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## Volume 22 (Part 4)

District Court of the United States for the Northern District of Ohio, Eastern Division

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Wein - cross

substantial amounts of time that are involved in that industry from more construction time and the like; do you remember that?

A Yes, I do.

Q Would it not be true that effective planning is particularly significant in an industry such as the electric industry where long lead times are the rule?

A Well, a particular kind of planning is very important there. Where you have long lead times, you have to have a pretty good forecast and you have to have fairly complex models and things of that sort.

I mean, other industries don't have such long lead times, but they may have planning of a different nature which is equally important.

Q And by "projections and models and the like," you mean what; prediction of what your requirements would be?

A Forecasts, yes. Forecasts of loads in the future, forecasts of what likely costs are going to be in the future, both of generation -- I mean of construction, of fuel, examination of all the alternatives available in selecting a generating plant, and many, many complex problems of that sort in electric power as well as many other industries.

Wein - cross

Q And a part of good management is the ability to execute these long-range plans once having laid the plans or determined what needs to be done; is this not so?

A Well, yes. I think a good management should be able to choose plans which they can execute.

Q And, similarly, a good management is involved in the actual operation of the business, is it not? That is to say, the problem of -- the requirement of good management applies to the actual operation of the business, does it not?

A Well, yes. Good management consists in making sure that all parts of the business, as much as you can, given the resources that you have and the constraints that you operate under, make sure that all parts of your business are operating effectively.

Q And this would include making sure that you have competent people running the machinery?

A When you say "making sure," no management can make sure that anybody they pick is competent. They do the best they can. Sometimes they give them personnel tests. Sometimes they look at their experience. Every management tries to get the best people it can but it doesn't always succeed in doing so.

Wein - cross

Q And if it doesn't succeed in getting good people, then it is not as effective in the competitive struggle as its competitors who, by luck or by skill, do get good people?

A If the competitors, by luck or by skill, have better personnel, that gives them an advantage.

Q Yes.

A But, generally, every company has more or less particular strengths. Not all companies have the same strengths in the same field and, as a consequence, management must recognize the strengths which it has.

No management, no good management would be under the assumption or illusion that it is equally as strong or equally effective in all parts of its business.

Q But we agree, do we not, Dr. Wein, that the company who was most successful was the one who had the best combination of these things?

A Well, if you have the best combination, then you will be the most successful.

The question is the other thing, that if the company that is most successful doesn't necessarily have the best combination, that doesn't follow.

Wein - cross

That would be affirming the consequence.

Q And from the economy standpoint, one of the economic efficiencies derived from competition is the forcing of the firm to provide the management which will make them effective in the marketplace; is this not so?

A Provide all the ingredients.

Q Sir?

A Provide all the ingredients necessary.

Q Yes.

A Or enough of them that are necessary.

Q Yes.

A I don't wish to leave the impression, Mr. Lansdale -- So far I have been agreeing with all the propositions you have been putting, but I don't wish to leave the impression that every firm that survives in a business or even in competitive markets is managed according to the textbook.

Q I am sure that they are not, Dr. Wein. I'm sure that they are not.

A Okay. Some of them, as you point out, survive by skill or luck, and, of course, you can't count on luck forever.

Q Right. Well, now, Dr. Wein, another factor which is very important in the competitive struggle is price,

Wein - cross

is it not? I think you mentioned it.

A In some industries it is.

Q In some industries it is?

A Yes.

Q And I believe you conducted a survey in which you indicated it was important in the electric industry?

A The switching is important.

Q Beg pardon?

A Determining which customers will switch to which industry, price is important.

Q Isn't that competition, determining which customer serves which?

A I said that's an important element. There are other elements of competition. I agreed with you that price is important.

Q Dr. Wein, isn't determining which company a customer will purchase a product from, isn't that the end result of competition?

A That is the end result.

Q That is the end result.

A Yes. Yes.

Q And what I asked you was you determined from your surveys that relatively small differences in price were the important determinant in competition in

Wein - Cross

the electric industry?

A What I said was this, that rates in the City of Cleveland were very important in determining whether a company would switch from one to another. That's exactly what I said.

- Now, in saying the end result of competition, there are two viewpoints that one wishes to look at. One is from the viewpoint of the individual firm as to what it gets as a result of this competitive struggle and the other is from the viewpoint of the economist who is looking at the process itself.

The end result of competition for the economist is not to determine whether A switches to B, or whether A switches to C, but the end point from the point of view of the economist is to see that this process continues because it is the view of economists studying this that the process leads to all those factors of efficiency you were pointing out and factors of innovation and so on.

So one has got to keep it clear here the objective of a company and the reason why economists think that this process is important.

Q Dr. Wein, you told me that the economist is not interested in any particular industry or any

Wein - cross

particular competitor; instead, it is the operation of these economic forces.

Didn't you tell me that?

A Did I say he is not interested in a particular industry?

Q No, particular competitor.

A That may be. I thought you said particular industry.

Certainly, he is interested. He is not interested in the identity or the fact of whether a particular competitor goes from Company A to Company B. What he is interested in is the analysis of that process and what it is supposed to yield.

Q And what it is supposed to yield is economic efficiency; is this not so?

A Where economic efficiency means low cost and proper allocation of resources, satisfying consumer wants, yes.

Q All right. Now, Dr. Wein, the result of the operation of these forces in a competitive market, those competitors who are inefficient in the economic sense will necessarily disappear from the scene; is this not so, as economists so regard it?

A No. Necessarily, what we are saying is kind of an abstract proposition. What we are saying is all



Wein - cross

other things equal, all other things equal. Supposing there are factors of accident and luck or government policy, or whatever it is, tax policy. By abstracting from all these other conditions, then what the proposition is saying is over a long time this process will cause failures among firms.

Q It would cause failures amongst its inefficient firms?

A Well, it may sometimes cause failures.

Again, the question of timing comes in amongst firms which are not inefficient, and let me give you an example.

A firm may be efficient and cannot get access to money because the time of the business cycle is such that the interest rates are very high.

I made actually a study of this matter. One of the first studies I made was on the capital and credit problems of small business, and many small business firms that were efficient did fail not because they were inefficient, but because they couldn't get the money.

Q Dr. Wein, you told us that one of the factors in competition was the availability of resources?

A Yes.

Wein - cross

Q And the fact that I may be a poor man, and my neighbor may be a rich man, so that he can easily get the capital to start or continue in a business, and I may be unable to, I may think that's unfair, but this is one -- this is the way the cookie crumbles, isn't it?

Isn't this one of the factors delineating the efficiency of the competitor, that is, the availability of resources?

A Well, this is what the economist wants to study.

If the proposition is that the resources of capital, for example -- which happens to be a very important one -- are equally available, that is to say, there are no barriers set up institutionally or the money markets are perfectly competitive, you see that proposition assumes that all the rest of industry is perfectly competitive.

If all the rest of industry were not perfectly competitive, that proposition falls down.

And one of the things that economists who are studying this whole question of competition and the application of resources, one of the purposes is to try to see where these barriers which can be eliminated because of imperfections or because of

Wein - cross

concentration or because of monopoly, disappear.

Now, at some time in the history of the United States it was very difficult for small business who, in all other respects were equally as efficient as their larger competitors, to gain capital. I wouldn't -- and say that because they couldn't get it because the banks didn't want to loan them the capital, even though they would pay higher interest, that that's just an element of the perfectly competitive process.

Q I hear you saying, Dr. Wein, that small business couldn't get capital because banks refused to loan it to them no matter what they paid.

Are you stating that capital was not available in the last 20 years on equal terms to everybody?

A No, I didn't say in the last 20 years.

I did say that I studied that condition and wrote "Temporary National Economic Committee Monograph 17," on the capital and credit problems of small business published by the U.S. Senate in 1940 or '41, from which came the development of the Small Business Administration to make available credit to small businesses, and that still exists.

Q Dr. Wein, we're dealing with the present time, you

Wein - cross

understand?

A Well, I thought you asked me a hypothetical about -- and hypothetical is not the present time, hypothetical is any time.

Q You're telling me about times 20, 30 or 40 years ago, and I'm asking you about things that are applicable today.

A I thought the hypothetical was "time" period.

THE COURT: Just a moment.

Just a moment.

I think this is a good time for us to take our afternoon recess.

So please, during the recess, ladies and gentlemen, don't discuss the case, and keep in mind the Court's admonition.

We'll all relax for 15 minutes, and we'll come back and start all over.

{Recess had.}

THE COURT: You may proceed,

Mr. Lansdale.

BY MR. LANSDALE:

Q Dr. Wein, would economists distinguish between matters of social policy which bear on competition and the pure operation of economic forces?

Wein - cross

A It depends on the question they are examining as to whether they distinguish that or not.

Q I'll give you more specific examples, then.

The United States Government may determine that it is desirable to promote small business, and thereby provide in various grants or economic assistance or other devices to assist them in the competitive struggle so that those who, without Government help, would not be able to get sufficient resources to compete, hopefully may be provided them.

My question is: The determination by the Government to give some sort of a subsidy for small businesses to get started is a matter of social policy, a social determination by our Government that this is good on the whole to promote these people?

A Now, what's the question?

Q That is a question of social policy whether that shall be done, is it not?

A That's a question of social policy.

Q All right.

A Socioeconomic policy.

Q And socioeconomic, right.

And absent this Government subsidy, some

Wein - cross

particular or even a number of particular individuals who might otherwise desire to go into business would be unable to get their resources to do so, and would either fail to go into business; or having gone into business, would pass from the scene.

That is a result of economic forces, is it not?

A Well, the problem of what is an economic force, Mr. Lansdale, is one of a definition and one of --

MR. LANSDALE: If your Honor please, may I approach the bench?

THE COURT: You may.

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{The following proceedings were had at the bench:}

MR. LANSDALE: I ask that the witness be instructed to answer the question.

There are three answers to that question:

"Yes," "No," or "I cannot answer it."

I object to these continuous speeches. I have been very patient with him before the recess.

THE COURT: Read the question back.

{Record read by the reporter.}

THE COURT: Ms. Coleman.

Wein - cross

MS. COLEMAN: Your Honor, that's a compound of testimony and a question which might be answerable yes or no or may require some further definition of conditions or terms, your Honor.

THE COURT: No. The answer has to be in the context of the question. If on redirect examination you are desirous of bringing out an explanation, that is your prerogative at that time providing you pose a proper question.

MS. COLEMAN: Not every question can be answered yes or no, your Honor. That is one of them which I submit to me can't be.

MR. LANSDALE: There are three possibilities.

THE COURT: Read the question back.

The witness cannot re-form the question in any answer. He has got to answer the question as it is propounded.

Read the question.

MS. COLEMAN: It is a general question which is not sufficiently conditioned to answer it. It can't be answered.

Wein - cross

{Question read by the reporter.}

THE COURT: Yes. "Yes," "No,"

or "I don't know."

MR. LANSDALE: If he says "I

don't know," we will start again.

THE COURT: Let's proceed.

MR. LANSDALE: May the witness be  
instructed to answer the question?

THE COURT: Yes.

Sust

{End of bench conference.}

- - - - -

THE COURT: Read the question  
back, please.

Doctor, please listen to the question and  
answer the question if you can. If you don't  
know, you can say so.

{The question was read by the reporter.}

A The question here is how do you define "economic  
forces." I will be glad to answer the question if  
you tell me what you mean by "economic forces."

Q Do I understand you cannot answer the question,  
Doctor?

A Because economic forces is a very, very vague term.  
It includes a lot of things.



Wein - cross

Q My question is: Can you answer the question as put, not why you can't answer it.

A Not as put.

Q Thank you.

Dr. Wein, at one time in the not too recent past the world price of oil increased very rapidly, did it not, and the operation of economic forces would have caused the price of domestic oil to rise to world price, would it not, absent any restraints?

A The operation of supply and demand and no other considerations would have resulted in --

Q These are economic forces, are they not?

A Supply and demand are.

Q Are economic forces?

A Right.

Q And if the Government --

A I haven't finished.

They are not the only economic forces.

Q Of course they are not.

And, Dr. Wein, if the United States Government comes along and says that various reasons deemed in the best interest of the United States we are going to put a limitation on the price of domestic oil so that it sells at a lower price than the world

Wein - cross

price, that price is the result of a determination by the Government, that is to say, a socioeconomic determination by the Government rather than the operation of economic forces?

A No. It's both. That itself is an economic force because it means then that suppliers and demanders are now in a different kind of market.

So the effects of Government, whether you call the policy social or economic, are very tough economic forces.

Q Then you are in a market in which the results are determined by the laws and regulations of the Government rather than by the operation of pure economic forces; is this not so?

A There are no pure economic forces which operate outside of law, which operate outside of Government. I don't know of any.

Q Dr. Wein, are you not able to make a distinction between the results of the operation of competition in the competitive world without the intervention of Government fixing a price; are you able to discuss that?

A Yes, I'm able to discuss the operation --

Q Thank you.

Wein - cross

Q -- able to discuss the operation of economic forces without Government fixing a price.

I'm not able to discuss the operation of pure economic forces without some intervention of Government. I defy anybody to do that in this country.

Q Dr. Wein, we have received a lecture from you about markets of pure competition, did we not?

A Well, are you asking me a question?

You asked whether you received a lecture from me?

Q A lecture from you concerning the operation of the wheat market as an illustration of perfect or nearly perfect competition, is that correct?

A I would not characterize it as a "lecture" at all.

Q Did you use the world wheat market as an illustration of perfect competition?

A I did. I certainly did.

Q And how are prices fixed in that market?

A Prices are not fixed in that market.

Prices in that market are determined, they are determined by the operations of supply and demand which are based on a whole set of institutional forces, one of which is the concept of contract.

Contracts are enforced by governments. If there

Wein - cross

weren't any such governmental interference, you wouldn't have any international world markets. They result as a result of the operation of very many credit institutions, and they are backed by government intervention of some sort or another.

Now, when you talk about pure economic forces, we're talking about a hypothetical model which economists draw up for certain purposes.

This is what the term "pure" means, they assume certain conditions as given --

Q Are you through, Doctor?

A No, I'm not.

MR. LANSDALE:

I object, if your

Honor please.

THE COURT:

Approach the bench.

- - - - -

{The following proceedings were had at the bench:}

THE COURT:

Read the last

question.

{Question read by the reporter.}

THE COURT:

Now read the answer.

{Answer read by the reporter.}

THE COURT:

The answer may stand

Wein - cross

up until when you talk about "pure economic market."

Let's go on with it.

You're the one that asked the question.

MR. LANSDALE:

Yes, I am.

THE COURT:

You got an answer.

Let's proceed.

{End of bench conference.}

- - - - -

{Answer read by the reporter as follows:

"A Prices are not fixed in that market.

"Prices in that market are determined, they are determined by the operations of supply and demand which are based on a whole set of institutional forces, one of which is the concept of contract.

"Contracts are enforced by governments. If there weren't any such governmental interference, you wouldn't have any international world markets. They result as a result of the operation of very many credit institutions, and they are backed by government intervention of some sort or another.

"Now, when you talk about pure economic

Wein - cross

forces," --}

THE COURT:

This may go out.

Everything before that may stand.

Please go to another question.

BY MR. LANSDALE:

Q Dr. Wein, do you regard the existence of contractual arrangements which may be enforced in a court of law as an intervention by Government in the operation of free market forces?

A Free market forces depend upon such things.

Q Exactly so. And if in the wheat market the United States Government were to decide for one reason or another that it was in the public interest to place a limitation upon the price of wheat or to fix the price of wheat, would it be fair to characterize that as an interference, whether good or bad or indifferent, in the operation of free market forces?

A I'd rather use the term an intervention aiding another force in the market.

Q And it is, in any event, not a force generated by free market forces; is that a fair statement?

A Free market forces is not something which I want to talk about unless it is properly and rigorously defined. It is a term which appears in all

Wein - cross

newspapers, and it is not a term apparently as simple as you think it is.

Now, if you will define it for me, I'll agree with you. But you obviously have one definition and I have another.

Q All right, Dr. Wein. Do I understand, then, that you require in the explanation of these economic matters a rigorous definition of terms?

A In answer to your questions, I think I better.

Q Beg your pardon?

A I said yes, when I am answering questions from counsel, I think I had better.

Q All right. I can cope with that as we go along.

Dr. Wein, you told us about a study you made based upon Census tracts.

Please tell us what a Census tract is.

A A Census tract is a geographic area which the Census defines, U.S. Census defines for purposes of gathering data in the Census.

It consists generally of various, in the city, of various blocks of territory.

Q It is a geographic area?

A Yes. It's a small geographic area.

Q Is the extent of the area defined by square feet or

Wein - cross

square miles or by number of souls in there or what?

A Well, they vary all the time. Sometimes they are fairly large.

It was my understanding when I was involved in that many years ago, that they usually got defined on the basis of what one Census enumerated can accomplish in a given amount of time.

Q I am trying to get one of your rigorous definitions, Dr. Wein.

A I can't tell you exactly what it is in square miles or feet or people. I said it varies.

Q Okay. And why did you use Census tracts in your study of the area?

A Because it's something which I could pin information to. It's a thing which continues over the years in the City of Cleveland more or less continuously.

Q Now, what is the significance, Dr. Wein, of the fact, if it be the fact, in a particular case that Mundy Light has one or more customers in a particular Census tract?

A The significance of that, it goes to the question as to geographic market.

Q What relation to the geographic market does it have, if any?



Wein - cross

A Well, if Muny has a customer in a Census tract, it is in that Census tract, in this particular piece of geography, defined as a Census tract.

Q If I look at some of these small scale maps correctly, most of the Census tracts are shaped about like I have indicated on the board; is that not so?

A Many of them are.

Q Many of them are?

A Yes.

Q What I want to know is if Muny Light has one customer or two or three or whatever in that Census tract, what significance does that fact have precisely by rigorous definition?

A You mean with respect to the definition of geographic market?

Q Yes.

A Oh, okay.

Well, it has this significance: That it enables me to take a piece of geography called the City of Cleveland, and it enables me to say that if you look over the City of Cleveland, there are these customers and I can identify them by the Census tract.

Wein - cross

I then have to go on and say, "What proportion of Census tracts, i.e., what proportion of persons or businesses is the City of Cleveland that is to say Municipal Electric Light Plant, in what Census tracts, does it serve?"

Now, the definition of a regional market has to be made in terms of two things: Where customers are now, served by one or the other company, and where they can potentially be reached. This is essentially it.

You can't define a market when you are dealing with geography. You are defining a regional market or a geographic market except by referring to some facts of geography, and this happens to be a fact.

A Census tract -- as I mentioned there are 200 of them and there are 33 wards, that gives you some idea that a ward is roughly six times as large geographically as a Census tract.

And if you ask me what is the significance of a ward in terms of the geographic market, again I would ask you the same thing. If you are defining a geographic market, you have to define geography.

Now, alternatively, if I took a street, there might be 20 streets in a Census tract or more, and

Wein - cross

I enumerated customers on the street; and I found that some streets have Muny Light customers and other streets don't have Muny Light customers, and then you ask me what is the significance of that, and what I finally say is that well, just looking where customers are is sort of like saying how do I, you know -- let me put it this way.

The smaller I get in terms of the location of a particular customer, the less significance does geographic market have. The larger I get, then I have to start to qualify that in terms of not solely as to the location, but in terms of the potentiality of one customer reaching one place or another.

And it is sort of like asking me this, Mr. Lansdale: If I had a piece of Swiss cheese and it had holes in it, is the swiss cheese the market without the holes or with the holes?

THE COURT: I'd like to have the question read back to me.

MR. LANSDALE: I'm willing to buy the Swiss cheese.

THE COURT: Read the question.

{Record read.}

Wein - cross

THE COURT: I don't think you

have responded to the question, Doctor, so far.

MR. LANSDALE: I don't, either.

THE WITNESS: Let me see if I

can try again, your Honor.

A The location of a customer has two significances; one, it demonstrates some ability of an electric system to serve a particular customer in a particular geographic area.

Now, the question of how to define a geographic area is precisely the problem of a geographic market and if you say what is the significance of having a customer's Census tract, I say, well, obviously, at least in that piece of geography they had some customers.

Q Dr. Wein, --

A The second significance of it is to see whether there is in some potential sense the question of reaching other areas of geography.

Q All right, sir.

Now, Dr. Wein, I see here in your study at least two Census tracts in which Muny Light had one customer and quite a few in which it had two or three.

Is it significant to you in determining

Wein - cross

the geographic market whether there is one or two customers in the Census tract or 820, as I see here one? Does that have any significance to you?

A No.

Q It does not?

A No.

MR. LANSDALE: May I have on the board that map of Muny Light's service area and the first overlay?

{The exhibit was placed on the board.}

MR. LANSDALE: Jim, while you are there, look at those exhibit numbers, will you?

MR. MURPHY: The underlay is 2064 and the overlay is 3240. I don't think my question is going to require the overlay.

BY MR. LANSDALE:

Q Dr. Wein, Exhibit 2064 is the underlying map which has in dark-yellow what was originally presented here as the area of Muny Light's territory, so to speak, and the overlay represents the additions made to that area as a result of a study directed by you, if I recall correctly.

Is this right?

A Yes, that's right.

Wein - cross

Q What instructions did you give to the person who did the work?

A I told them to put out all the extensions that he could find, every place that he had lines and customers, whether the customers were just traffic lights or were they other kinds of customers, and draw them on that map so I could see what that map was supposed to be.

Q And you gave him no instructions, however, indicating the areas in which the underlying map showed too much, that is to say, you gave him no instructions to delete from the area places where Muny Light did not actually serve; is that a correct statement?

A You mean could not serve on that map?

Q Yes, sir.

A No, I didn't give him any such instruction.

Q You did not give him any such instructions?

A No.

Q And you yourself have no knowledge of any of the areas represented by the dark-yellow as being in -- served by Muny Light, that, in fact, are not served?

A Well, do you mean blocks, regions?

You know, this term "being served" is -- I defined customers located in a Census tract.

Wein - cross

Now, are you asking me did I ask them to find Census tracts that are shown there that are now devoid of customers, is that what you mean?

Yes.

I said I didn't give them such instruction.

You did not give him such instruction?

No.

Are you stating to me that these dark-brown additions appearing on Exhibit 3240 are by Census tract, is that your statement?

No, it's -- they're not Census tract.

It's his drawing going through the -- looking to see where they have lines and looking to see where they have customers and drawing the lines around that, that's what it amounts to.

It's the actual area that he found by going through his records where customers were?

And where lines were, yes.

Well, are there lines without customers?

There could be, I don't know.

There could be, you don't know?

No.

Some of these may represent places where there are Muny Light facilities, but no customers, is that

Wein - cross

your statement?

A Well, there may be traffic -- a lot of traffic lights there, no other customers than that.

MR. LANSDALE: May I have your question read, if your Honor please?

THE COURT: Read the question back, please.

{The last question was read by the reporter.}

Q If you know.

A As I say, some of these represent the extension of lines serving traffic lights --

MR. LANSDALE: May I have the question read --

A -- not traffic lights, I mean, the street lights, -- I'm sorry.

MR. LANSDALE: May I have the question read again, if your Honor please?

THE COURT: Read the question back.

{The question was read by the reporter as follows:

Q Some of these may represent places where there are Muny Light facilities, but no



Wein - cross

customers, is that your statement?"}

THE COURT: I have sustained  
the objection to the form of the question; the  
question is confusing.

BY MR. LANSDALE:

Q Do you know whether or not any of these brown areas  
showing additions on Exhibit 3240 represent  
facilities with respect -- which do not serve any  
customers?

A As far as I know, they all have either a traffic  
light, the City then as a customer, or some other  
kind of customer, so far as I know.

Q All right; that's what I wanted to know.

Are you aware that Mr. Albach testified that  
there were areas which the dark-yellow showed as  
being served by Muny that were not in fact served  
by Muny; are you aware of that?

A No, I'm not aware of that.

Q You're not aware of that.

If this is the fact, does that make any  
difference to what you are trying to show by the  
study represented in Exhibit 3240?

A No.

Q It does not.

Wein - cross

Is the reason it makes no difference to you is that, so far as you are concerned, it doesn't matter precisely where Muny Service is?

A It does not in determining the geographic market matter precisely where Muny Service is at the present time.

What is involved -- what does matter is the whole spread of it as to where it can reach.

Q And then what significance in this case does the work represented by Plaintiff's Exhibit 3240 have?

A The significance is to point out that the statement that Muny's geographic market is 30 square miles has no significance.

Q How many square miles does it have?

A You don't measure -- the square miles, in my view, is the entire square miles in the City of Cleveland.

MR. LANSDALE: You may take it down

{referring to the exhibit on the easel.}

MR. MURPHY: I'm relieved?

{Laughter.}

BY MR. LANSDALE:

Q What do you understand by the term "Muny Light Service Area"?

A The City of Cleveland.

Wein - cross

Q And in Plaintiff's Exhibit 3040-A, at page 43, which happens to be the damage exhibit, Dr. Wein, you refer to the number of occupied family units in Muny Light's service area.

Do I understand that you mean by that the entire City of Cleveland?

You wish to say this, do you not?

A Yes, I certainly would.

{After an interval.}

{Ms. Doyle gets the exhibit.}

MR. LANSDALE: Page 43.

MS. DOYLE: The date?

MR. LANSDALE: It's the 1981, the recent one, July 10, 1981.

Take this, Kathy. {Mr. Lansdale hands the book of exhibits to Ms. Doyle, and she, in turn, hands it to the witness.}

THE WITNESS: What page is that, now?

THE COURT: 42.

MR. LANSDALE: 43, at the bottom of the page, I think I have it open.

I see the reference up at the top of the page.

Wein - cross

{After an interval.}

THE WITNESS: I see, yes, your Honor.

Now, what I meant there, it's clear that for purposes of projecting damages, I simply took the customers which they had now and as defined by the RPI Survey.

For purposes of defining geographic market, I would not use the service area.

BY MR. LANSDALE:

Q All I'm trying to find out is what you mean by the term "Muny Light service area."

A In this connection I mean essentially the Census tracts and the occupied family dwelling units which are in the Census tracts in which Muny Light has one or more customers.

Q And you do not mean the geographic area delineated on either the Plaintiff's Exhibit 2064 or 3240?

A No. That's -- the geographic area there is the question of what the geographic market is.

Q All right. Now, let's go back to our Census tracts, then.

You have told us that you regard the whole City of Cleveland as the relevant geographic market?

Wein - cross

Q What significance is it, then, that Muny Light has service in 139 out of the 200 Census tracts of the City of Cleveland?

A It's a measure as to where it now exists.

Q As to where Muny now exists?

A Yes, as to where it now serves.

Q Doesn't Plaintiff's Exhibit 2064 and 3240 show us with greater accuracy where Muny now exists?

A Well --

Q Sir?

A You mean the amendment by Mr. Albach?

Q The amendment by Mr. Albach subject to the fact that he has overstated it a little bit.

A Well, I don't know that it's more accurate. I haven't counted the Census tracts there.

Q Dr. Wein, if I understand correctly, the purpose of Plaintiff's Exhibit 2064 as amended by Plaintiff's 3240, Mr. Albach's brown spot editions, the purpose of that was to tell with some preciseness where Muny Light facilities now are; is that not correct?

A Muny Light distribution, yes.

Q Facilities, Dr. Wein. Facilities.

Are you trying to make a distinction between distribution and facilities?

1 Wein - cross

2 A It doesn't tell you where -- Yes, I am. I mean the  
3 combustion turbines are in a certain place, the  
4 generating plant, which is now not operating, is in  
5 a certain place; the substations are certain places.  
6 Those extensions, you know, are extensions of  
7 distribution lines.

8 Q Dr. Wein, each and every one of the facilities that  
9 you mentioned -- substations, combustion turbines,  
10 the dismantled generating equipment -- are all  
11 within the dark-yellow area on Exhibit 2064, are they  
12 not?

13 A Yes, they are.

14 Q And the Exhibit 2064 and Exhibit 3240 together show  
15 the full extent of the location of each and every  
16 one of Muny Light's facilities, do they not?

17 A Well, in using the definition of facilities, yes,  
18 they do.

19 Q Tell me what your definition of facilities is.  
20 What are you trying --

21 A I didn't have Mr. Albach draw the extensions in  
22 order to tell me where the substations were or where  
23 the generating plant is. I wanted to know in terms  
24 of where distribution lines hooked up to  
25 customers or where customers mean also traffic lights.

Wein - cross

That's the only purpose of that, and that's what he did.

Q Dr. Wein, does or does not Exhibit 2064 as amended by Plaintiff's Exhibit 3240 delineate the geographic area within which all of Muny Light's facilities physically exist? If you know.

A Yes, it does.

Q Yes, it does. Thank you.

Now, Dr. Wein, will you please tell me why the 139 Census tracts define more precisely than those two exhibits the physical location of the area in which Muny Light now serves customers, if it does?

A Well, the 139 Census tracts are not defining the facilities. The 139 Census tracts are simply saying where Muny Light has one or more customers.

Q Exactly so.

A They are two different things.

Q My question is why, in your judgment, do the 139 Census tracts in which Muny Light has one or more customers define more precisely the geographic area in which Muny Light has facilities for the service of customers and does serve customers than Plaintiff's Exhibit 2064 and 3240?

A I never made the claim that one is more accurate than

Wein - cross

the other.

What I am trying to do is get the evidence and the considerations which would lead me to define what the geographic market is and, in order to do that, I want to know where customers are, and, secondly, I want to know where facilities are.

Q You certainly do.

A So I never made the claim that one is more precise than the other.

Q What I want to know, Dr. Wein, is what does the 139 Census tracts tell you about the location of the physical abilities of Muny Light that is not more accurately shown by Plaintiff's Exhibit 2064 as amended by 3240, if you can answer.

A I think I have answered it already.

Q It is a fact, is it not, Dr. Wein, that Plaintiff's Exhibit 2064 as amended by 3240 shows us far more accurately than an area described by 139 Census tracts precisely where the physical facilities and customers of Muny Light are located? Is this not the fact?

A One exhibit shows me something about facilities; the Census tract shows me something about the density of customers in the particular area.



Wein - cross

Now, if I wanted to ask the question: Where are their polar line transformers and how are they distributed all over the City, which are facilities of Muny Light, then I say I better look at the Census tract because that gives me some numbers perhaps of the distribution of customers by area. That kind of facility is a facility.

But I am not using these two things as in opposition. I am using them as lines of information to guide me in determining a regional geographic market.

MR. LANSDALE: May I have the question read, if your Honor please.

THE COURT: Read the question back.

{The question was read by the reporter as follows:

"Q It is a fact, is it not, Dr. Wein, that Plaintiff's Exhibit 2064 as amended by 3240 shows us far more accurately than an area described by 139 Census tracts precisely where the physical facilities and customers of Muny Light are located? Is this not the fact?"}

Wein - cross

THE COURT: Yes or no?

THE WITNESS: I've answered,

your Honor, that if I wanted to know where a particular facility like these are --

MR. LANSDALE: I object, if your  
Honor please.

THE COURT: Just a moment.

Dr. Wein, answer the question if you know.

Read the question back, please.

THE WITNESS: The.

THE COURT: Just a moment.

Just read the question back.

{Question read by the reporter.}

THE COURT: Either yes, no,  
or you don't know.

MS. COLEMAN: Approach the bench,  
your Honor?

THE COURT: Just a moment. We  
will recess right after this evening and have  
the rest of the evening to discuss it. I am  
overruling an objection if you are objecting.

*Sast*  
I have directed the witness to answer the  
question if he knows.

MS. COLEMAN: May I approach the

Wein - cross

bench?

THE COURT: Not at this juncture.

Doctor, can you answer the question?

THE WITNESS: Certainly I can answer the question, but facilities is not something which is completely self-evident.

As I am trying to point out, if we are talking about customer meters, the density of customers is much more important.

THE COURT: Okay. All you have --

THE WITNESS: If he asked me what the value of the facilities were and the nature of the facilities, then of course I can answer it.

THE COURT: Doctor, you are supposed to answer the question in the form he has given it to you.

If you don't understand it, all you have to say is restate the question and --

THE WITNESS: Please restate the question.

THE COURT: We will adjourn for the evening and you can rephrase your question

Wein - cross

over the adjournment of Court and, Doctor, you can consider your answer.

In the meantime, I will consider the objection.

Ladies and gentlemen of the jury, please, during the adjournment of Court, keep in mind the Court's admonition that you are not to discuss the case either among yourselves or with anyone else. Keep an open mind until you have heard all of the evidence, the Court's instruction on the law, and until such time as the matter is submitted to you for your final judgment.

Thank you and good night.

We will send the exhibits in.

{Jury returned to the jury room.

THE COURT: Now, approach the bench.

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{The following proceedings were had at the bench:}

THE COURT: The answer to that question, if he doesn't understand, all he has to do is ask to have the word "facilities"

1 defined.

2 And Mr. Lansdale, I think he has answered  
3 the question previously, not in this answer.  
4 He was just going around in a circle in this  
5 answer, but previously I thought he answered  
6 the question.

7 MR. LANSDALE: Perhaps so.  
8 He keeps wanting to tell me why it doesn't make  
9 any difference.

10 MS. COLEMAN: Your Honor, I  
11 object to the form of the question. It is one  
12 of these if-you-stop-beating-your-wife questions.

13 MR. LANSDALE: Oh, come on.

14 MS. COLEMAN: You say it can be  
15 answered yes or no.

16 THE COURT: Read the question.

17 MS. COLEMAN: The contention is  
18 not that both of them showed where the facilities  
19 were. So to say "Doesn't one show more of the  
20 facilities than the other," is ridiculous.

21 THE COURT: You will rephrase  
22 your question in the morning.

23 MR. LANSDALE: Yes.

24 THE COURT: Where are the  
25 exhibits? Bring the exhibits up.

{Side bar conference had off the record.}

THE COURT: Plaintiff's Exhibits

18, 33, 124, 167, 171, 172, 293, 299, 310, 311,  
312, 313, 314, 318, 338, 393, 1838, 2527, 2528,  
2875, 2876, 2880 are offered and admitted.

Defendant's Exhibit 1002 is admitted.

Unsponsored Exhibit No., Plaintiff's  
Exhibit No. 261, a CEI memo dated 2/12/73, an  
objection is sustained to that again. It is  
similar to the ruling on 8/14.

Plaintiff's Exhibit 3107, 1772, 628 and  
2385 are admitted. These are smaller exhibits  
of the large demonstrative exhibits 2617, 2641,  
2644.

Plaintiff's Exhibits 3032, 3033 and 3034  
may be admitted.

I have another hearing. I would appreciate  
vacating the court as quickly as possible.

- - - - -  
{Court was adjourned.}