

DECEMBER 12 1979

Docket No. 50-346

Mr. Lowell E. Roe
Vice President, Facilities
Development
Toledo Edison Company
Edison Plaza
300 Madison Avenue
Toledo, Ohio 43652

Dear Mr. Roe:

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Pursuant to a Decision of the Atomic Safety and Licensing Appeal Board dated September 6, 1979, the Commission has issued the enclosed Amendment No. 22 to Facility Operating License No. NPF-3 for the Davis-Besse Nuclear Power Station, Unit No. 1. This amendment modifies the antitrust license conditions.

A copy of the Notice of Issuance is also enclosed.

Sincerely,
Original signed by
Robert W. Reid

Robert W. Reid, Chief
Operating Reactors Branch #4
Division of Operating Reactors

Enclosures:

1. Amendment No. 22
2. Notice

cc w/enclosures:
See next page

OFFICE	ORB#4: DOR	ORB#4: DOR	C-ORB#4: DOR	NRR AIG	A-AD AORP: DOR
SURNAME	RIngram/ch	RIngram	RIngram	JSaltzman	JSaltzman
DATE	10/11/79	10/11/79	10/11/79	10/11/79	10/11/79



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 12, 1979

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Vice President, Facilities
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A copy of the Notice of Issuance is also enclosed.

Sincerely,

A handwritten signature in cursive script, reading "Robert W. Reid", is written over the typed name.

Robert W. Reid, Chief
Operating Reactors Branch #4
Division of Operating Reactors

Enclosures:

1. Amendment No. 22
2. Notice

cc w/enclosures:
See next page

Toledo Edison Company

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Federal Activities Branch
Region V Office
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Chicago, Illinois 60604

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The Honorable Tim McCormack
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The Honorable Tim McCormack
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Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Toledo Edison Company

cc w/enclosure(s):

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U. S. Nuclear Regulatory Commission
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

THE TOLEDO EDISON COMPANY

AND

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

DOCKET NO. 50-346

DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 22
License No. NPF-3

1. Pursuant to a Decision of the Atomic Safety and Licensing Appeal Board dated September 6, 1979, the Nuclear Regulatory Commission has amended Facility Operating License No. NPF-3 as follows:

License Condition 2.E is revised in its entirety to read as follows:

E. This license is subject to the following antitrust conditions:

Definitions

Entity shall mean any electric generation and/or distribution system or municipality or cooperative with a statutory right or privilege to engage in either of these functions.

Wheeling shall mean transportation of electricity by a utility over its lines for another utility, including the receipt from and delivery to another system of like amounts but not necessarily the same energy. Federal Power Commission, The 1970 National Power Survey, Part 1, p. I-24-8.

License Conditions Approved By the Atomic Safety and Licensing Appeal Board*

- (1) Applicants shall not condition the sale or exchange of wholesale power or coordination services upon the condition that any other entity:
- a. enter into any agreement or understanding restricting the use of or alienation of such energy or services to any customers or territories;
 - b. enter into any agreement or understanding requiring the receiving entity to give up any other power supply alternatives or to deny itself any market opportunities;
 - c. withdraw any petition to intervene or forego participation in any proceeding before the Nuclear Regulatory Commission or refrain from instigating or prosecuting any antitrust action in any other forum.

*"Applicants" as used by the Appeal Board refers to the Toledo Edison Company, Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company although the Licensees for this facility are the Toledo Edison Company and Cleveland Electric Illuminating Company.

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- (2) Applicants, and each of them, shall offer interconnections upon reasonable terms and conditions at the request of any other electric entity(ies) in the CCCT, such interconnection to be available (with due regard for any necessary and applicable safety procedures) for operation in a closed-switch synchronous operating mode if requested by the interconnecting entity(ies). Ownership of transmission lines and switching stations associated with such interconnection shall remain in the hands of the party funding the interconnection subject, however, to any necessary safety procedures relating to disconnection facilities at the point of power delivery. Such limitations on ownership shall be the least necessary to achieve reasonable safety practices and shall not serve to deprive purchasing entities of a means to effect additional power supply options.
- (3) Applicants shall engage in wheeling for and at the request of other entities in the CCCT:
- a. of electric energy from delivery points of Applicants to the entity(ies); and,
 - b. of power generated by or available to the other entity, as a result of its ownership or entitlements* in generating facilities, to delivery points of applicants designated by the other entity.

Such wheeling services shall be available with respect to any unused capacity on the transmission lines of Applicants, the use of which will not jeopardize Applicants' system. In the event Applicants must reduce wheeling services to other entities due to lack of capacity, such reduction shall not be effected until reductions of at least 5% have been made in transmission capacity allocations to other Applicants in these proceedings and thereafter shall be made in proportion to reductions** imposed upon other Applicants to this proceeding.

Applicants shall make reasonable provisions for disclosed transmission requirements of other entities in the CCCT in planning future transmission either individually or within the CAPCO grouping. By "disclosed" is meant the giving of reasonable advance notification of future requirements by entities utilizing wheeling services to be made available by Applicants.

* "Entitlement" includes but is not limited to power made available to an entity pursuant to an exchange agreement.

** The objective of this requirement is to prevent preemption of unused capacity on the lines of one Applicant by other Applicants or by entities the transmitting Applicant deems noncompetitive. Competitive entities are to be allowed opportunity to develop bulk power services options even if this results in reallocation of CAPCO transmission channels. This relief is required in order to avoid prolongation of the effects of Applicants' illegally sustained dominance.

- (4) a. Applicants shall make available membership in CAPCO to any entity in the CCCT with a system capability of 10 Mw or greater;
- b. A group of entities with an aggregate system capability of 10 Mw or greater may obtain a single membership in CAPCO on a collective basis.*
- c. Entities applying for membership in CAPCO pursuant to License Condition 4 shall become members subject to the terms and conditions of the CAPCO Memorandum of Understanding of September 14, 1967, and its implementing agreements, except that new members may elect to participate on an equal percentage of reserve basis rather than a P/N allocation formula for a period of twelve years from date of entrance.** Following the twelfth year of entrance, new members shall be expected to adhere to such allocation methods as are then employed by CAPCO (subject to equal opportunity for waiver or special consideration granted to original CAPCO members which are then in effect).
- d. New members joining CAPCO pursuant to this provision of relief shall not be entitled to exercise voting rights until such time as the system capability of the joining member equals or exceeds the system capability of the smallest member of CAPCO which enjoys voting rights.***

* E.g., Wholesale Customer of Ohio Edison (WCOE).

** The selection of the 12-year period reflects our determination that an adjustment period is necessary since the P/N formula has a recognized effect of discriminating against small systems and forcing them to forego economies of scale in generation in order to avoid carrying excessive levels of reserves. We also found that P/N is not entirely irrational as a method of reserve allocation. We have observed that Applicants themselves provided adjustment periods and waivers to integrate certain Applicants into the CAPCO reserve requirement program. The 12-year period should permit new entrants to avoid initial discrimination but to accommodate and adjust to the CAPCO system over some reasonable period of time. Presumably new entrants will be acquiring ownership shares and entitlements during the 12-year period so that adverse consequences of applying the P/N formula will be mitigated.

*** Our objective is to prevent impediments to the operation and development of an areawide power pool through the inability of lesser entities to respond timely or to make necessary planning commitments. While we grant new member entities the opportunity to participate in CAPCO it is not our intent to relieve joining entities of responsibilities and obligations necessary to the successful operation of the pool. For those smaller entities which do not wish to assume the broad range of obligations associated with CAPCO membership we have provided for access to bulk power service options which will further their ability to survive and offer competition in the CCCT.

- (5) Applicants shall sell maintenance power to requesting entities in the CCCT upon terms and conditions no less favorable than those Applicants make available: (1) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (2) to non-Applicant entities outside the CCCT.
- (6) Applicants shall sell emergency power to requesting entities in the CCCT upon terms and conditions no less favorable than those Applicants make available: (1) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (2) to non-Applicant entities outside the CCCT.
- (7) Applicants shall sell economy energy to requesting entities in the CCCT, when available, on terms and conditions no less favorable than those available: (1) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract; or (2) to non-Applicant entities outside the CCCT.
- (8) Applicants shall share reserves with any interconnected generation entity in the CCCT upon request. The requesting entity shall have the option of sharing reserves on an equal percentage basis or by use of the CAPCO P/N allocation formula or on any other mutually agreeable basis.
- (9) a. Applicants shall make available to entities in the CCCT access to the Davis-Besse 1, 2 and 3 and the Perry 1 and 2 nuclear units and any other nuclear units for which Applicants or any of them, shall apply for a construction permit or operating license during the next 25 years. Such access, at the option of the requesting entity, shall be on an ownership share, or unit participation or contractual pre-purchase of power basis.*

Each requesting entity (or collective group of entities) may obtain up to 10% of the capacity of the Davis-Besse and Perry Units and 20% of future units (subject to the 25-year limitation) except that once any entity or entities have contracted for allocations totaling 10% or 20%, respectively, no further participation in any given units need be offered.

* Requesting entities' election as to the type of access may be affected by provisions of state law relating to dual ownership of generation facilities by municipalities and investor-owned utilities. Such laws may change during the period of applicability of these conditions. Accordingly, we allow requesting entities to be guided by relevant legal and financial considerations (including Commission regulations on nuclear power plant ownership) in fashioning their requests.

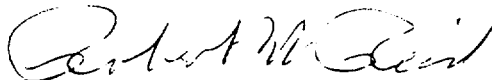
- b. Commitments for the Davis-Besse and Perry Units must be made by requesting entities within two years after this decision becomes final. Commitments for future units must be made within two years after a construction permit application is filed with respect to such a unit (subject to the 25-year limitation) or within two years after the receipt by a requesting entity of detailed written notice of Applicants' plans to construct the unit, whichever is earlier; provided, however, that the time for making the commitment shall not expire until at least three months after the filing of the application for a construction permit. Where an Applicant seeks to operate a nuclear plant with respect to which it did not have an interest at the time of the filing of the application for the construction permit, the time periods for commitments shall be the same except that reference should be to the operating license, not the construction permit.

- (10) Applicants shall sell wholesale power to any requesting entity in the CCCT, in amounts needed to meet all or part of such entity's requirements. The choice as to whether the agreement should cover all or part of the entity's requirements should be made by the entity, not the Applicant or Applicants.
- (11) These conditions are intended as minimum conditions and do not preclude Applicants from offering additional wholesale power or coordination services to entities within or without the CCCT. However, Applicants shall not deny wholesale power or coordination services required by these conditions to non-Applicant entities in the CCCT based upon prior commitments arrived at in the CAPCO Memorandum of Understanding or implementing agreements. Such denial shall be regarded as inconsistent with the purpose and intent of these conditions.

The above conditions are to be implemented in a manner consistent with the provisions of the Federal Power Act and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

2. This amendment is effective as of the date of its issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Robert W. Reid, Chief
Operating Reactors Branch #4
Division of Operating Reactors

Date of Issuance: December 12, 1979

UNITED STATES NUCLEAR REGULATORY COMMISSIONDOCKET NO. 50-346THE TOLEDO EDISON COMPANY
AND
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY
OPERATING LICENSE

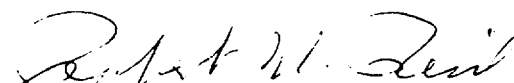
The U. S. Nuclear Regulatory Commission (the Commission) has pursuant to the Decision of its Atomic Safety and Licensing Appeal Board dated September 6, 1979, issued Amendment No. 22 to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the license for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

The amendment modifies License Condition 2.E. relating to antitrust matters.

For further details with respect to this action, see (1) Amendment No. 22 to License No. NPF-3 and (2) the Decision of the Atomic Safety and Licensing Appeal Board dated September 6, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio. A copy of both items may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of December 1979.

FOR THE NUCLEAR REGULATORY COMMISSION


Robert W. Reid, Chief
Operating Reactors Branch #4
Division of Operating Reactors

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