

3. Examiner's Belief that Section 10 (h) Decision Is Collateral to the Purpose of These Proceedings

The Examiner believes that "discussion of possible Section 10 (h) or antitrust law violation is a matter entirely collateral to the intended purpose of the instant proceeding" (Initial Decision, p. 17). His reasons for reaching this conclusion appear to be twofold, as follows:

(a) He states that the "proceeding is concerned with whether the public convenience and necessity will be served by issuance of a license for construction of the Northfield Mountain Project by the Applicants" (Initial Decision, p. 17). The implication intended, presumably, is that an antitrust inquiry is extraneous to the purpose of such a proceeding. The problem with this analysis is that it ignores the mandate given to the Commission in Section 10 (h). Moreover, even if Section 10 (h) were not in the Act, the analysis would be of questionable validity under the Supreme Court's established interpretation of the scope of inquiry in public convenience and necessity proceedings. The Court, for example, stated in California v. FPC, 369 U.S. 482, 484-485 (1962), that "evidence of antitrust violations is plainly relevant in merger applications, for part of the content of 'public convenience and