

AFFIDAVIT OF HAROLD H. WEIN

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OF
HAROLD H. WEIN

Dr. Harold H. Wein, being duly sworn, deposes and says:

1. My name is Harold H. Wein, and my address is 4808 Ottawa Drive, Okemos, Michigan. I am Professor of Policy Science at the Graduate School of Business Administration of Michigan State University, East Lansing, Michigan. I have a B.S. degree with special honors in Philosophy from the College of the City of New York; a Masters degree in Economics from Columbia University; and a Ph.D. in Economics from the University of Pittsburgh. I have taught at Carnegie Institute of Technology and at Michigan State University. I have also been a visiting professor at Queen's University in Kingston, Ontario, Canada. I served as Principal Economist at the Antitrust Division, United States Department of Justice (1945 to 1951), where I also served as Advisor to Attorney General Tom Clark (later Justice Clark, United States Supreme Court), and as a special assistant to the Solicitor General of the United States in the Columbia Steel case, 334 U.S. 495 (1947). In January 1962, I took leave from Michigan State University to become the first Chief Economist of the Federal Power Commission and Head of the newly created Office of Economics.

2. Since I have been a working economist for 40 years, my experience is extensive and the details would be lengthy. For that reason, I give here only that experience relating to the area of antitrust and the electric power industry. I have published many papers in professional journals and many monographs. I have testified in a number of antitrust cases and regulatory proceedings involving the electric power industry, as well as other industries. In the electric power industry, I served as economist and have submitted testimony in the antitrust suit brought by the City of Cleveland

against the Cleveland Electric Illuminating Company. I have also served as economist on behalf of the North Carolina Electric Membership Corporation and submitted an affidavit for them in their civil action now pending in the United States District Court for the Middle District of North Carolina, Greensboro Division. I have, in September 1981, prepared testimony and served as a witness for the City of Winnfield, Louisiana, in the Louisiana Power & Light Company case (FERC Docket Nos. ER81-457-000 and EL81-13-000). In antitrust proceedings held before the Nuclear Regulatory Commission, I have served as economist for the U. S. Department of Justice and submitted testimony in the following cases: Consumers Power Company (Midland Nuclear Units), Alabama Power Company (Farley Units), and CAPCO Companies (Davis-Besse and Perry Units).

3. In all of these cases, I have considered the following aspects of the electric power industry:

1. evolution and organization of the electric power industry;
2. operating and facility coordination and their corollary power exchange;
3. nature of product and geographic markets;
4. kinds of competition in relevant markets;
5. acquisition and maintenance of monopoly power in relevant markets;
and
6. nature of predatory actions in the electric power industry.

I have been acting as economic consultant to the Florida Cities in the present NRC proceeding and in their antitrust suit in the Federal District Court in Miami. I have become reasonably acquainted with the structure of the electric power industry in Florida in the course of my work. My purpose in this affidavit is to answer the following questions:

1. Are the existing nuclear power generating plants an essential facility in peninsular Florida for Cities which are engaged in the sale of retail firm electricity now and in the foreseeable future?
2. Can electricity be produced by these nuclear facilities be considered a separate product market or sub-market in peninsular Florida?
3. Has FPL dominant power in that market or sub-market?

After reviewing data on the cost of production of the FPL generating plants as well as the corresponding data for other generation in peninsular Florida and reading Mr. Bathen's affidavit, I have come to the following conclusions:

1. That the existing nuclear power generating plants are an essential facility in peninsular Florida for the electric power systems of the Cities. An "essential facility" is a concept used to examine the market power of a particular firm or firms controlling the facility in some defined product and geographic market which is under antitrust examination. A facility is "essential" if those firms not having that facility will be unable to compete effectively in the relevant product market with the firm (or firms) which control the output of that essential facility. To be unable to "compete effectively" implies that competition is substantially lessened or eliminated in the relevant market.
2. The relevant product markets in this proceeding are the market for retail firm power, the market for bulk power, and the market for regional power exchange, i.e., the market for coordinating power. An important and relevant sub-market of the bulk power market is the

market for base load power. Facilities which produce base load power are not economically substitutable for generating facilities which produce intermediate power or peaking power.

3. Nuclear plants are essential for Florida Cities in the production of base load power. Nuclear base load power is a submarket of the bulk power market. The existing nuclear plants of FPL produce base load power at a cost far below those of any generating facilities now existing in control of Cities or available to them.

4. Without access to these existing nuclear generating facilities, either through ownership of some portion of the existing nuclear plants or unit power purchases from them, Cities would be deprived of an essential facility necessary to the economical production of retail firm power.

5. FPL has dominating or monopoly power in the production of nuclear base load power in the State of Florida. In 1980, FPL produced 80% of all nuclear power in the State of Florida and had 73% of the total nameplate nuclear capacity.

6. On the basis of my studies of the acquisition of municipal systems by investor-owned utilities in the states of Michigan, Ohio, Indiana, Alabama, North Carolina, and other areas, I have found that when municipal systems' rates for retail firm power exceed those of a private company in similar cities, there is a high probability that the municipal system will be sold to the investor-owned utility.

7. The disparity in the cost of base load power produced by the existing nuclear plants compared to the cost of base load power now available or will be available in the next eight or ten years to the Cities is so substantial as to create, in my opinion, a dangerous

possibility that the municipal systems of these Cities will be acquired by FPL or by Florida Power Corporation or by both.

8. Such acquisition would reduce competition in retail firm power sales in peninsular Florida.

Harold H. Wein

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Sworn and Subscribed to before me
this 14th day of January, 1982.

Emily B. Faulstich

Notary Public

Notary Public, State of Florida
My Commission Expires Jan. 2, 1985
Notary Public - Commission, Inc.

AFFIDAVIT OF ROBERT E. BATHEN