notice of Filing of the plan (Holding Company Act Release No. 21656). Persons desiring to be heard in connection with the plan were given until August 11, 1980, to file an application to request a hearing. Such notice was published in the Federal Register (45 Fed. Reg. 48757, July 21, 1980) and a copy mailed to the last known address of each stockholder of CSOE. A copy of such notice is attached hereto as Exhibit C.

8. No one requested a hearing concerning the proposed plan.

9. On October 30, 1980, the Commission approved the plan. It found, as required by Section 11(e), that the plan was necessary to effectuate the provisions of Section 11(b)(2) and fair and equitable to the persons affected by it. Copies of the Commission's Findings and Opinion and related Order (Holding Company Act Release Nos. 21768 and 21769), are attached hereto as Exhibits D and E.

10. AEP and CSOE have requested that the Commission apply to the appropriate United States District Court pursuant to Section 18(f) to enforce and carry out the plan.

WHEREFORE, the Commission respectfully prays that this Court, pursuant to Sections 11(e) and 18(f) of the Act, take the following action:

a. Hold a hearing on this application;

b. Order AEP to give notice of the hearing to all public holders of record of the common stock of CSOE by mail and by publication in such newspapers and in such form as the Court may deem appropriate;

c. After notice and opportunity for hearing, approve the plan proposed by AEP and CSOE as fair and equitable and appropriate to effectuate the provisions of Section 11 of the Act; and to the extent necessary for the purpose of carrying out the provisions of the plan, take exclusive jurisdiction over CSOE and its assets;

d. After notice and opportunity for hearing, issue an appropriate order enforcing and carrying out the plan by directing AEP to take such steps as may be necessary to retire the publicly-held minority interest in the common stock of CSOE;

e. Enjoin all security holders in CSOE, and all other persons, during the pendency of these proceedings and after approval of the plan, from taking any action interfering or tending to interfere with this proceeding, or with the enforcement or carrying out of the plan, or compliance with the orders of this Court with respect thereto, including the commencement or prosecution of any action, suit or proceeding, at law or in equity or under any statute, in any court or before any executive or administrative officer, commission, agency or tribunal, other than such proceedings before the Commission or this Court as may be provided for by law;

f. Grant such other, further and different relief and enter such other orders or decrees as the Court may find to be appropriate.

Respectfully submitted,

James C. Cissell
United States Attorney

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Of Counsel

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Division of Corporate Regulation
Securities and Exchange Commission
Washington, D.C. 20549
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Dated: November 6, 1980

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of AMERICAN ELECTRIC POWER COMPANY, INC. COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY	EXHIBIT A TO APPLICATION OF THE SECURITIES AND EXCHANGE COMMISSION TO ENFORCE PROVISIONS OF A PLAN PURSUANT TO SECTIONS 11(e) AND 18(f) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PERTINENT PROVISIONS OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 (49 Stat. 803 (1935), 15 U.S.C. Section 79a, et seq.)

Section 11(b)(2) of the Public Utility Holding Company Act of 1935 ("Act") (15 U.S.C. Section 79k(b)(2)) provides as follows:

> "(b) It shall be the duty of the [Securities and Exchange] Commission, as soon as practicable after January 1, 1938:
>
> . . . .
>
> (2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company."

Section 11(e) of the Act (15 U.S.C. Section 79k(e)) provides as follows:

> "(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b) of this section. If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) of this section and fair and equitable to the persons affected by such plan, the Commission shall make an

order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 79r of this title [Section 18(f) of the Act], to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed."

Section 18(f) of the Act (15 U.S.C. Section 79r(f)) provides as follows:

"(f) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this chapter."

Off. of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF ENERGY

Agency Clearance Officer—Diane W. Lique—633–8526

New Forms

National Study of the Presidential Solar Consumer
CS–440A/B
Single time
National homeowner sample (440A) and solar homeowners (440B), 5,000 responses, 3,333 hours
Jefferson B. Hill, 395–7340

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strand—245–7488

New Forms

Alcohol, Drug Abuse and Mental Health Administration
Directory of Minority Organigations providing services in alcohol, drug abuse, and mental health
Single time
Adm. agency directors or staff, 500 responses, 125 hours
Richard Eisinger, 395–6880

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. LaRue—633–3326

New Forms

Offices, Boards, Division
Questionnaire on offender based transaction statistics
BJS (series 6610)
Single time
Stat. Anal. Ctrs. of Crim. Just. Cou. in 52 Sts (In. DC, Pr), 52 responses, 47 hours
Off. of Federal Statistical Policy and Standard, 673–7974

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Henry F. Beal—755–2744

New Forms

New Source Environmental Questionnaire
On occasion
Potential air and water pollution dischargers, 300 responses, 2,400 hours
Edward H. Clarke, 395–7340

EXECUTIVE OFFICE OF THE PRESIDENT (OTHER)

Agency Clearance Officer—Robert J. Roeder—395–5132

New Forms

President's Commission on Pension Policy

Pensions and savings survey instrument, wave 2 [1]
6375–10
Single time
Single family non-farm household, 3,500 responses, 2,333 hours
Arnold Strasser, 395–6880

C. Louis Kincannon,
Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–21422 Filed 7–15–80, 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 21658 (70–4596)(54–259)]

American Electric Power Co., Inc., and Columbus & Southern Ohio Electric Co; Filing of Plan Pursuant to Section 11(e) for Retirement of Publicly Held Shares of Common Stock of Subsidiary

July 15, 1980. Notice is hereby given that American Electric Power Company, Inc. ("AEP"), 2 Broadway, New York, New York 10004, a registered holding Company, has filed with this Commission an amended plan ("Plan") pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act") providing for the retirement of the publicly-held shares of common stock of Columbus and Southern Ohio Electric Company ("CSOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary. All interested persons are referred to the Plan, which is summarized below, for a complete statement of the proposed transaction.

By supplemental memorandum and order dated February 12, 1980 (HCAR No. 21433), AEP was authorized to acquire the common stock of CSOE. By supplemental order dated March 28, 1980 (HCAR No. 21498), AEP was authorized to tender shares of its common stock in exchange for shares of common stock of CSOE on the basis of 1.3 shares of AEP common stock for each share of CSOE. As a result of the tender, which terminated June 20, 1980, AEP acquired 15,870,875 shares (or 96.71 percent) of the 16,410,425 outstanding shares of CSOE's common stock. The remaining 539,550 shares of CSOE common stock are still held by members of the general public. AEP states that although the exchange offer expired June 20, 1980, it will, prior to the effective date of the Plan (discussed below), offer informally to exchange, under the authorization previously granted by this Commission, its common shares for CSOE common shares on the basis of 1.3 shares of common stock of AEP for each common share of CSOE.

The principal terms and provisions of the Plan are as follows:

1. Prior to the effective date of the Plan each holder of record of outstanding common shares of CSOE shall be entitled (i) to all rights of such record holders, including the right to vote and to receive such dividends as may be paid on such shares, or, in the alternative, (ii) to deposit with AEP or its agent his certificate(s) for common shares of CSOE in exchange for certificate(s) for common shares of AEP on the basis of 1.3 shares of common stock of AEP for each common share of CSOE; provided, however, that neither AEP nor its agent shall be obligated to issue and/or deliver any fractional share of common stock of AEP, but shall be entitled to deliver to such depositor a check representing the value of such fractional interest on the basis of the reported closing sale price of common stock of AEP on the New York Stock Exchange on the business day preceding the date of the exchange; and provided further that neither AEP nor its agent shall be obligated to effect any such exchange upon a day which shall be a record date for the determination of those shareholders of CSOE, or of AEP, who shall be entitled to receive a dividend or to vote or for some other purpose.

2. On and after the effective date of the Plan, holders of certificates for common shares of CSOE, other than AEP, shall cease to have any rights as shareholders of CSOE, and shall become owners and record holders of shares of common stock of AEP on the basis of 1.3 shares of common stock of AEP for each common share of CSOE so held.

3. On the effective date of the Plan, CSOE shall issue to and in the name of AEP one or more certificates representing all of the common shares of CSOE which shall be changed pursuant to the Plan into shares of common stock of AEP, and AEP shall become as of said effective date, the owner and record

[1] The Office of Management and Budget has approved clearance of the President's Commission on Pension Policy's Pensions and Savings Survey Instrument, Wave 2, prior to Federal Register notification of receipt because of the urgent time constraints under which the Commission must prepare its final report to the President and the Congress.

The Commission must make recommendations on proposed policies by February 1980 which could have a substantial effect on the economy as a whole. To accomplish this task and incorporate the crucial results from the second wave of this study into the final report, immediate clearance was necessary.

The second wave of the Pensions and Savings Instrument is entirely comparable to the first wave cleared in August 1979. It is, however, a considerably shorter instrument than was previously cleared.

holder of all of the outstanding common shares of CSOE.

4. From and after the effective date of the Plan, the holder of any certificate previously representing common shares of CSOE shall, upon surrender of such certificate (or certificate issued in lieu thereof) to AEP or its agent, be entitled to receive a certificate for shares of common stock of AEP, upon the basis specified in paragraph 2 above. No fractional shares of common stock of AEP shall be issued in connection with the Plan but, in lieu thereof, as soon as practicable after the effective date of the Plan, AEP's agent shall sell the fractional interests in the shares of common stock of AEP to which the holders of record of common shares of CSOE on the effective date would otherwise have been entitled, in the open market or otherwise, for the account of such holders. The proceeds of such sales, which may be held in any commercial form of bank account or accounts, shall be paid to such holders, without interest, at the time of the due surrender of their certificates for common shares of CSOE to AEP's agent in exchange for certificates for shares of common stock of AEP.

5. Upon the fifth anniversary of the effective date of the Plan, AEP and CSOE shall be entitled, with the approval of this Commission, to apply to the court referred to below, for an order or decree finding that AEP made all reasonable efforts to locate holders of unexchanged shares of CSOE's common stock and ordering that neither AEP nor CSOE shall have any further obligations to solicit the surrender of any unsurrendered certificate or to take any other action with respect thereto other than as specified in paragraph 4 above and paragraph 6 below.

6. Upon the fifth anniversary of the effective date of the Plan, AEP shall be entitled to instruct its agent to deliver to any AEP any funds held by its agent pursuant to paragraph 4 above with respect to certificates for common shares of CSOE not surrendered for exchange, and after such delivery the agent shall have no obligation to any person with respect to such funds or with respect to certificates previously representing common shares of CSOE. Upon and after such payment and until the fifteenth anniversary of the effective date of the Plan, any holder of record of certificates (or certificates issued in lieu thereof) previously representing common shares of CSOE shall be entitled, upon due surrender to AEP, but only upon due surrender, of such certificates to receive from AEP shares of common stock of AEP upon the basis set forth in paragraph 2 above and the funds formerly held for the account of such holder by AEP's agent pursuant to paragraph 4 above, to be paid by AEP. All such funds delivered by its agent to AEP pursuant to this paragraph shall be held by AEP as part of its general funds and may be used in its business. Such funds shall not be required to be set aside, held in trust, paid over to any entity, or segregated for holders of such certificates, nor shall AEP be under any obligation to record in its accounts any reserve or other provision for the payment of any amount to the holder of such certificate.

7. Upon and after the fifteenth anniversary of the effective date of the Plan, such holders who shall not theretofore have surrendered such certificates (or certificates issued in lieu thereof) shall cease to have any claims against AEP or CSOE or against any person whatsoever on account of or with respect to the shares represented by such certificates.

The Plan will become effective on a date set by AEP, such date to be within 30 days after the entry of an order by a District Court of the United States approving and enforcing the Plan. The carrying out of the Plan is subject to all necessary approvals by this Commission under the Act, and to the approval and enforcement of the Plan by a District Court of the United States having jurisdiction, as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act.

It is stated that notice shall be given to the holders of certificates for common shares of CSOE (or certificates issued in lieu thereof) of their eligibility to receive distributions under the Plan, and of the fact that common shares of CSOE held by them will cease to have any rights other than to receive the common stock of AEP upon due surrender of certificates pursuant to the Plan, by mailing not more than 30 days after the effective date of the Plan to each such person whose address appears of record on the stock books (or the equivalent thereof) of CSOE, and by publication by AEP at the time of such mailing at least once in at least one newspaper published and of general circulation in Columbus, Ohio, and in a newspaper published and of circulation in New York, New York. In addition, during a period of five years from the effective date of the Plan, AEP shall at least once during each calendar year within such period, solicit the surrender by the holders thereof, at their last known addresses, of all certificates previously representing common shares of CSOE (or certificates issued in lieu thereof) which have not previously been deposited.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no State commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 11, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Plan which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon AEP and CSOE at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the Plan, as amended or as it may be further amended, may be approved as provided in Section 11(e) of the Act or the Commission may take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 80-21811 Filed 7-18-80; 8:45 am]
BILLING CODE 8010-01-M

SMALL SUSINESS ADMINISTRATION

[License No. 03/03-5144]

Continental Investors, Inc.; Issuance of License

On May 5, 1980, a Notice was published in the Federal Register (45 FR 29652), stating that Continental Investors, Inc., located at 2020 K Street, NW., Washington, D.C. 20006 has filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

AMERICAN ELECTRIC POWER COMPANY, INC.

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY

Plan, as amended October 10, 1980,
for Compliance with Section 11(b) of the
Public Utility Holding Company Act of 1935

American Electric Power Company, Inc. (AEP) and Columbus and Southern Ohio Electric Company (CSOE) hereby submit to the Securities and Exchange Commission a plan (the Plan) for compliance with Section 11(b) of the Public Utility Holding Company Act of 1935 (the Act). The Plan is submitted pursuant to the provisions of Section 11(e) of the Act.

A. The principal terms and provisions of the Plan are as follows:

1. Prior to the effective date of the Plan each holder of record of outstanding Common Shares of CSOE shall be entitled (i) to all of the rights of, including the right to vote and the right to receive such dividends as shall be paid to, record holders of Common Shares of CSOE, or, in the alternative, (ii) to deposit with AEP at the office of AEP at 2 Broadway (Finance Department, 14th Floor) New York, New York 10004, at the office of Morgan Guaranty Trust Company of New York, AEP's transfer agent, 30 West Broadway, New York, New York 10015, or at the office of such other bank within or without the State of New York as shall be designated by AEP for such purpose (the transfer agent or such other bank being herein called the Agent), the certificate(s) for Common Share(s) of CSOE of such holder in exchange for certificate(s) for shares of Common Stock of AEP at the rate of 1.3 shares of Common Stock of AEP for each Common

Share of CSOE; provided, however, that neither AEP nor the Agent shall be obligated to issue and/or deliver any fractional share of Common Stock of AEP, or any scrip or similar certificate, but shall, in lieu thereof, be entitled in any case, with respect to any fractional interest to which the depositor would otherwise be entitled, to deliver to such depositor a check representing an amount in cash reflecting, in the reasonable exercise of the discretion of AEP or the Agent, the value of such fractional interest on the basis of the reported closing sale price of Common Stock of AEP on the New York Stock Exchange on the trading day next preceding the date of the exchange; and provided further that neither AEP nor the Agent shall be obligated to effect any such exchange upon a day which shall be a record date for the determination of those shareholders of CSOE, or of AEP, who shall be entitled to receive a dividend on Common Shares of CSOE, or on shares of Common Stock of AEP, or to vote or for some other purpose.

2. On and after the effective date of the Plan, holders of certificates for Common Shares of CSOE; other than AEP, shall cease to have any rights as shareholders of CSOE with respect thereto, and thereafter shall have no claim against CSOE or AEP or against any other person whatsoever on account of or with respect to the shares represented by such certificates, except that holders, other than AEP, of certificates which prior to such effective date represented such shares, shall become owners and record holders of shares of Common Stock of AEP on the basis of 1.3 shares of Common Stock of AEP for each 1 Common Share of CSOE so held and shall, with respect to full shares of Common Stock of AEP resulting thereform, be entitled to dividends, to the right to vote and to all other rights to which holders of shares of Common Stock of AEP shall be entitled.

3. On the effective date of the Plan, CSOE shall issue to and in the name of AEP one or more certificates representing all of the Common Shares of CSOE which shall be changed pursuant to the Plan into shares of Common Stock of AEP, and AEP shall become as of said effective date, the owner and record holder of all of the outstanding Common Shares of CSOE.

4. From and after the effective date of the Plan, the holder of any certificate previously representing Common Shares of CSOE shall, upon surrender of such certificate, or certificate issued in lieu thereof,* to AEP or to the Agent, be entitled to receive a certificate for shares of Common Stock of AEP, upon the basis specified in paragraph 2 above. No fractional shares of Common Stock of AEP shall be issued in connection with the Plan but, in lieu thereof, as soon as practicable after the effective date of the Plan, the Agent shall sell the full shares** representing fractional interests in shares of Common Stock of AEP to which holders of record of Common Shares of CSOE on the effective date would otherwise have been entitled, on the New York Stock Exchange, for the account of such holders. The proceeds of such sales which may be held in any commercial form of bank account or accounts, shall be paid to such holders, without interest, at the time of the due surrender of their certificates for Common Shares of CSOE to the Agent in exchange for certificates for shares of Common Stock of AEP.

5. Upon the fifth anniversary of the effective date of the Plan, AEP and CSOE shall be entitled, with the approval of the Commission, to apply to the court referred to below, for an order or decree finding that the actions contemplated by

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* Former holders of Common Shares of CSOE who are unable to surrender their CSOE certificates, because of loss, destruction or other disability, may in lieu of seeking from CSOE the issuance of a certificate in lieu thereof, establish with AEP their right to receive a certificate representing shares of Common Stock of AEP, and any funds representing a fractional interest to which they are entitled, in the same manner as other holders of shares of Common Stock of AEP with a like disability.

** If a terminal fraction results from the initial computation AEP will pay to the Agent in cash the market value of such fraction, based on the closing sale price of the Common Stock of AEP on the New York Stock Exchange on the trading day immediately preceding the effective date of the Plan.

Part E hereof have been taken and ordering that neither AEP nor CSOE shall have any further obligations to solicit the surender of any unsurrendered certificate or to take any other action with respect thereto other than as specified in paragraph 4 above and paragraph 6 below.

6. Upon the fifth anniversary of the effective date of the Plan, AEP shall be entitled to instruct the Agent to deliver to AEP any funds held by the Agent pursuant to paragraph 4 above with respect to certificates for Common Shares of CSOE not surrendered for exchange and after such delivery the Agent shall have no obligation to any person whatsoever with respect to such funds or with respect to certificates previously representing Common Shares of CSOE. Upon and after such payment and until the fifteenth anniversary of the effective date of the Plan, any holder of record of certificates, or certificates issued in lieu thereof, previously representing Common Shares of CSOE shall be entitled, upon due surrender to AEP, but only upon due surrender, of such certificates, or otherwise establishing their right thereto, as hereinabove provided, to receive from AEP shares of Common Stock of AEP upon the basis specified in paragraph 2 above and the funds formerly held for the account of such holder by the Agent pursuant to paragraph 4 above, to be paid by AEP. All such funds delivered by the Agent to AEP pursuant to this paragraph 6 shall be held by AEP as part of its general funds and may be used in its business. Such funds shall not be required to be set aside, held in trust, paid over to any entity, or segregated for holders of such certificates nor shall AEP be under any obligation to record in its accounts any reserve or other provision for the payment of any amount to the holder of any such certificate.

7. Upon and after the fifteenth anniversary of the effective date of the Plan, such holders, or lawful successors thereto, who shall not theretofore have surrendered such certificates, or certificates issued in lieu thereof, shall cease to have any claims against AEP or CSOE or against any person whatsoever on account of or with respect to the shares represented by such certificates.

8. The transactions enumerated in paragraphs (1) through (7) above, shall be the only changes effected by the Plan involving the capital structure, or the issued and outstanding securities, of CSOE.

9. The Plan shall become effective, and the effective date shall occur, as provided below, in accordance with a decree or order of a court approving and enforcing this Plan, as referred to below. No vote or consent of the holders of any of the issued and outstanding securities of CSOE or of AEP shall be required as a condition to the effectiveness of the Plan or to the consummation of the Plan or any part thereof.

B. The Plan and the consummation thereof are subject to the following conditions:

1. The Plan may be supplemented, amended, modified, in whole or in part, by action of the Board of Directors or the duly authorized officers of AEP at any time prior to the approval thereof by the Commission. After being approved by the Commission, the Plan may be supplemented, amended, modifed or abandoned, in whole or in part, by action of the Board of Directors or the duly authorized officers of AEP, with the approval of the Commission. After being approved by a court, as provided below, the plan may be supplemanted, amended, modified or abandoned, in whole or in part, by action of the Board of Directors or the duly authorized officers of AEP, with the approval of the Commission and of such court. The term "Plan", whenever used herein (unless the context otherwise requires), shall mean the Plan as so supplemented, amended or modified.

2. The Commission shall find the Plan necessary to effectuate the provisions of subsection (b) of Section 11 of the Act and fair and equitable to the persons affected thereby and shall make an order, in form and substance satisfactory to AEP and CSOE, approving the Plan, which order if requested by AEP, shall contain recitals under the provisions of the internal revenue laws of the United States or any State thereof to the effect that the transactions contemplated by the Plan are

necessary or appropriate to effectuate the provisions of the Act.

3. The Commission, which is hereby requested so to do, shall apply to a court of competent jurisdiction, in accordance with the provisions of subsection (e) of Section 11 and of subsection (f) of Section 18 of the Act, to enforce and carry out the terms and provisions of the Plan, such court shall enter a decree or order approving the Plan as fair and equitable and as appropriate to effectuate the provisions of Section 11 of the Act and directing that action be taken to enforce and carry out the terms and provisions of the Plan and such decree or order shall become effective in accordance with its terms.

C. Within 30 days after the foregoing conditions precedent to the consummation of the Plan shall have been satisfied, AEP shall designate a date (the effective date) on which the Plan shall become effective. Any of the conditions precedent to the consummation of the Plan, as set forth above, or any part of any of such conditions, may be waived by action of the Board of Directors or the duly authorized officers of AEP at any time, and the action contemplated by paragraph 1 above may be taken prior to the effective date and without any necessity for any waiver of any such condition.

Upon the Plan becoming effective, AEP and CSOE and their officers and directors shall have full power and authority to do any and all things necessary or advisable to carry out the terms and provisions of and to effectuate the consummation of the Plan. Such companies may employ such agents, attorneys and others as they may deem desirable for

the purpose of carrying out the Plan or any part thereof and may from time to time, delegate to others any power or discretion conferred upon them by the Plan.

D. Payment of expenses incurred in connection with the Plan shall be made by AEP and shall be subject to the approval of the Commission.

E. Notice shall be given to the holders of certificates for Common Shares of CSOE, or certificates issued in lieu thereof, of their eligibility to receive distributions under the Plan and of the fact that Common Shares of CSOE, held by them will cease to have any rights other than to receive the Common Stock of AEP herein provided for upon due surrender of certificates pursuant to the Plan, by mailing not more than thirty (30) days after the effective date of the Plan to each such person whose address appears of record on the stock books, or the equivalent thereof, of CSOE and by publication by AEP at the time of such mailing at least once in at least one newspaper published and of general circulation in Columbus, Ohio, and in a newspaper published and of general circulation in New York, New York.

In addition, during a period of five years from the effective date of the Plan, AEP shall at least once during each calendar year embraced within such period, solicit the surrender by the holders thereof, at their last known addresses, of all certificates previously representing

Common Shares of CSOE which have not previously been deposited, or certificates issue in lieu thereof, and shall use such other methods or efforts as, in the reasonable exercise of AEP's discretion,. shall be appropriate to cause the surrender of such certificates during such period.

F. This Plan is submitted, and all statements herein are made, with due reservation of all constitutional and legal rights of AEP and CSOE.

AEP and CSOE also reserve the right to themselves, pending the consummation of the Plan, to take any and all lawful action considered by any of them desirable, upon receipt of any requisite regulatory authorization, as if no plan had been proposed.

June 18, 1980,
as amended
July 9, 1980
and
October 10, 1980.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Rel. No. 21768 / October 30, 1980

In the Matter of :

AMERICAN ELECTRIC POWER COMPANY, INC. :
New York, New York
:

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY :
Columbus, Ohio

(70-4596) :
(54-259)

MEMORANDUM FINDINGS AND OPINION APPROVING PLAN FOR SIMPLIFICATION OF HOLDING COMPANY SYSTEM

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of AEP, have filed a joint plan ("Plan") pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act") providing for the retirement of the minority interest in the common stock of CSOE.

We approved AEP's proposal to acquire control of CSOE by offering to exchange 1.3 AEP common shares for each common share of CSOE in a series of opinions and orders, jurisdiction over the solicitation being released March 28, 1980. 1/ AEP acquired 88.45% of the CSOE stock on May 9, 1980, the closing date under the tender offer. The offer had been conditioned on the tender of at least 80% of the voting shares of CSOE 2/ and became final on the closing date.

1/ Compliance with most of the requirements of the Act was ruled on in HCAR No. 20633, July 21, 1978. The terms of the offer, and other reserved questions, were passed on in HCAR No. 21433, February 13, 1980, and the solicitation was cleared in HCAR No. 21498, March 28, 1980.

2/ Since the CSOE preferred and preference shares are also voting shares, but were not tendered for, that condition required tender of more than 80% of the common stock. CSOE had outstanding at the close of business on that date:

	Shares	Votes
Preferred $100	469,429	469,429
Preferred $25 (1/4 vote)	127,233	32,083
Preference $100	548,342	548,342
Common	16,410,426	16,410,426
Total		17,460,280

The 14,515,000 tendered common shares were 83.1% of the CSOE voting shares. CSOE's offer to repurchase preferred shares expired April 22, 1980. It was accepted by 93.8% of the eligible preferred stock.

AEP has continued to accept additional CSOE common shares under its tender offer, 3/ and the Plan will extend the period for voluntary exchanges until the effective date of the Plan, except that no exchange will be made on a record date for either CSOE common shares or AEP common shares. It is accordingly expected that the 2.2% minority interest in CSOE will be further reduced by the effective date of the Plan, but experience in other cases has shown that it cannot be entirely eliminated except through a Section 11 plan.

We stated, in authorizing the tender offer:

> Section 10(c)(1) of the Act provides that we may not approve an acquisition if, among other things, it ". . . is detrimental to the carrying out of the provisions of Section 11. . ." We have held that the existence of a minority interest is contrary to the standards of Section 11(b)(2), and, in the instant case, such detrimental effects may arise if AEP should acquire less than all of the outstanding CSOE common stock. AEP has agreed to file a plan, jointly with CSOE, to retire any such minority interest pursuant to a plan under section 11(e)." 4/

AEP filed the Plan before us, which has been duly noticed 5/ and copies of such notice were mailed by applicants to all holders of record of CSOE common shares. No hearing thereon has been requested, nor does one appear to be needed.

The Plan is subject to our approval and its approval and enforcement by a United States District Court ("Enforcement Court"), pursuant to Section 11(e) of the Act. The effective date of the Plan, to be set by AEP, will be a date not more than 30 days after the entry of such order by the Enforcement Court.

3/ By August 19, 1980, further exchanges had increased AEP's holdings to 16,052,208 CSOE shares - 97.8%.

4/ HCAR No. 21433 (February 13, 1980) (footnotes omitted).

5/ HCAR No. 21656 (July 15, 1980). The Plan was filed June 18, 1980, and amended July 9, 1980. Further clarifying amendments were filed October 10, 1980. This opinion deals with the Plan as so amended.

The Plan provides that each holder of CSOE common stock, on the effective date of the Plan, except AEP, shall instead become the owner and holder of record of 1.3 shares of AEP common stock for each CSOE share owned, and that AEP shall become the owner of the CSOE common stock. The outstanding certificates for the CSOE minority common shares shall cease, on that date, to represent any interest in or claim against CSOE. CSOE shall issue to AEP a new certificate or certificates for all of the minority common shares then outstanding.

AEP shall issue, on the effective date, to the bank which is its transfer agent ("Agent"), instructions irrevocable for five years to issue, for the purposes hereinafter stated, AEP common shares equal to 1.3 times the number of CSOE minority common shares then outstanding. 6/ The Agent shall allocate to each holder of record of minority CSOE shares at the close of business on the day immediately preceding the effective date of the Plan, full AEP common shares equal to 1.3 times the number of CSOE common shares held, excluding any fractional AEP share. It shall sell on the New York Stock Exchange, as soon as practicable thereafter, the balance of the AEP shares, representing the fractional remainders, for the account of the CSOE holders who would otherwise be entitled to a fractional AEP share. The net proceeds, including the fractional share adjustment paid by AEP, if any, shall be allotted to those minority CSOE holders.

The AEP shares shall be deemed to be issued and outstanding and owned by the former CSOE minority shareholders for all purposes, including the payment of AEP dividends and voting, subject only to the five and fifteen year limits on completing the exchange described hereafter. Each former CSOE shareholder shall be entitled, upon surrender within 5 years of the CSOE certificate to AEP or the Agent, to receive the AEP shares, and the fractional proceeds, without interest. Former holders of CSOE shares who are unable to surrender their CSOE certificates, because of loss, destruction or other disability, may establish their right to receive the new shares and proceeds in the same manner as other AEP shareholders with a like disability.

On or after the fifth anniversary of the effective date of the Plan, the Agent may deliver to AEP any remaining fractional share proceeds held by it, and will have no further responsibility or obligation to any person with respect to such funds or with respect to certificates previously representing minority CSOE common shares.

6/ If a fraction results AEP will pay in cash to the agent the market value of the fraction, based on the closing price of AEP shares on the trading day immediately preceeding the effective date of the Plan.

If the Enforcement Court, on application on or after the fifth anniversary of the effective date of the Plan, finds that AEP has made all reasonable efforts to locate holders of unexchanged shares of CSOE common stock, neither AEP nor CSOE shall have any further obligation to solicit the surrender of any unsurrendered certificate, but AEP shall until the fifteenth anniversary of the effective date of the Plan, nevertheless issue the AEP shares and pay, without interest, the fractional proceeds to any former CSOE shareholder or the successor thereof, who surrenders a CSOE share certificate or otherwise establishes a right thereto. Neither AEP nor CSOE, nor any other person shall have any other obligation whatsoever with respect to the minority CSOE common shares.

The Companies Involved

AEP is a holding company whose subsidiaries provide electric utility service in an area extending from southeastern Virginia and a small portion of eastern Tennessee in a generally northwesterly direction to southwestern Michigan. AEP's service territory, which includes portions of Indiana, Kentucky, Ohio, Tennessee, Virginia, West Virginia and Michigan, has a total area of about 42,000 square miles and an aggregate population of about 6,300,000. Its consolidated assets were $8.2 billion at December 31, 1979, and its operating revenues and net income were $2.8 billion and $261 million, respectively, for the year then ended. AEP's service area is largely rural. The largest community served (prior to the acquisition of CSOE) was Fort Wayne, Indiana, with a population of about 180,000.

CSOE is principally an urban system, supplying power in the City of Columbus, but it also serves an extensive area in southeastern Ohio. Its service area has a population of about 1.3 million. Its consolidated assets were $1.3 billion at December 31, 1979, and its operating revenues and net income were $417 million and $46 million, respectively, for the year then ended.

Compliance with Statutory Standards

Before we may approve a plan filed pursuant to Section 11(e) of the Act, we must find that such plan is necessary to effectuate the provisions of Section 11(b) of the Act and is fair and equitable to the persons affected thereby. We must also find the proposed transactions satisfy the other applicable provisions of the Act.

The Plan is directed to elimination of the publicly-held minority common stock interest in CSOE by substituting a stock interest in AEP. We have consistently held that the existence of a minority interest in a subsidiary is contrary to the standards of Section 11(b)(2), and we make the same finding here. 7/ The Plan is an appropriate and necessary means of compliance.

The "fair and equitable" standard of Section 11(e) requires that each security holder affected by a plan receive thereunder "the equitable equivalent of the rights surrendered." 8/ A determination as to fairness requires a comparison of the financial characteristics of the securities surrendered and received under the Plan. In making such comparison, primary emphasis is given to currently effective rights to earnings and dividends. 9/

We examined, in our 1978 opinion, the two systems, with particular attention to the effect of the proposed combination, and our opinion in February of this year focused in large part on comparison of the common stock of the two companies, in the context of the exchange offer, at the same rate as proposed by the Plan. The combination is now consummated, AEP owning about 98% of CSOE common shares. The present record adds to the data previously reviewed, actual results for the year 1979, and for the 12 months ended June 30, 1980.10/

The preferred stock recapitalization was incident to the acquisition by AEP. It temporarily distorted CSOE's capital structure, a distortion

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7/ Union Electric Company, HCAR No. 20013 (April 29, 1977); Eastern Utilities Associates, 43 SEC 243, 246 (1967) and cases cited therein.

8/ Otis & Co. v. SEC, 323 U.S. 624, 639-640 (1945).

9/ SEC v. Central-Illinois Securities Corp., 338 U.S. 96, 130 (1949).

10/ Appendix A hereto incorporates 1979 in the historical tables developed for our previous opinion. Appendix B compares the June 30, 1980, consolidated balance sheet of the AEP system, including CSOE, with that of CSOE, noting the effect of the concurrent recapitalization of CSOE's preferred stock.

intended to be corrected by financing in the near future. 11/ A more permanent effect was a reduction of common equity by about $14 million, due to the premiums and expenses incurred in the recapitalization and a substantial long range increase in fixed charges, the exact amount of which depend on the money costs incurred in the pending refunding. We exclude the adverse effects of the recapitalization from our consideration of the fairness of the Plan, since these costs would not have been incurred by CSOE as an independent company. They nevertheless, illustrate concretely the practical disadvantages to which minority common stockholders are exposed and the reasons for requiring the elimination of such potentially conflicting interests.

As shareholders of AEP, the CSOE shareholders would continue as equity owners of an integrated electric utility system, of which CSOE is a central and important part. The consolidated capital structure of the AEP system parallels closely that of CSOE, so the character and rank of their securities would not be changed.

AEP offered a 14.9% common stock interest in the combined system, for the common stock of CSOE. The Plan would complete the acquisition on that basis. Over the past 7 years, 1973-1979, CSOE provided 13.61% of the combined income for common stock 12/ and represented, at the time of the offer, 14.28% of the common equity.

11/ CSOE borrowed $65.3 million to consummate the cash portion of its offer to its preferred stockholders. It was recently authorized to issue and sell (HCAR No. 21723, September 23, 1980), $50 million of new preferred stock and $80 million of first mortgage bonds. The pro forma effect of this refunding, as of June 30, 1980, on capitalization ratios would be:

	CSOE Actual		Financing	CSOE Proforma		AEP Proforma	
	Amount	%	Amount	Amount	%	Amount	%
Long term debt	$ 586	41.9	$ 80	$ 666	47.6	$4,904	49.9
Short term Debt	224	16.0	(130)	94	6.7	510	5.2
	$ 810	57.9	$(50)	$ 760	54.3	$5,414	55.1
Deferred taxes	62	4.4	-	62	4.4	481	4.9
Preferred and preference	105	7.5	50	155	11.1	876	8.9
Common equity	422	30.2		422	30.2	3,058	31.1
Total	$1,399	100.0	-0-	$1,399	100.0	$9,829	100.0

A $30 million 1980 equity contribution is also proposed by AEP, which cannot be made in that form until the minority interest is eliminated. It would bring CSOE's short-term debt and common equity ratio even closer to that of the system.

12/ This period includes 1978, a year in which CSOE's income was abnormally low. Excluding 1978, CSOE's contribution was 14.21%. For 1979 it was 14.98%.

Appendix A also compares the 1.3 shares of AEP with the CSOE common shares, in terms of net income, dividends, book value and market prices over the 13 years 1967-1979. The data for the 12 months ended June 30, 1980, did not differ materially from 1979. The earnings and book value are consistent with the aggregates just described. AEP has consistently paid significantly higher dividends than CSOE, the 1.3 shares yielding over 20% more in dividends, and has enjoyed a significantly higher market price.

On the basis of the entire record, from which the foregoing factors have been selected for special analysis, we find that the Plan is fair and equitable to the minority shareholders of CSOE and to AEP, and otherwise meets all the requirements of Section 11(e) of the Act.

OTHER APPLICABLE STATUTORY PROVISIONS

The issuance by AEP of its common shares is subject to the provisions of Section 7 the Act. We find that the AEP common shares satisfy the requirements of Clause (A) of Section 7(c)(1) and all the requirements of Section 7(d) of the Act. As the AEP common shares will be issued only to shareholders of CSOE pursuant to a plan which we have found to be fair and equitable, the transaction cannot be the subject of competitive bidding and an exception from the competitive bidding requirements of Rule 50 will be granted.

The acquisition by AEP of the publicly held shares of common stock of CSOE is subject to the provisions of Sections 9(a) and 10 of the Act. We make no adverse findings under Sections 10(b) and 10(c)(1) of the Act. The purpose of the Plan is to comply with Section 11(b) of the Act, so Section 10(c)(2) is satisfied.

OTHER MATTERS

Accounting Treatment

The proposed transaction will be recorded on the books of AEP in the same manner as prescribed in our opinion approving the tender offer, which we find still appropriate.

Court Enforcement

As a condition precedent to its consummation, the Plan provides that it be approved and ordered enforced by an appropriate District Court of the United States. As requested by AEP, we shall apply to an appropriate court for approval and enforcement of the Plan, and our order will stay the consummation of the Plan until such court order has been entered. It will not, however, preclude AEP from continuing to exchange its shares for CSOE shares tendered pursuant to our previous order.

Fees and Expenses

The Plan provides that AEP will pay the fees and expenses relating to the Plan. Since the record is incomplete concerning this matter, we shall reserve jurisdiction with respect thereto.

Tax Recitals

AEP and CSOE have requested that any order approving the Plan include appropriate tax recitals pursuant to Section 1081(f) of the Internal Revenue Code of 1954 and Section 270(c) of the Tax Law of the State of New York. The Plan is for the purposes specified and our order of approval will include fuller findings on this subject.

CONCLUSION

Based upon the foregoing, we shall enter an order (1) directing that AEP and CSOE, pursuant to Section 11(b)(2) of the Act, take appropriate action to effectuate the elimination of the publicly held interests in the common stock of CSOE, (2) approving the Plan filed pursuant to Section 11(e) of the Act, and (3) excepting the issuance and sale by AEP of its common shares from the competitive bidding requirements of Rule 50 under the Act. We shall reserve jurisdiction with respect to the fees and expenses incurred and to be incurred in connection with the Plan, and our order will provide that the Plan shall not be consummated until an appropriate court has entered an order approving and enforcing the Plan.

By the Commission.

George A. Fitzsimmons

George A. Fitzsimmons
Secretary

COLUMBUS & SOUTHERN OHIO ELECTRIC—AMERICAN ELECTRIC POWER COMPANY
ANALYSIS OF EARNINGS AND COMMON EQUITY
(In Millions)

Year	CSOE Net Income After Preferred Div. (a)	AEP—CSOE Combined Net Income After Pref. (a+b)	(a)/(a+b) = %	CSOE Common Equity (c)	AEP—CSOE Combined Common Equity (c+d)	(c)/(c+d) = %
1973 =	$ 22	$ 197	11.17%	$ 192	$ 1,516	12.66%
1974 =	16	193	8.29%	193	1,715	11.25%
1975 =	36	226	15.93%	267	1,976	13.51%
1976 =	46	276	16.67%	356	2,309	15.42%
1977 =	44	279	15.77%	422	2,623	16.09%
1978 =	27	263	10.27%	415	2,790	14.87%
1979 =	46	307	14.98%	431	3,018	14.28%

COMPARISON OF 1.3 AEP COMMON SHARES WITH ONE CSO COMMON SHARE
At the End of Each Calendar Year

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Reported earnings per													
1.3 AEP shares ..	2.60	2.73	2.86	2.99	3.09	3.24	3.54	2.50**	3.07	3.29	3.12	2.94	2.98
1.0 CSO share ...	2.55	2.49	2.59	2.42	2.13	2.65	2.97	2.04	3.60	3.71	3.05	1.73	2.84
AEP as percent of CSO	1.02	1.10	1.10	1.24	1.45	1.22	1.19	1.23	0.85	0.89	1.02	1.70	1.05
Dividends per													
1.3 AEP shares ..	1.90	2.00	2.07	2.15	2.21	2.29	2.40	2.57	2.60	2.62	2.70	2.77	2.85
1.0 CSO share ...	1.54	1.64	1.72	1.76	1.80	1.88	1.92	1.96	1.98	2.08	2.23	2.32	2.32***
AEP as percent of CSO	1.23	1.22	1.20	1.22	1.23	1.25	1.25	1.31	1.31	1.26	1.21	1.19	1.23
Book value per													
1.3 AEP shares ..	17.36	18.19	19.96	21.58	23.45	24.40	26.16	27.17	26.73	27.26	27.79	27.90	27.72
1.0 CSO share ...	19.96	20.79	21.64	22.30	22.82	23.50	24.95	25.03	24.31	25.46	26.33	25.69	26.36
AEP as percent of CSO	0.87	0.87	0.92	0.97	1.03	1.03	1.05	1.09	1.10	1.07	1.06	1.09	1.05
Year end market prices per													
1.3 AEP shares ..	48.75	49.08	39.16	37.05	39.49	39.00	32.50	18.69	27.30	33.15	31.69	27.46	23.24
1.0 CSO share ...	37.00	44.25	29.75	28.38	27.50	28.38	24.10	12.25	23.00	27.00	26.75	21.00	21.13
AEP as percent of CSO	1.32	1.11	1.32	1.31	1.44	1.37	1.35	1.53	1.19	1.23	1.18	1.31	1.10

* Prices of January 19, 1968, immediately before announcement of proposed tender, used.

** Excludes 1974 accounting revision, 53¢ per share.

*** Does not include dividend of 39¢ per share paid in December 1979 in accordance with realignment of dividend record and payment dates with AEP. SOURCE: Annual Report of CSOE for 1979.

KWH sold in (millions) .	74,912	75,858	75,917	84,913	81,865	85,932	95,508
Operating revenues	$ 979	$ 1,333	$ 1,625	$ 1,833	$ 2,029	$ 2,389	$ 2,814
Operating expenses:							
Fuel	$ 289	$ 571	$ 698	$ 753	$ 833	$ 1,092	$ 1,180
Other operations	164	183	184	192	226	208	365
Maintenance	74	87	82	103	136	163	172
Depreciation	115	128	156	180	185	204	224
Taxes—non income ..	63	73	91	104	129	145	164
Income taxes	(14)	(12)	9	29	48	51	105
Operating expenses .	$ 691	$ 1,030	$ 1,220	$ 1,361	$ 1,557	$ 1,863	$ 2,210
Operating income	$ 288	$ 303	$ 405	$ 472	$ 472	$ 526	604
Other income—net	10	4	3	6	7	3	3
AFUDC—gross (a) ...	38	119	82	69	95	95	91
Interest—gross (a)	(187)	(259)	(262)	(273)	(296)	(335)	(379)
Preferred dividends	(25)	(31)	(38)	(44)	(46)	(52)	(58)
Consolidated income after subsidiary preferred dividends ..	$ 174	$ 136	$ 190	$ 230	$ 235	$ 236	$ 261
Accounting adjustment (b)		41					
		$ 177					

* As restated in 1978 10-K. The restatement reflected the outcome of certain rate cases, but had a relatively small net effect.

(a) AFUDC includes the portion credited to fixed charges and, in 1978, the related tax adjustment.

(b) In 1974, the system commenced recording revenue when service was rendered rather than on the later billing date, and deferring additional fuel costs until the time permitted for inclusion of such costs in the member companies energy adjustment clauses for rate purposes. The non recurring adjustment reflected the changes in accounts receivable and deferred charges, and related tax accounts, to make them consistent with the new accounting procedures.

CSO	1973	1974	1975	1976	1977	1978	1979
KWH sold (in millions)	7,536	7,767	7,851	8,133	8,727	8,626	9,034
Operating revenues	$158	$189	$259	$280	$320	$366	$417
Operating expenses:							
Fuel & purchased power	$ 36	$ 62	$ 88	$ 90	$ 99	$131	$119
Other operations	28	32	35	43	53	66	70
Maintenance	15	16	20	25	25	34	38
Depreciation	19	21	23	24	31	36	40
Taxes—non income	17	20	21	24	29	32	38
Income taxes	3	(4)	11	7	7	1	22
Operating expenses	$118	$147	$198	$213	$244	$300	$327
Operating income	$ 40	$ 42	$ 61	$ 67	$ 76	$ 66	$ 90
Other income (including coal operations)	1	—	2	3	—	1	3
AFUDC—gross(a)	6	8	14	24	22	23	27
Interest—gross	(21)	(29)	(35)	(40)	(44)	(51)	(60)
Preferred dividends	(4)	(5)	(6)	(8)	(10)	(12)	(14)
Net income after preferred dividends	$ 22	$ 16	$ 36	$ 46	$ 44	$ 27	$ 46

(a) Includes AFUDC credited to fixed charges and, in 1978, related tax adjustment.

CONDENSED CONSOLIDATED BALANCE SHEET
JUNE 30, 1980
(in millions)

AEP AND CSOE ACTUAL AND CSOE ADJUSTED TO ELIMINATE PRINCIPAL EFFECTS OF RECAPITALIZATION

	Adjusted CSOE	Effects of Preferred Stock Recapitalization	CSOE Actual	AEP Including CSOE b/	Percent Represented By: CSOE	Percent Represented By: Adjusted CSOE
Current assets	$ 135	$(2)	$ 133	$ 1,043	12.75	12.94
Utility plant - net	1,317		1,317	8,988	14.82	14.82
Other assets - net	27		27	334	8.08	8.08
Excess cost of investments in subs.				10		
Deferred debts	20		20	194	10.31	10.31
Total assets	$1,499	$(2)	$1,497	$10,507	14.25	14.27
Notes & current maturities	$ 159	$ 65	$ 224	$ 640	35.00	24.85
Other current liabilities	95		95	607	15.65	15.65
Long-term debt	586		586	4,824	12.15	12.15
Operating reserves & other deferrals	3		3	71	4.23	4.233
Liabilities & reserves	$ 843	$ 65	$ 408	$ 6,142	14.78	13.93
Deferred taxes	62		62	481	12.89	12.89
Preferred stock	158	(108)	50	771	6.49	20.49
Preference stock		55	55	55	100.00	
Common & paid-in capital	292	(1) a/	291	2,320	12.54	12.59
Retained earnings	144	(13)	131	738	17.75	19.51
	$1,499	$(2)	$1,497	$10,507	14.25	14.27

Capitalization ratios:	Amount	Percent	Amount	Percent	Amount	Percent
Long-term debt	$ 586	41.8	$ 586	41.9	$ 4,824	49.1
Notes & current maturities	159	11.4	224	16.0	640	6.5
Total debt	$ 745	53.2	$ 810	57.9	$ 5,464	55.6
Deferred taxes	62	4.4	62	4.4	481	4.9
Preferred & preference stock	158	11.3	105	7.5	826	8.4
Common equity	436	31.1	422	30.2	3,058	31.1
Total capitalization	$1,401	100.0	$1,399	100.0	$ 9,829	100.0

a/ CSOE spent $66,903,000 and issued $54,816,000 of its new preference stock, at par, to repurchase $108,203,000 of its outstanding preferred stock. It borrowed $65.3 million, the approximate price of the shares repurchased for cash. The premium and expenses on the shares repurchased, for cash or new stock, was charged to CSOE's retained earnings after adjustment for the recorded premium on the retired shares. The adjustment to cash and retained earnings shown also includes a $404,000 allowance for the excess of the dividends on the preference stock and interest, after a tax adjustment of about 46.4%, on the $65.3 million bank loan, during the period to June 30, 1980, over the dividends which would have accrued on the preferred shares retired; plus $12,000 of other expenses.

b/ AEP's balance sheet assumes 100% acquisition of the CSOE common. At June 30, 1980, the AEP common stock shown included 616,655 AEP shares (0.42%) reserved for 474,350 (2.89%) then unexchanged CSOE shares.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Rel. No. 21769 / October 30, 1980

In the Matter of
AMERICAN ELECTRIC POWER COMPANY, INC. New York, New York
COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY Columbus, Ohio
(70-4596) (54-259)

ORDER DIRECTING THE ELIMINATION OF PUBLICLY-HELD COMMON STOCK INTERESTS PURSUANT TO SECTION 11(b)(2) AND APPROVING PLAN FILED PURSUANT TO SECTION 11(e)

American Electric Power Company, Inc. ("AEP"), a registered holding company, having filed pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), a plan and an amendment thereto ("Plan") for the elimination of the publicly-held interests in the common stock of its electric utility subsidiary Columbus and Southern Ohio Electric Company ("CSOE");

Appropriate notice having been given affording all interested persons an opportunity to request a hearing with respect to the Plan;

AEP having requested, pursuant to Section 11(e) of the Act, that the Commission apply to an appropriate United States District Court to enforce and carry out the terms and provisions of the Plan;

AEP having further requested that, if the Commission approves the Plan, the Commission's order contain the findings and recitals necessary to meet the requirements of Section 1081 of the Internal Revenue Code of 1954 and Section 270(c) of the Tax Law of the State of New York;

The Commission having considered the record and having this day issued its Memorandum Findings and Opinion; on the basis of such Memorandum Findings and Opinion:

IT IS ORDERED, pursuant to Section 11(b)(2) of the Act, that AEP and CSOE be, and each hereby is, directed to take appropriate action to effect the elimination of the publicly-held shares of common stock of CSOE;

IT IS FURTHER ORDERED, pursuant to Section 11(e) of the Act, that the Plan be, and it hereby is, approved, subject to the terms and conditions of Rule 24 and subject to the following additional terms and conditions:

(1) This order shall not be operative to authorize consummation of the Plan until an appropriate United States District Court shall, upon application thereto, enter an order approving and enforcing the Plan;

(2) Jurisdiction is reserved to determine the reasonableness of all fees and expenses and other remuneration incurred or to be incurred by AEP in connection with the Plan, the transactions incident thereto, and all proceedings on such Plan or related thereto;

(3) Jurisdiction is reserved with respect to the entering of such further orders and the taking of such further action as the Commission may deem necessary or appropriate to effectuate the requirements of Section 11(b) of the Act.

IT IS FURTHER ORDERED that the issuance and sale by AEP of its common shares be, and they hereby are, excepted from the competitive bidding requirements of Rule 50 under the Act.

IT IS FURTHER ORDERED AND RECITED in accordance with Section 1081 of the Internal Revenue Code of 1954, as amended, and Section 270(c) of the Tax Law of the State of New York, that the delivery and transfer of certificates for common shares of CSOE, the acquisition of certificates for common shares of CSOE by AEP, the issuance and delivery by AEP of certificates for common shares of AEP, the acquisition by those entitled thereto of certificates for common shares of AEP and the sale by or on behalf of AEP of certificates for common shares of AEP, all as provided in the Plan, are necessary or appropriate to effectuate the provisions of Section 11(b) of the Public Utility Holding Company Act of 1935.

By the Commission,

George A. Fitzsimmons

George A. Fitzsimmons
Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of	:	
AMERICAN ELECTRIC POWER COMPANY, INC. COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY	:	CIVIL ACTION NO. _____
	:	

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION
IN SUPPORT OF ITS APPLICATION FOR ENFORCEMENT OF A PLAN

This memorandum is submitted in connection with the application filed herein by the Securities and Exchange Commission ("Commission") at the request of American Electric Power Company, Inc. ("AEP"), a holding company incorporated in New York and registered with the Commission as a public utility holding company pursuant to the Public Utility Holding Company Act of 1935 ("Act"), 1/ and of AEP's subsidiary Columbus and Southern Ohio Electric Company ("CSOE"). An order is sought enforcing a plan approved by the Commission pursuant to Section 11(e) of the Act. The plan is designed to retire the publicly-held minority common stock interest in CSOE, the existence of which constitutes an inequitable distribution of voting power in contravention of the requirements of Section 11(b)(2) of the Act. 2/ This memorandum sets forth the background of Section 11 of the Act and the statutory provisions and decisions relevant to this proceeding.

As pointed out in the Congressional reports, it is the power vested in the Commission by Section 11(b) which is "the very heart" of the Act. 3/ Under Section 11(b)(1) the Commission is charged with a duty to limit registered

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1/ 49 Stat. 803 (1935), 15 U.S.C. Section 79a, et seq. Pertinent provisions of the Act are reproduced in Exhibit A to the application in this proceeding.

2/ See Union Electric Company, Holding Company Act Release No. 20012 (April 29, 1977); Washington Gas Light Company, 44 S.E.C. 515 (1971); Northeast Utilities, 43 S.E.C. 949 (1968); American Electric Power Company, Inc., 43 S.E.C. 942 (1968); Eastern Utilities Associates, 43 S.E.C. 243 (1967); New Orleans Public Service, Inc., 40 S.E.C. 886 (1961); Lynn Electric Company, 40 S.E.C. 828 (1961), and cases cited therein at p. 833, fn. 9; Cities Service Co., 37 S.E.C. 342 (1956), aff'd sub. nom. Cities Service Co. v. S.E.C., 247 F. 2d 646 (C.A. 2, 1957), cert. den., 355 U.S. 912 (1958).

3/ North American Co. v. S.E.C., 327 U.S. 686, 704 (1946), fn. 14.

holding companies and their subsidiaries to a "single integrated public-utility system, and to such other businesses as are reasonably incidental" thereto. Under Section 11(b)(2), the Commission is further obligated to require that registered holding companies and their subsidiaries "take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system." This provision has long been held to require the simplification of the corporate structure of holding company systems by, among other measures, the retirement of publicly-held minority interests in the voting stock of subsidiary companies. 4/ The proposed retirement of the publicly-held minority interest in CSOE's common stock is in accordance with this requirement.

In view of the magnitude of the task and complexities of the problems imposed under the provisions of Section 11, Congress recognized the desirability of encouraging voluntary compliance by the companies affected. This method of compliance is provided for in Section 11(e), which permits the company to initiate or submit to the Commission a plan or plans for accomplishing the statutory objectives. In other words, under Section 11(b) the Commission directs the end result that the statute requires, and under Section 11(e) the Commission may "leave to the company involved the initiative in suggesting from among the available alternative methods that one which it deems most appropriate." 5/

4/ See cases cited in note 2, supra.

5/ Commonwealth & Southern Corp. v. S.E.C., 134 F.2d 747, 751 (C.A. 3, 1943). The statute provides, of course, that if an appropriate plan is not forthcoming under Section 11(e), the Commission may under Section 11(d), apply to a court for enforcement of its 11(b) orders. The Section 11(d) alternative has been used in only a very few instances.

Under Section 11(e), the company prepares and submits a plan to the Commission. After notice and opportunity for hearing, the Commission determines whether the plan is necessary to effectuate the provisions of Section 11(b) and is fair and equitable to the persons affected thereby. If it so finds, the Commission, at the request of the company, may apply to the appropriate district court for enforcement of the plan. 6/ Section 11(e) provides, in part:

> "If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of Section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located. . . ."

To date, there have been more than 100 cases in which plans have been enforced pursuant to Section 11(e).

Unlike most matters coming before a district court, an enforcement proceeding under Section 11(e) is not a trial de novo. The fact that a plan requires court enforcement does not alter the basic nature of the Commission's decision. In this type of proceeding, the district court sits as a court of review, and the scope of its review is precisely the same as a review under Section 24(a) of the Act by a court of appeals where enforcement is not required. S.E.C. v. Central Illinois Securities Corp., 338 U.S. 96, 125 (1949). Therefore, the findings of the Commission are not subject to re-examination if they are supported by substantial evidence and are arrived at in accordance with legal standards. (Ibid. at p. 126.) Where there is no contest, or where the issues raised are issues of law, it is unnecessary for the district judge to examine the record and he may rely upon the statements in the Commission's opinion and order. In re Electric Power & Light Corp., 176 F.2d 687, 690-91 (C.A. 2, 1949). 7/

6/ For illustrations of plans approved under Section 11(e), see S.E.C. v. Leventritt, 340 U.S. 336 (1951); S.E.C. v. Central-Illinois Securities Corp., 338 U.S. 96 (1949); Otis & Co. v. S.E.C., 323 U.S. 624 (1945).

7/ In this respect, the Commission's findings may serve not unlike an agreed statement of the parties as to the record on appeal under Rule 10(d) of the Federal Rules of Appellate Procedure.

The application in this proceeding has been filed at the request of AEP and CSOE for enforcemnt of a plan submitted pursuant to Section 11(e) of the Act by those companies in accordance with an undertaking made by AEP at the time the Commission authorized AEP to acquire the common stock of CSOE through a tender offer. 8/ The plan is designed to retire the remaining 1.9% publicly-held interest in the common stock of CSOE.

After publishing notice of the plan, 9/ concerning which no one requested a hearing, the Commission entered a Memorandum Findings and Opinion and related order 10/ approving the plan, finding it necessary to effectuate the provisions of Section 11(b)(2) of the Act 11/ and fair and equitable to the persons affected thereby. Copies of the plan, the Commission's Notice of Filing and the Commission's Memorandum Findings and Opinion and related Order approving the plan are attached to the application in this proceeding as Exhibits B, C, D and E, respectively. The object of this proceeding is to retire the outstanding minority shares of CSOE. This court is authorized by Xections 11(e) and 18(f) to effectuate the plan, which converts those shares into common stock of AEP..

8/ American Electric Power Co., Inc., Holding Company Act Release No. 21433, February 13, 1980.

9/ American Electric Power Co., Inc., Holding Company Act Release No. 21656, July 15, 1980.

10/ American Electric Power Co., Inc., Holding Company Act Release Nos. 21768 and 21769, October 30, 1980.

11/ Such findings are in accord with well established precedent. See Northeast Utilities, 42 S.E.C. 963 (1966); Lynn Electric Co., 40 S.E.C. 828, 833, Fn.9 (1961), New Orleans Public Service, Inc. 40 S.E.C., 886 (1961).

The Court is requested, after notice and opportunity for hearing, to enforce and carry out the plan as fair and equitable and as appropriate to effectuate the provisions of Section 11(b)(2) and to take such action and to enter such orders as are necessary to complete the retirement of the publicly-held minority interest in CSOE's common stock.

Respectively submitted,

James C. Cissell
United States Attorney

Trial Attorney
James E. Rattan
Assistant United States Attorney
85 Marconi Boulevard
Room 200
Columbus, Ohio 43215
(614) 469-5715

Of Counsel

James E. Lurie
Division of Corporate Regulation
Securities and Exchange Commission
Washington, D.C. 20549
(202) 523-5683

Dated: November 6, 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of :

AMERICAN ELECTRIC POWER COMPANY, INC. : CIVIL ACTION NO. _____
COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY :

ORDER FOR HEARING

Upon consideration of the application filed herein by the Securities and Exchange Commission,

IT IS HEREBY ORDERED:

1. That a hearing be held on the ___ day of _____, 1980, at _____ E.D.S.T., in the United States District Court for the Southern District of Ohio, Eastern Division, in Courtroom __, __ floor, of the United States Courthouse, Columbus, Ohio, for the purpose of determining whether, pursuant to 15 U.S.C. Section 79r(e), this Court should approve and enforce an order of the Securities and Exchange Commission ("Commission"), dated October 30, 1980, approving a plan pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935, designed to retire the publicly-held minority interest in the common stock of Columbus and Southern Ohio Electric Company ("CSOE"), a subsidiary of American Electric Power Company, Inc. ("AEP").

2. That at least 15 days prior to the date of said hearing, AEP will give notice of said hearing by causing a copy of the notice attached hereto to be published once a week in a newspaper of general circulation in Columbus, Ohio, and in the Wall Street Journal, and by mailing a copy of said notice to the last known addresses of all CSOE shareholders of record (other than AEP).

3. That any person proposing to object to the application of the Commission or the approval of the plan by this Court shall file, not later than five days prior to the date of said hearing, with the Clerk of this Court, a written statement of objections and a supporting brief and shall, at the same time, serve by mail copies thereof upon James E. Rattan, Esq., Assistant United States Attorney, 85 Marconi Boulevard, Room 200, Columbus, Ohio 43215, upon James E. Lurie, Esq., Division of Corporate Regulation, Securities and Exchange Commission, Washington, D.C. 20549, upon Richard M. Dicke, Esq., Simpson, Thacher & Bartlett, One Battery Park Plaza, New York, New York 10004, and upon A. Joseph Dowd, Esq., Secretary, American Electric Power Company, Inc.,

2 Broadway, New York, New York 10004. Such objections shall be stated in detail in accordance with the pleading requirements of the Federal Rules of Civil Procedure.

United States District Judge

Dated:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of	:	
AMERICAN ELECTRIC POWER COMPANY, INC. COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY	:	CIVIL ACTION NO. _____

NOTICE

TO ALL HOLDERS OF RECORD OF COMMON STOCK OF COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY AND TO ALL OTHER PERSONS

Notice is hereby given that the Securities and Exchange Commission ("Commission") has filed an application requesting the United States District Court for the Southern District of Ohio, Eastern Division, to approve and enforce the Commission's Memorandum Findings and Opinion and Order of October 30, 1980, approving a plan pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), and that the Court has entered an order directing that a hearing be held. The plan is designed to retire the publicly-held minority interest in the common stock of Columbus and Southern Ohio Electric Company ("CSOE"), a subsidiary of American Electric Power Company, Inc. ("AEP"), a holding company registered under the Act.

The plan provides that, as of an effective date to be set within 30 days of the court order enforcing it, all shareholders of record of CSOE (except AEP) will become shareholders of record of AEP for purposes of dividends and voting, at the rate of 1.3 AEP common shares for each share of CSOE common stock held, with adjustments for the sale of any fractional shares for such holders who would otherwise be entitled to a fractional AEP common share, such fractional shares to be sold on the New York Stock Exchange and the proceeds to be held for and paid to such holders. Thereafter, for a period of 15 years from the effective date, holders of unexchanged certificates of CSOE common stock may surrender such certificates to the exchange agent (to AEP after the end of the fifth such year) and receive certificates for the common stock of AEP to which they are entitled under the plan. At the end of 15 years from the effective date of the plan, public holders of the common stock of CSOE who have not surrendered their certificates will cease to have any rights or claims against AEP or CSOE and all such certificates will be null and void and of no further force or effect.

The order of the Court directs that a hearing be held on the ___ day of _____, 1980, at _____ a.m. p.m., E.D.S.T., in the United States District Court for the Southern District of Ohio, Eastern Division, in Room _____ of the United States Court House, Columbus, Ohio, for the purpose of determining whether the Court should approve and enforce the Commission's order approving the plan to retire the publicly-held common stock in CSOE. The order of the Court requires that any person proposing to object to the application of the Commission or the approval of the plan by the Court shall file, not later than five days prior to the hearing, with the Clerk of the Court, a written statement of objections and a supporting brief and shall, at the same time, serve by mail copies thereof upon James E. Rattan, Esq., Assistant United States Attorney, 85 Marconi Boulevard, Room 200, Columbus, Ohio 43215, upon James E. Lurie, Esq., Division of Corporate Regulation, Securities and Exchange Commission, Washington, D.C. 20549, upon Richard M. Dicke, Esq., Simpson, Thacher & Bartlett, One Battery Park Plaza, New York, New York 10004, and upon A. Joseph Dowd, Esq., Secretary, American Electric Power Company, Inc., 2 Broadway, New York, New York 10004. The order of the Court directs that such objections be stated in detail and in accordance with the pleading requirements of the Federal Rules of Civil Procedure.

Copies of the Commission's Memorandum Findings and Opinion and Order approving the Section 11(e) plan dated October 30, 1980, will be sent to interested persons free of charge, upon request addressed to A. Joseph Dowd, Esq., Secretary, American Electric Power Company, Inc., 2 Broadway, New York, New York 10004.

AMERICAN ELECTRIC POWER COMPANY, INC.

By _____

Dated:

AMERICAN ELECTRIC POWER *Company, Inc.*

AEP

2 Broadway, New York, N.Y. 10004
(212) 440-9000

W. S. WHITE, JR.
Chairman of the Board
and
Chief Executive Officer
(212) 440-8500

November 7, 1980

American Municipal Power-Ohio, Inc.
1500 W. Lane Avenue
P. O. Box 5815
Columbus, Ohio 43221

Attention of Mr. George Crosby
Executive Director

Re: Coordination Agreement dated as of May 1, 1979 among AMPO, CSOE, OPCO and AEP

Dear Sirs:

Reference is made to the Coordination Agreement, dated as of May 1, 1979, among American Municipal Power-Ohio, Inc. (AMPO), Columbus and Southern Ohio Electric Company (CSOE), Ohio Power Company (OPCO) and American Electric Power Company, Inc. (AEP), and to the provisions of Article One thereof relating to the establishing of the Notification Date, the Acquisition Date, and the Election Date therein described.

You will recall that by letter, dated May 9, 1980, OPCO and CSOE advised AMPO, pursuant to Section 1.2 of the Coordination Agreement, that May 9, 1980 was the Notification Date referred to in said Section 1.2; that May 9, 1980 was the Acquisition Date referred to in said Section 1.2; and that OPCO and CSOE were prepared to proceed with the proposal contained in said Section 1.2.

Section 1.3(a) of the Coordination Agreement contemplates, you will recall, that AMPO shall be entitled, at its election, signified by written notice delivered to AEP, CSOE and OPCO on a date (Election Date) within six calendar months following the Notification Date to purchase from CSOE (subject to the receipt of any regulatory approvals necessary to enable CSOE to sell and AMPO to purchase) Poston Unit No. 5, or, at its election, Poston Units Nos. 5 and 6, on an "as is" basis on a Closing Date determined

in the manner provided in the Coordination Agreement. Neither CSOE nor any other members of the AEP System has received from AMPO to date written notice of any such election by AMPO. It is important, particularly to CSOE, that it be apprised of such an election within such period because CSOE did commit, in Section 1.3(b) of the Coordination Agreement, not to finally terminate, prior to the last day on which the Election Date could occur, as distinguished from postponing, further construction work on Poston Unit No. 5 or Poston Unit No. 6 without consulting with AMPO and AEP with respect to such action.

Section 1.3(b) of the Coordination Agreement provides, in the event that for any reason AMPO decides subsequent to the Acquisition Date, but prior to the last date on which the Election Date may occur under the Coordination Agreement, not to purchase either Poston Unit No. 5 or Poston Units Nos. 5 and 6, but does believe that it would be in the best interests of AMPO and the AMPO Members to acquire generating facilities for AMPO through the mechanism provided by the Coordination Agreement, then AMPO shall so notify CSOE and OPCO in writing prior to the last date on which the Election Date may occur under the Coordination Agreement; and that if AMPO shall so notify CSOE and OPCO in writing prior to the last date on which the Election Date may occur under the Coordination Agreement, then OPCO, with the cooperation of CSOE, shall promptly proceed to use its best efforts to locate, and acquire for the account of AMPO (upon reimbursement by AMPO for any expenses incurred on behalf of AMPO) a site on which there can be installed, assuming requisite regulatory authorizations are secured, generating facilities which will initially have a rated capacity of not less than 600 MW (net) but not more than 1300 MW(net).

Neither CSOE nor any other members of the AEP System has received from AMPO to date written notice pursuant to Section 1.3(b) to the effect that AMPO has decided not to purchase Poston Unit No. 5 or Poston Units Nos. 5 and 6, but that AMPO does believe that it would be in the best interests of AMPO and AMPO Members to acquire generating facilities for AMPO through the mechanism provided by the Coordination Agreement. AMPO did indicate, in the financial plan which it furnished for attachment as Appendix No. 4 to the Coordination Agreement, that if the Acquisition Date did occur - as it did - AMPO believed that AMPO would probably elect, if financing and other arrangements were completed, to purchase from CSOE either Poston Unit No. 5 or Poston Units Nos. 5 and 6. Neither CSOE nor OPCO has, during the intervening period, received an indication of a change in such preference although, as indicated in the recent Prospectus, dated October 1, 1980, of CSOE relating

to its public offering of $80 million principal amount of First Mortgage Bonds, 13 5/8% Series due 1990, the total of the construction costs of both Poston units has since 1979 escalated to an estimated $1.2 billion.

CSOE, OPCO and AEP are familiar with certain of the difficulties with which AMPO, and its members, have been confronted since the execution and delivery of the Coordination Agreement. It is necessary, on the other hand, in the interests of the security holders of, and the customers served by, the American Electric Power System as it is now constituted not to delay unduly the system planning decisions which must be made on a timely basis if the System is to continue in future years to render adequate, efficient and reliable electric service on reasonable terms.

The American Electric Power System, including CSOE, would not now, absent other considerations, continue the construction of either of the Poston units on the basis of a current cost-benefit analysis of the desirability of continuing the construction of such units, when considered in the light of other capacity alternatives which it is believed will be available to the System in the periods subsequent to 1987 and 1990.

Under such circumstances, CSOE, OPCO and AEP have decided to, and hereby (i) waive any requirement that the Election Date under Section 1.3(a) of the Coordination Agreement occur on or before November 10, 1980 provided that if AMPO shall elect pursuant to said Section 1.3(a) to purchase Poston Unit No. 5 or, alternatively, Poston Units Nos. 5 and 6, on an "as is" basis, AMPO shall signify its election so to do by delivering written notice to such effect to CSOE and OPCO pursuant to said Section 1.3(a) on or prior to December 31, 1980, and (ii) waive any requirement that the Election Date under Section 1.3(b) of the Coordination Agreement occur on or before November 10, 1980 provided that AMPO shall decide, and shall advise CSOE and OPCO in writing of its decision prior to December 31, 1980, not to purchase either Poston Unit No. 5 or Poston Units Nos. 5 and 6 and shall also decide, and shall so advise CSOE and OPCO in writing of its decision prior to July 1, 1981 that it would be in the best interests of AMPO and the AMPO Members to acquire generating facilities through the mechanism provided by the Coordination Agreement, in which case OPCO, with the cooperation of CSOE, shall promptly proceed to use its best efforts to locate and to acquire for the account of AMPO (upon reimbursement by AMPO for any expenses incurred on behalf of AMPO as provided in the Coordination Agreement) a site on which there can be installed, assuming requisite regulatory authorizations are secured, generating facilities which will initially have a rated capacity of not less than 600 MW (net) but not more than 1300 MW (net).

The waivers herein contained are granted in the light of the provisions of Section 1.13 of the Coordination Agreement, the provisions of which obligate AMPO, CSOE and OPCO, because of the interacting benefits and burdens contemplated by the Coordination Agreement, to act fairly with respect to the transactions contemplated by the Coordination Agreement, but, as expressly provided by the provisions of Section 4.4 of the Coordination Agreement, the failure of CSOE and OPCO to insist in this single instance upon strict performance of the provisions of Section 1.3(a) and Section 1.3(b) of the Coordination Agreement, shall not be construed as a waiver by CSOE, OPCO or AEP of any of the other provisions of said Section 1.3(a), or said Section 1.3(b), of the Coordination Agreement, or the relinquishment of any of the rights to which CSOE, OPCO or AEP are entitled but the same shall continue to remain in full force and effect except as in this letter expressly provided. CSOE, in this connection, expressly reserves the right, if AMPO shall fail to elect prior to December 31, 1980 to purchase Poston Unit No. 5, or Poston Units Nos. 5 and 6, on the terms herein provided, thereafter to terminate construction of either or both of the Poston units without any further consultation with AMPO or AEP.

Yours very truly,

AMERICAN ELECTRIC POWER COMPANY, INC.

By _____
Chairman of the Board

COLUMBUS AND SOUTHERN OHIO
ELECTRIC COMPANY

By John E. Dolan
Vice President

OHIO POWER COMPANY

By _____
Vice President

AMERICAN ELECTRIC POWER Company, Inc.

AEP

180 East Broad Street, Columbus, Ohio 43215
(614) 223-1000

W. S. WHITE, JR.
Chairman of the Board
and
Chief Executive Officer
(614) 223-1500

December 5, 1980

Re: Coordination Agreement, dated as of May 1, 1979, among AMPO, CSOE, OPCO and AEP

American Municipal Power-Ohio, Inc.
1500 W. Lane Avenue
P.O. Box 5815
Columbus, Ohio 43221

Attention of Mr. George Crosby
Executive Manager

Dear Sirs:

Reference is made to the Coordination Agreement, dated as of May 1, 1979, among American Municipal Power-Ohio, Inc. (AMPO), Columbus and Southern Ohio Electric Company (CSOE), Ohio Power Company (OPCO) and American Electric Power Company, Inc. (AEP); to the letter, dated November 7, 1980, from AEP, CSOE and OPCO to AMPO; to the letter, dated November 7, 1980, from Mr. George B. Crosby, Executive Manager of AMPO, to Mr. W. S. White, Jr., the Chairman of AEP; and to the conversations between representatives of AMPO, AEP, CSOE and OPCO which have been held with respect to the above matter since November 7th.

Our letter of November 7, 1980 was mailed to AMPO on that day to assure AMPO and the AMPO Members that prior action had been taken by AEP, CSOE and OPCO (i) to waive, subject to the conditions specified in our letter of November 7th, prior to the expiration on November 10, 1980 of the six-month period from the Acquisition Date of May 9, 1980, any requirement that the Election Date under Section 1.3(a) of the Coordination Agreement must occur on or before November 10, 1980, and (ii) to waive, subject to the conditions specified in our letter of November 7th, any requirement that the Election Date under Section 1.3(b) of the Coordination Agreement must occur on or before November 10, 1980. Since the two letters probably crossed in the

mails, it may have been that representatives of AMPO were not previously aware that AEP, CSOE and OPCO would probably decide, as they did, that the AEP System, including CSOE, would not now, absent other considerations, continue the construction of either Poston Unit No. 5 or Poston Unit No. 6, which CSOE has been constructing in recent years. The decision of the AEP System that, absent other considerations, CSOE would not continue the construction of either of the Poston units resulted from consideration of the rapid escalation in the estimated cost of constructing such units and of other capacity alternatives which it is believed will be available to the AEP System in the period subsequent to 1987 and 1990.

The proposed characteristics of Poston Units No. 5 and No. 6, each of which would have a nominal net rating of 400 MW, which are being constructed at the existing E. M. Poston Generating Station of CSOE in York Township, Athens County, Ohio, were summarized in Appendix No. 3 to the Coordination Agreement.

In Appendix No. 4 to the Coordination Agreement - summarizing the financial plan of AMPO for the acquisition of its initial generating facilities - it was indicated that the most recent estimate of the total cost of construction of Poston Units No. 5 and No. 6, based on in-service dates of 1987 and 1990, was that both units would cost approximately $880 million. Since May, 1979, however, construction costs and estimates of future costs have so escalated that it is now believed, as we advised you in our letter of November 7th, that, based on in-service dates of 1987 and 1990, both units would cost more than $1.2 billion to construct. The construction of Unit No. 5 alone would result in even higher cost of power since CSOE would not construct Unit No. 6 if AMPO elected to purchase Unit No. 5.

The American Electric Power System, including AEP, CSOE, and OPCO, supported, as you know, the proposed amendment to the Ohio Constitution set forth in Appendix 7 to the Coordination Agreement but, unfortunately, the proposed amendment was not adopted. The American Electric Power System is pleased that, despite the misfortune, AMPO and the AMPO officers believe that financing and legal arrangements can be evolved which stand a reasonable chance of being saleable to the municipal communities as well as being marketable by them. It is noted, however, that a number of legal questions do remain and a test case in the courts will be an absolute requirement before AMPO can totally commit to exercise a Poston option under the Coordination Agreement.

Under such conditions, the AEP System, including CSOE, has decided that CSOE will not continue with the construction of Unit No. 5, or Unit No. 6, subsequent to December 31, 1980 and that - although CSOE will not, for the present at least, cancel and finally terminate, as distinguished from postponing, further construction work on the Poston units - it will shut the project down and not make any further commitments for the manufacture, construction and installation of equipment which, absent such decision, it would be making in order to place Unit No. 5 in commercial operation in 1987 and Unit No. 6 in commercial operation in 1990. However, CSOE will cooperate with AMPO in trying to maintain the effectiveness of all existing permits relating to the construction of the Poston units.

It would be CSOE's intention, however, because of AMPO's developing plan for the acquisition and utilization of one or both of the units to take such action as may be required to extend until June 30, 1981, the time within which AMPO may elect, pursuant to Section 1.3(a) of the Coordination Agreement, to purchase Poston Unit No. 5 from CSOE or, at AMPO's election, Poston Units No. 5 and 6, on an "as is" basis on a closing date (the Closing Date) determined by AMPO and consented to by CSOE (which consent shall not be unreasonably withheld) on the terms contemplated by Section 1.3(a) subject to the condition that unless otherwise consented to in writing by CSOE and OPCO, in no event shall the Closing Date under said Section 1.3(a) be later than December 31, 1981. It would be CSOE's intention, under such circumstances, that, since the Election Date under Section 1.3(a) of the Coordination Agreement could occur at any time prior to July 1, 1981, AMPO's right under Section 1.3(b) of the Coordination Agreement to elect, in the light of intervening developments, to acquire for AMPO generating facilities, other than either or both of the Poston units, through the mechanism of the Coordination Agreement, AMPO would similarly be entitled to effect the alternative election under Section 1.3(b) of the Coordination Agreement at any time prior to July 1, 1981.

The AEP System, including CSOE, understands that, under the foregoing conditions, if AMPO does purchase either or both of the Poston units but costs, in addition to those now contemplated, are incurred as a result of postponing construction of the additional units at the Poston Plant as a result of a necessity to effect modifications in equipment for environmental or other reasons, such factors would be taken into account and provided for by AMPO in deciding to purchase the Poston facilities under the Coordination Agreement.

To effect the foregoing extension of the time within which AMPO may effect an election to purchase either or both of the Poston units under the Coordination Agreement, CSOE, OPCO and AEP have decided to, and hereby (i) waive any requirement that the Election Date under Section 1.3(a) of the Coordination Agreement occur on or before December 31, 1980 provided that if AMPO shall elect pursuant to said Section 1.3(a) to purchase Poston Unit No. 5 or, alternatively, Poston Units Nos. 5 and 6, on an "as is" basis, AMPO shall signify its election so to do by delivering written notice to such effect to CSOE and OPCO pursuant to said Section 1.3(a) on or prior to June 30, 1981 and (ii) also waive any requirement that the Election Date under Section 1.3(b) of the Coordination Agreement occur on or before December 31, 1980 or any earlier date, provided that, if AMPO shall decide to exercise the alternative contemplated by Section 1.3(b) of the Coordination Agreement, it shall so advise CSOE and OPCO in writing of its decision prior to June 30, 1981.

The waivers herein contained are granted in the light of the provisions of Section 1.13 of the Coordination Agreement, the provisions of which obligate AMPO, CSOE and OPCO, because of the interacting benefits and burdens contemplated by the Coordination Agreement, to act fairly with respect to the transactions contemplated by the Coordination Agreement, but, as expressly provided by the provisions of Section 4.4 of the Coordination Agreement, the failure of CSOE and OPCO to insist in this single instance upon strict performance of the provisions of Section 1.3(a) and Section 1.3(b) of the Coordination Agreement, shall not be construed as a waiver by CSOE, OPCO or AEP of any of the other provisions of said Section 1.3(a), or said Section 1.3(b), of the Coordination Agreement, or the relinquishment of any of the rights to which CSOE, OPCO or AEP are entitled but the same shall continue to remain in full force and effect except as in this letter expressly provided. CSOE, in this connection, expressly reserves the right, if AMPO shall fail to elect prior to June 30, 1981 to purchase Poston Unit No. 5, or Poston Units Nos. 5 and 6, on the terms herein provided, thereafter finally to terminate construction of either or both of the Poston units without any further consultation with AMPO.

Very truly yours,

AMERICAN ELECTRIC POWER
COMPANY, INC.

By _____
Chairman of the Board

COLUMBUS AND SOUTHERN OHIO
ELECTRIC COMPANY

By _____
Senior Vice President

OHIO POWER COMPANY

By _____
Vice President

Exhibit No. 7

STEAM ELECTRIC GENERATING CAPACITY ADDITION INSTALLED SINCE 1969 AND PLANNED FOR INSTALLATION BY CGE, CSOE, AND DPL

Generating Unit	In-Service Date	Net Demonstrated Capability, MW	Ownership Share, Percent		
			CGE	CSOE	DPL
Existing					
Beckjord 6	July 1, 1969	420	27.5	12.5	50
Stuart 2	Oct. 11, 1970	585	39	26	35
Stuart 1	May 17, 1971	585	39	26	35
Stuart 3	May 10, 1972	585	39	26	35
Conesville 4	June 8, 1973	800	40	43.5	16.5
Stuart 4	June 21, 1974	585	39	26	35
Conesville 6	Nov. 24, 1976	375	--	100	--
Conesville 6	June 1, 1978	375	--	100	--
Planned (Under Construction)					
W.H. Zimmer 1	1982(1)	807	40	28.5	31.5

Notes:

(1) Presently anticipated in-service date.

ORGANIZATION OF CCE COMMITTEES

	CGE	CSOE	DPL
EXECUTIVE COMMITTEE	W. H. Dickhoner	Ben T. Ray	R. E. Frazer
ENGINEERING & OPERATING	E. A. Borgmann R. P. Wiwi**	*J. P. Fenstermaker W. R. Kelley** T. R. Watkins	P. H. Forster °S. G. Smith** C. R. Morey** J. R. Dill**
Operating Subcommittee	J. F. Raga H. E. Grimes	*M. H. Knapp	C. E. Scheer J. J. Krupar**
Transmission Loss Working Group	Philip J. Engel	*Scott Lockwood	C. R. Lewis
Production Subcommittee	S. G. Salay L. W. Gleason** J. F. Raga H. E. Grimes**	*L. W. Meredith N. M. Champa** M. H. Knapp R. J. McCloskey**	C. R. Morey R. Ralston**
Protection Subcommittee	*R. W. Haas	D. P. Trego	S. E. Grier
Transmission Planning Subcommittee	*J. E. Grote J. J. Hunt	R. M. Bertka D. M. Schlegel**	C. R. Lewis
Transmission Engineering Subcommittee	R. D. Swanson	Z. J. Andracki	*B. W. Liesch
LEGAL COMMITTEE	W. J. Moran	R. M. McMorrow	*J. R. Newlin

* Denotes Chairman
** Denotes Alternate Member
° Denotes Revision

Exhibit No. 8

	CGE	CSOE	DPL
ACCOUNTING COMMITTEE	M. L. Van Schoik	*R. A. Heimann	J. R. Dill
Subcommittees			
Accounting	*D. R. Herche	O. E. Bowers	J. C. Wise
Depreciation	D. R. Herche W. L. Scheafer R. D. Swanson S. G. Salay	A. J. Andracki L. W. Meredith J. E. Henderson	*T. M. Kersey B. W. Liesch E. J. Cutter R. J. Post
Internal Audit	J. E. Feltner	*L. L. Rapp	T. J. Wabler
Overheads	E. J. Averbeck R. R. Hartman	*J. R. Orr C. R. Boyle	L. S. Bierly
Plant Accounting	W. L. Sheafer	*G. L. McLoughlin E. A. Nicholson	J. H. Browne
Records Coordinating	H. J. Averbeck	C. R. Boyle	*L. S. Bierly T. J. Pohlabel
Tax	F. E. Coyne	J. R. Orr W. A. Pinkerton	*E. C. Strain D. L. Aukerman
NUCLEAR FINANCE COMMITTEE	*W. H. Zimmer, Jr.	J. M. Emery	P. R. Anderson
INSURANCE COMMITTEE	*C. N. Khoury	E. O. Lynn	C. H. Mirro

* Denotes Chairman
** Denotes Alternate Member

Exhibit 8
(Page 2)

EXHIBIT NO. 7

SALES FOR RESALE (Account 447)

1. Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers.
2. Provide subheadings and classify sales as to (1) Associated Utilities, (2) Nonassociated Utilities, (3) Municipalities, (4) Cooperatives, and (5) Other Public Authorities. For each sale designate statistical classification in column (b) thus: FP for firm power supplying total system requirements of customer or total requirements at a specific point of delivery, FP(C), for firm power supplying total system requirements of customer or total requirements at a specific point of delivery with credit allowed customer for available standby, FP(P), for firm power supplementing customer's own generation or other purchases, DP for dump power, O for other. Place an "x" in column (c) if sale involves export across a state line. Group together sales coded "x" in column (c) by state (or county) of origin, providing a subtotal for each state (or county) of delivery in columns (f) and (g), suitably identified in column (e).
3. Report separately firm, dump, and other power sold to the same utility. Describe the nature of any sales classified as Other Power, column (b).
4. If delivery is made at a substation indicate ownership in column (f), thus: respondent owned or leased, RS, customer owned or leased, CS.

Line No.	Sales to (a)	Statistical Classification (b)	Export across State lines (c)	F P C Rate Schedule No. (d)	Point of Delivery (e)	Substation (f)	Kw or Kva of Demand (Specify which) Contract demand (g)	Average monthly maximum demand (h)	Annual maximum demand (i)
1	Non-Associated Utilities								
2									
3	Ohio Edison	FP		13	Battelle	CS	None	1,045(1)	1,095(1)
4	Ohio Valley Electric	O		6	Sargent	RS	None	–	–
5	Corporation (5)								
6									
7									
8	Municipalities								
9									
10	City of Westerville	FP		(ER-77-529)	Westerville	CS	10,000	33,216	45,810
11	City of Jackson	FP			- kson	RS	6,000	6,842	8,632
12	Village of Glouster	FP			Glouster	RS	1,000	1,218	1,343
13	City of Columbus	FP			High Street	RS	5,000	51,413	54,870
14					Dublin Rd.	RS			
15					Vine St.	RS			
16									
17									
18									
19									
20									
21									
22									
23	(1) KVA - All others are KW								
24	(2) Fuel Adjustment & Surcharge								
25	(3) Fuel Adjustments & Excess KVA								
26	(4) Aggregate of settlement for the year received from OVEC is pursuant to								
27	section 403 of Article 4 (Supplemental Power) of the Inter-Company								
28	Power Agreement among OVEC and sponsoring companies dated July 10, 1953.								
29	(5) Power sold to OVEC on a supplemental basis; various dates during year.								
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									

SALES FOR RESALE (Account 447) (Continued)

5. If a fixed number of kilowatts of maximum demand is specified in the power contract as a basis of billings to the customer, this number should be shown in column (g). The number of kilowatts of maximum demand to be shown in column (h) and (i) should be actual based on monthly readings and should be furnished whether or not used in the determination of demand charges. Show in column (j) type of demand reading (instantaneous, 15, 30, or 60 minutes integrated).

6. The number of kilowatt-hours sold should be the quantities shown by the bills rendered to the purchasers.

7. Explain any amounts entered in column (o) such as fuel or other adjustments.

8. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Type of demand reading (j)	Voltage at which delivered (k)	Kilowatt-hours (l)	REVENUE				Revenue per kwh (q)	Line No.
			Demand Charges (m)	Energy (n)	Other Charges (o)	Total (p)		
			$	$	$	$	Cents	
30 Min.	40,000	4,086,800	57,495	26,741	63,842(2)	148,078	3.62	3
None	138,000	23,758,000	–	435,371	–	435,371(4)	1.83	4
30 Min.	69,000	166,212,000	1,842,324	2,561,413	638,661(3)	5,042,398	3.03	10
30 Min.	2,400	38,304,000	476,172	599,202	155,331(3)	1,230,705	3.21	11
30 Min.	2,400	7,191,600	84,900	111,538	29,275(3)	225,713	3.14	12
30 Min.	69,000	347,260,000	2,952,380	5,129,780	1,349,760(3)	9,431,920	2.72	13
30 Min.	138,000							14
30 Min.	138,000							15
Total		586,812,400	5,413,271	8,864,045	2,236,869	16,514,185	2.81	18

INTERCHANGE POWER (Included in Account 555)

1. Report below all of the kilowatt-hours received and delivered during the year. For receipts and deliveries under interchange power agreements, show the net charge or credit resulting therefrom.

2. Provide subheadings and classify interchanges as to (1) Associated Utilities, (2) Nonassociated Utilities, (3) Associated Nonutilities, (4) Other Nonutilities, (5) Municipalities, (6) Cooperatives, and (7) Other Public Authorities. For each interchange across a state line place an "X" in column (b).

3. Particulars of settlements for interchange power shall be furnished in a footnote or supplemental schedule which includes the name of each company, the nature of the transaction, and the dollar amounts involved. If settlement for any transaction also includes credit or debit amounts other than for increment generation expenses, show such other component amounts separately, in addition to debit or credit for increment generation expenses, and give a brief explanation of the factors and principles under which such other component amounts were determined. If such settlement represents the net of debits and credits under an interconnection, power pooling, coordination, or other such arrangement, submit a copy of the annual summary of transactions and billings among the parties to the agreement. If the amount of settlement reported in this schedule for any transaction does not represent all of the charges and credits covered by the agreement, furnish in a footnote a description of the other debits and credits and state the amounts and accounts in which such other amounts are included for the year.

Summary of Interchange According to Companies and Points of Interchange

Line No.	Name of company (a)	Interchanges across State lines (b)	FPC Rate Schedule Number (c)	Point of interchange (d)	Voltage at which interchanged (e)	KILOWATT-HOURS Received (f)	Delivered (g)	Net difference (h)	Amount of settlement (i)	
1	Nonassociated Utilities									
2	Ohio Power Company		7	Various	138,000 &					
3					345,000	19,503,000	217,978,000	(198,475,000)	(4,192,875)	(1)
4	The Dayton Power and									
5	Light Company		10	Various	69,000					
6					138,000 &					
7					345,000	1,862,000	62,536,000	(60,674,000)	(1,837,329)	(1)
8										
9	Ohio Edison Company		12	Various	138,000	1,775,000	442,203,000	(440,428,000)	10,199,226)	(1)
10										
11	The Cincinnati Gas &									
12	Electric Company		26	Various	69,000					
13					138,000 &					
14					345,000	1,501,000	65,520,000	(64,019,000)	(1,713,606)	(1)
15										
16	Net Inadvertent between interconnected systems					1,058,000	2,141,000	(1,083,000)	(2)	-
17						25,699,000	790,378,000	(764,679,000)	17,943,030)	
18										
19										
20										
21	(1) See page 424-A for details of settlement.									
22	(2) To be repaid in like kind.									
23										

Details of Settlement for Interchange Power

Name of Company	Explanation	Amount
Nonassociated Utilities		
Ohio Power Company	Economy Energy In	$ 229,714
	Emergency Energy In	545,023
	Short-Term In	957
	Economy Energy Out	(41,649)
	Emergency Energy Out	(406,415)
	Short-Term Out	(4,520,505)
		$ (4,192,875)
The Dayton Power and Light Company	Economy Energy In	$ 20,778
	Emergency Energy In	44,161
	Economy Energy Out	(1,526,573)
	Emergency Energy Out	(375,695)
		$ (1,837,329)
Ohio Edison Company	Economy Energy In	$ 55,891
	Emergency Energy In	2,463
	Economy Energy Out	(3,408,326)
	Emergency Energy Out	(1,520,434)
	Short-Term Out	(5,328,820)
		$(10,199,226)
The Cincinnati Gas & Electric Company	Economy Energy In	$ 36,057
	Emergency Energy In	4,640
	Economy Energy Out	(1,633,127)
	Emergency Energy Out	(73,052)
	Short-Term Out	(48,124)
		$ (1,713,606)

EXHIBIT C

November 19, 1980

Distribution:
JRutberg, OELD
SLewis, OELD
PNicholson, UFB
LPDR
NRCPDR
Docket Files
OELD
NSIC
TERA
AToalston
JSaltzman
UFB Reading
UFB Files
NRR Reading

Docket No. 50-358

Mr. Earl A. Borgmann
Vice President - Engineering
Cincinnati Gas & Electric Company
P. O. Box 960
Cincinnati, Ohio 45201

Re: Request for Updated Antitrust Information

Dear Mr. Borgmann:

On February 13, 1980 the Securities and Exchange Commission approved the acquisition of Columbus and Southern Ohio Electric Company (C&SOE), one of the licensees of this facility, by American Electric Power Company (AEP). This acquisition must be considered in connection with our determination whether there have been "significant changes in the licensee's activities or proposed activities subsequent to the previous review by the Attorney General." 1/ We are, therefore, requesting you to update the Antitrust Information submitted to the NRC on April 27, 1977 to address the impacts of the acquisition. As you are aware, we have also published a Notice of Supplementary Antitrust Review of Operating License Application 2/ inviting comments from the public on the impacts of the acquisition. Any comments received in response to that Notice will be considered along with your updated information.

Attached to this letter is a list of questions and requests for information regarding the anticipated impacts of the acquisition. Please contact Mr. Phillip Nicholson of the Utility Finance Branch (301-492-8943) to establish a schedule for the filing of responses to these requests.

Sincerely,

/s/ JEROME SALTZMAN

Jerome Saltzman, Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc: Troy Conner, Esq.

See previous yellow for concurrences.

1/ Atomic Energy Act, Section 105(c)(2), 42 U.S.C. Section 2135(c)(2)
2/ November 6, 1980 letter to you from Mr. A. Schwencer.

OFFICE			NRR:UFB	NRR:UFB		
SURNAME	Lewis	Rutberg	AToalston	JSaltzman		
DATE	11/13/80	11-17-80	11/18/80	11/18/80		

Zimmer 1: Request for Updated Antitrust Information

Please update your operating license antitrust information submittal of April 27, 1977 with respect to the following questions or requests:

1. What is the current status of the CCD pool?
   a. Is it operational?
   b. What operational and planning functions does the pool perform?
   c. What are the present and future joint activities conducted with respect to generation and transmission?

2. How may AEP's acquisition of C&SOE be expected to change the coordination policies of the CCD pool and of C&SOE with respect to the CCD pool and other non-CCD firms?
   a. How will the structure, activities, policies, and practices of the CCD change as a result of the acquisition?
   b. Does C&SOE acquire a larger proportional vote in CCD decision-making as a result of the acquisition?
   c. What is the effect of the acquisition on the coordination policy of C&SOE with respect to non-CCD utilities?

3. How may the acquisition be expected to affect C&SOE's policy with respect to wholesale power sales?
   a. How may the acquisition be expected to affect policy towards current wholesale customers in terms of present demand and future growth?
   b. How may the acquisition be expected to affect policy towards requests for wholesale power from utilities not presently served?

4. How will C&SOE be integrated into the planning, operation, and management of the AEP system?
   a. Will C&SOE be operated as an autonomous entity with respect to management policy concerning coordination and wholesale power policy toward other firms?
   b. Will C&SOE plan future additions to generation and transmission with other affiliates in the AEP system?
   c. Will C&SOE's current generation and transmission be operated in conjunction or coordination with that of other AEP affiliates?

5. Provide copies of the coordination agreement entered into between AEP, Ohio Power, C&SOE, and AMPO on May 1, 1979 and the earlier (1974) interconnection agreement between Ohio Power and AMPO, both of which are referenced in the February 13, 1980 SEC decision on page 1 (footnote 1).

EXHIBIT D

CONFIDENTIAL MEMORANDUM FOR: Steve Lewis, OELD

FROM: Phil Nicholson, UFB

SUBJECT: TELEPHONE CONTACTS WITH OFFICIALS OF ECAR, CSOE, (GE, DPL AND AMPO IN RELATION TO ANTITRUST REVIEW OF ZIMMER 1 OL

In response to your request enclosed are summaries of telephone conversations conducted by Argil Toalston and Phil Nicholson with officials of East Central Area Reliability Group (ECAR), Columbus and Southern Ohio Electric Company (CSOE), Cincinnati Gas and Electric Company (CGE), Dayton Power and Light Company (DPL), and American Municipal Power of Ohio, Inc., (AMPO). These conversations were conducted as part of our investigation relating to the Zimmer 1 operating license review.

Phil Nicholson
Antitrust Economist
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor Regulation

Enclosures:
As stated

Distribution
UFB Reading
UFB Antitrust
PNicholson Reading
AToalston

NRR:UFB
PNicholson:na
2/ /81

Telephone Contact - Zimmer - 2/6/81

Jerry Albert

East Central Area Reliability Group (ECAR)

Canton, Ohio

216-456-2488

Executive Board

Coordination Review Committee

1. Electric Equipment Panel
2. Generation Facility Panel
3. Operations Panel
4. Transmission Facility Panel
5. Environmental Panel
6. Generation Reserve Panel
7. Protection Panel
8. Transmission System Performance Panel

Each panel has 7 members selected from the utilities represented by ECAR.

Each utility submits its plans and the ECAR groups appaise these plans.

Jerry Albert, Bill Lewis and Owen Lentz of ECAR central office act as liason with their assigned panels.

Liasons

Dayton P&L

Transmission - Ron Lewis

Operations - Carol Scheer

Generation - Ted Santa

Cincinnati G & E

Transmission - Jim Hunt

Operations - J. Raga Generation - John Grote

Generation - John Grote

AEP's corporate headquarters is in Columbus, Ohio. After acquisition by AEP of CSOE, CSOE's planning personnel moved to AEP's Service Corporation- the planning arm of AEP.

Subsidiaries have separate distribution departments, so that CSOE's distribution function probably did not change.

ECAR has no direct function with respect to contract or coordination arrangements among the ECAR utilities.

Telephone Contact - Zimmer - 2/6/81

Rolland H. Bertka 614-223-1000

Former manager of system planning for Columbus & Southern Ohio Electric (CSOE), now head of EHV and interconnection planning, Bulk Transmission Planning, for AEP.

Formerly and still on the Columbus, Cincinnati, Dayton (CCD) Transmission Engineering Subcommittee. He expects this committee to become less active since no more joint transmission or generation by CCD is planned after Zimmer.

CSOE's automatic dispatch function has been transferred to AEP, except jointly owned units by CCD are probably specially handled.

CSOE people

Mike Knapp still in CSOE operations

Don Howard - Mgr. Distribution Eng.

Evan Williams - Rates

R. McMorrow - Lawyer

Conesville 4 is a CSOE operated unit that is jointly owned by CCD.

Bertka is not familiar with rate making or contractural matters. He believes that distribution functions are still handled by CSOE except for generic matters.

Bertka estimated that he attended about 6 to 7 CCD committee meetings last year.

Telephone Contact - Zimmer - 2/9/81

Cincinnati Gas & Electric 513-632-2663

The following were on a speaker system:

Earl A. Borgmann - V.P. of Engr. and El. Production

Dan Kemp - Legal Counsel for CG&E

Jerry Vinneman - Legal Counsel for CG&E

Steve Salay - Mgr. El. Production

CG&E and DP&L have been jointly planning fossil fired generating units since the early 70's after merger considerations began. They presently jointly own 2-500 Mw units, are planning a 600 Mw unit for operation in 1982 and another 600 Mw unit for operation in late 1980. Although, AEP no longer desires to jointly own fossil units with CG&E and DP&L, it is understood that AEP will share in future nuclear units. CG&E considers the economy of scale of a 600 Mw fossil unit comparable to larger units because of the greater reserve requirements for the larger units. They, CG&E therefore does not believe that its planning program has been significantly affected by the CSOE - AEP merger.

CG&E's operations has not been significantly affected as a result of the merger. CCD was not a pool in an operating sense.

Interconnection arrangements and power exchanges have not been affected since the interchanges have always been bi-lateral. CG&E has interconnections with CSOE and Ohio Power Co. as before, and power exchanges are arranged between the operators of the companies involved.

Although CG&E initially opposed the merger and continued to do so as a matter of principle, from a practical standpoint it didn't make much difference to them toward the end because the two companies became large enough to install economy of scale fossil units, and when they saw that the SEC was going to approve the merger they accepted the inevitable without a further fight.

With regard to a question I posed as to why the SEC had not mentioned or made any provisions for CG&E or DP&L in its decision, Mr. Borgmann referred me to the attorney involved in the SEC proceeding, Bill J. Moran.

Telephone Contact - Zimmer - 2/10/81

Dayton P&L - Pete Forster - V.P. Energy Resources

513-224-6000.

Material change in the Company's position between 1968 when the SEC proceedings beg n and in 1980. Have completed the plants in which DP&L was a co-owner with CSOE, and now considers AEP as an asset in the operation of these plants.

Approximate monthly planning meetings with CG&E and CSOE expected to continue. The few additional people from AEP should add to these meetings.

No assurance from AEP that it would work with DP&L in planning a future nuclear unit but no reason to believe either that it would not. DP&L has no plans for any future nuclear units primarily due to the financial problems involved with nuclear.

Forster not familiar with the legal stance taken by DP&L toward the en of the SEC proceedings, but as conditions changed during the period he elieves the officers of the Company changed their thinking and did not oppose the merger toward the end.

Telephone Contact - Zimmer - 2/9-10/81

George Crosby, Executive Manager

American Municipal Power -Ohio, Inc. (AMPO)

614-457-1274

AMPO consists of 51 member municipal electric systems and mainly serves to procure bulk power for the members. At present AMPO owns neither generation nor transmission and thus now acts primarily as a broker. Some examples of the transactions it has conducted are the PASNY - Cleveland power sale and a seasonal power exchange between Buckeye (a power supply arm of the Ohio cooperatives) and the cities of Cleveland and Hamilton.

As the law now stands in Ohio there is nothing to prevent AMPO from owning generation and transmission. However, because AMPO is not a political subdivision, it cannot finance on a tax-exempt basis. Further, alt ough inividual municipalites can issue debt on a tax-exempt basis and, in Crosby's opinion, combine on a joint basis to issue a joint debt instrument, the municipalites do face two general legal restrictions which impede efforts to finance economical generation. First, municipalities cannot jointly own (or probably jointly finance) generation with investor

owned utilities. Second, an individual municipality cannot sell outside of its city limits an amount of power greater than 50 percent of the amount of power consumed within the city limits - the so-colled 50 percent limitation. The effect is, of course, to prevent a city from building a plant much larger than its needs, that is, a plant of economical scale.

The recently defeated proposed amendment to the Ohio constitution would have effectively disposed of the restrictions by allowing the state legislature to create by law a publicly-owned wholesale electric authority. The legislature could have designated AMPO or a similar organization as a political subdivision. In that way AMPO could issue tax-exempt debt. Further, the proposed amendment would eliminated the 50 percent limitation and the restriction on joint ownership with investor-owned utilities. As an aside Crosby did indicate that the Ohio private utilities supported the amendment.

AMPO is now faced with the task of implementing the May 1979 coordination agreement with AEP, Ohio Power and CSOE under the present law. The primary effect of the agreement is to give the members of AMPO the option to acquire Poston 5 and 6 from CSOE. Crosby feels these units are economically and technically feasible for the cities to acquire. As for financing, it is felt that only a single debt instrument will be issued on behalf of all participants with each participant suscribing its pro-rata support to its share of the units. Crosby indicated AMPO will seek a legal ruling on this method of financing.

AMPO seems well satisfied with the May 1979 agreement. In Crosby's opinion it represents a real breakthrough in relationships between the private sector and the public sector. He did admit the pace of negotiations was slow until the 1978 SEC decision and then increased in speed thereafter. However, the agreement itself adds a generation option to those contained in the 1974 agreement, namely the limited-term service, short-term service, emergency service and transmission service. With regard to transmission service, it is felt that this now extends to the CSOE area, if it didn't before.

The AEP-CSOE merger is not regarded as having significant adverse impacts on the municipal systems. No adverse effect was expected on coordination relationships between AEP-CSOE and the AMPO systems. Further, Crosby did not think it likely that before the merger systems in CSOE's area looked to Ohio Power or systems in Ohio Power's area for power supply and vice-versa. Finally, no adverse impact was expected from the merger on AMPO's ability to act as a wholesale of electric power.

Phil Nicholson

U.S. Department of Justice

EXHIBIT E

Washington, D.C. 20530

II

Lewis/Rutberg

PF

June 18, 1981

Joseph Rutberg, Esquire
Assistant Chief Hearing
Counsel/Antitrust Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the Matter of Cincinatti Gas and Electric Co., et al. (Zimmer Nuclear Power Station), NRC Docket No. 50-358A

Dear Mr. Rutberg:

This is in response to your letter of June 5, 1981 which enclosed a draft evaluation entitled "Zimmer Nuclear Power Station, Unit 1: NRC Staff's Analysis of Whether CSOE's Acquisition by AEP Constitutes A "Significant Change" Requiring A Further Antitrust Review."

After analyzing the above described draft evaluation we have concluded that based on the facts contained therein we do not disagree with the Staff's analysis that the acquisition of CSOE by AEP does not constitute a "significant change".

Sincerely yours,

Donald A. Kaplan
Chief
Energy Section
Antitrust Division