

**UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION**

August 22, 2005 (4:55pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

FirstEnergy Nuclear Operating Company)	Docket Nos. 50-334
Beaver Valley Power Station Unit)	50-346
Nos. 1 and 2; Davis-Besse Nuclear)	50-412
Power Station Unit No. 1; Perry)	50-440
Nuclear Power Plant Unit No. 1)	

**PETITION FOR LEAVE TO INTERVENE OF
AMERICAN MUNICIPAL POWER-OHIO, INC.**

Pursuant to Rule 2.309 of the Rules of Practice for Domestic Licensing Proceedings of the Nuclear Regulatory Commission (the "Commission" or the "NRC"), 10 C.F.R. §2.309 (2005), and the Commission's Notices of Filing issued on August 2, 2005 (the "Notices of Filing")¹, American Municipal Power-Ohio, Inc., on behalf of itself and its members ("AMP-Ohio"), hereby petitions to intervene in the above-captioned proceedings concerning the filing by FirstEnergy Nuclear Operating Company ("FENOC"), on behalf of the Pennsylvania Power Company ("Penn Power"), Ohio Edison Company ("Ohio Edison"), the Toledo Edison Company ("Toledo Edison"), and

¹ FirstEnergy Nuclear Operating Co., Beaver Valley Power Station Unit Nos. 1 and 2, 70 Fed. Reg. 44,390 (N.R.C. August 2, 2005) (Notice of Consideration of Approval of Transfer of Facility Operating Licenses); FirstEnergy Nuclear Operating Co., Davis-Besse Nuclear Power Station Unit No. 1, 70 Fed. Reg. 44,391 (N.R.C. August 2, 2005) (Notice of Consideration of Approval of Transfer of Facility Operating Licenses); FirstEnergy Nuclear Operating Co., Beaver Valley Power Station Unit Nos. 1 and 2, 70 Fed. Reg. 44,392 (N.R.C. August 2, 2005) (Notice of Consideration of Approval of Transfer of Facility Operating Licenses); FirstEnergy Nuclear Operation Co., Perry Nuclear Power Plant Unit No. 1, 70 Fed. Reg. 44,393 (N.R.C. August 2, 2005) (Notice of Consideration of Approval of Transfer of Facility Operating Licenses); FirstEnergy Nuclear Operation Co., Perry Nuclear Power Plant, 70 Fed. Reg. 44,393 (N.R.C. August 2, 2005) (Notice of Consideration of Approval of Transfer of Facility Operating Licenses).

the Cleveland Electric Illuminating Company (“CEI”) (collectively, the “Operating Companies”) and FirstEnergy Nuclear Generation Corporation (“FENGenCo”) of the following applications:

(i) “Application for Order Consenting to Transfer of Licenses and Approving Conforming License Amendments,” on May 18, 2005, as supplemented by letter dated July 15, 2005, requesting the Commission’s authorization to transfer Penn Power’s ownership interests in Units 1 and 2 of the Beaver Valley Power Station (“Beaver Valley”) and Unit 1 of the Perry Nuclear Generating Station (“Perry”) to FENGenCo and approval of conforming administrative amendments to Facility Operating License Nos. DPR-66 and NPF-73 (Beaver Valley) and License No. NPF-58 (Perry); and

(ii) “Application for Order Consenting to Transfer of Licenses and Approving Conforming License Amendments,” on June 1, 2005, as supplemented by letter dated July 15, 2005, requesting the Commission’s authorization to transfer the respective ownership interests of Ohio Edison, Toledo Edison, CEI, and OES Nuclear, Inc., in Beaver Valley, Perry, and Unit 1 of the Davis-Besse Nuclear Power Station (“Davis-Besse,” and together with Perry and Beaver Valley, the “Nuclear Assets”) to FENGenCo and approval of conforming administrative amendments to the License Nos. DPR-66 and NPF-73 (Beaver Valley), NPF-58 (Perry), and NPF-3 (Davis-Besse).

As will be explained with more specificity below, the licenses for both Perry and Davis-Besse contain antitrust conditions that were imposed upon vertically-integrated companies, the breadth and effect of which will be significantly affected by the proposed amendments to License Nos. NPF-58 and NPF-3. Specifically, FENOC proposes to amend the antitrust licensing provisions “such that FENGenCo would be subject to the

conditions, and would be responsible for any actions of FENOC that contravene the antitrust conditions.” *See* FENOC, Davis-Besse Nuclear Power Station, 70 Fed. Reg. at 44,392; *see also* FENOC, Perry Nuclear Power Plant, 70 Fed. Reg. at 44,393 and FENOC, Perry Nuclear Power Plant, 70 Fed. Reg. at 44,394. If the proposed amendments are accepted by the Commission, the Operating Companies will no longer be licensees and would not be responsible for or subject to the antitrust conditions. *Id.* The conditions would become the responsibility of FENGenCo, a newly-formed subsidiary of FirstEnergy Solutions Corporation, itself a subsidiary of FirstEnergy Corporation (“FirstEnergy”), the parent of the Operating Companies. FENGenCo will be exclusively engaged in nuclear generation. As a nuclear generator, FENGenCo is simply incapable of ensuring that antitrust conditions will be complied with by the Operating Companies or other FirstEnergy subsidiaries that exist now or may be created in the future. Through parallel proceedings before the Federal Energy Regulatory Commission (“FERC”), it has become apparent that FirstEnergy is cognizant of this “gap” in the applicability of the antitrust conditions and is seeking to capitalize on this opportunity to relieve the Operating Companies of the obligations imposed by the conditions.

AMP-Ohio requests that the Commission reject the attempt by FirstEnergy to nullify the antitrust licensing conditions by reconfiguring its corporate structure and transferring the licenses to FENGenCo. FENGenCo is clearly unable to comply with the conditions, which pertain to generation (both nuclear and non-nuclear), transmission, and distribution services. For this reason, AMP-Ohio respectfully urges the Commission to condition its authorization to transfer the licenses on a commitment by FirstEnergy to

preserve the *status quo* by honoring the conditions through each of the Operating Companies and its other subsidiaries.

I. COMMUNICATIONS

Communications regarding this matter should be addressed to the following persons, who should also be designated for service on the Commission's official list:²

Chris Norton
American Municipal Power-Ohio, Inc.
2600 Airport Drive
Columbus, OH 43219
614-337-6222 (phone)
614-337-6220 (facsimile)
cnorton@amp-ohio.org

David R. Straus
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167
202-585-6900
202-585-6969 (facsimile)
dstraus@thompsoncoburn.com

John W. Bentine, Esq.
Chester, Willcox & Saxbe LLP
65 East State Street
Suite 1000
Columbus, OH 43215
614-221-4000 (phone)
614-221-4012 (facsimile)
jbentine@cwslaw.com

II. DESCRIPTION OF AMP-OHIO'S INTERESTS

AMP-Ohio is a nonprofit Ohio corporation organized in 1971. Its members are all municipalities that own and operate utility systems, some of which also operate

² AMP-Ohio requests, to the extent necessary, that the Commission waive the requirements of 10 C.F.R. §2.304(e) (2005) to permit all of the persons named above to be included on the Commission's official service list for these proceedings.

electric generating and transmission facilities. AMP-Ohio's primary purpose is to assist its member communities in meeting their electric and energy needs, and AMP-Ohio is a full or partial requirements supplier for many of its members. This purpose is served in a number of ways, including ownership of electric generation, scheduling and dispatch of member-owned generation, and through power supply and transmission arrangements that AMP-Ohio makes with third parties at the request and on behalf of its members. At present, eighty-one of Ohio's eighty-five public power communities are AMP-Ohio members, as are two in West Virginia, twenty-four in Pennsylvania and two in Michigan.

AMP-Ohio and its members are active participants in the markets for short, intermediate, and long-term power and energy, and purchase power from various utilities, in addition to, in certain cases, generating their own energy. While AMP-Ohio and its members purchase transmission service from several providers, including FirstEnergy, all of the power purchased by or for members in the FirstEnergy control area must ultimately be delivered by American Transmission Systems, Inc., a wholly-owned subsidiary of FirstEnergy ("ATSI"). Therefore, the antitrust conditions have the potential to affect AMP-Ohio and its members.

III. PETITION FOR LEAVE TO INTERVENE

FENOC's request for transfer of the licenses is one aspect of the corporate reorganization of the FirstEnergy companies' generation assets. Pursuant to the reorganization, FirstEnergy's nuclear generation assets will be held by FENGenCo. *See*

Application (May 18, 2005), Enclosure 1 at 7; Application (June 1, 2005), Enclosure 1 at 9. FirstEnergy, on behalf of itself, the Operating Companies, and FENGenCo, has also filed an application at the FERC seeking approval to transfer the respective ownership interests of the Operating Companies in the Nuclear Assets to FENGenCo. Joint Application of FirstEnergy Corp. on behalf of Cleveland Electric Illuminating Co., Ohio Edison Co., Toledo Edison Co., and the Pennsylvania Power Co., FERC Docket No. EC05-84-000 (May 19, 2005). According to its filings here, transfer of the licenses to FENGenCo is a necessary precondition to the transfer of ownership of the Nuclear Assets. *See* Application (May 18, 2005), Enclosure No. 1 at 5-6; Application (June 1, 2005), Enclosure No. 1 at 8.

According to the applications, FENOC is proposing to amend the licenses to reflect that FENGenCo will be responsible for compliance with the antitrust conditions. *See* Application (May 18, 2005), Enclosure 1, Exhibit A, Attachment 3; Application (June 1, 2005), Enclosure 1, Exhibit A, Attachments 3 and 4. Under the proposed scenario, the antitrust conditions will remain in place following the transfer of the licenses to FENGenCo, although the Operating Companies will no longer be obligated to comply with them. Having failed previously to remove the conditions, FirstEnergy now seeks to escape their reach.³

The conditions essentially require, among other things, that the licensees permit interconnection to the FirstEnergy transmission system upon reasonable terms and conditions, provide certain wheeling access rights over FirstEnergy transmission facilities, and not attach certain conditions to the sale of electricity or bulk power

³ *See* pp. 10-15, *infra*.

services. Because AMP-Ohio and its members purchase power from FirstEnergy and transmission service through ATSI, AMP-Ohio opposes the proposed transfer of the licenses to FENGenCo unless the antitrust conditions remain in place and enforceable as to FirstEnergy and its subsidiaries, regardless of which FirstEnergy subsidiary holds the licenses and owns the Nuclear Assets.

The antitrust conditions provide AMP-Ohio and its members, as transmission customers and competitors, with important rights relating to generation, transmission, and distribution service. The interests of AMP-Ohio and its members will, therefore, be directly affected by the outcome of this proceeding. No other party can adequately represent those interests. Moreover, participation in this proceeding by AMP-Ohio is in the public interest. AMP-Ohio therefore requests that the Commission grant its Petition for Leave to Intervene.

IV. CONTENTIONS OF AMP-OHIO

By proposing that FENGenCo assume the sole responsibility for compliance with the antitrust licensing conditions, FirstEnergy seeks to effect a substantial modification to the scope and effectiveness of the conditions, if not their literal terms. This proposed modification merits the Commission's attention and careful evaluation. Relieving the Operating Companies and the operators of FirstEnergy's non-nuclear generation of their obligation to comply with the antitrust conditions would significantly undercut the vitality of those conditions for their beneficiaries, such as AMP-Ohio and its members, that compete with and receive transmission service from FirstEnergy. The Commission

should not approve transfer of the licenses to FENGenCo unless the antitrust conditions remain viable as to FirstEnergy and all of its subsidiaries and affiliates.

By way of background, the antitrust conditions arose out of a protracted antitrust investigation by the Commission that culminated in lengthy findings by the NRC Atomic Safety and Licensing Board (the "Licensing Board") that the Operating Companies had engaged in substantial anti-competitive conduct that warranted the attachment of conditions to the licenses for Davis-Besse and Perry. *See generally In the Matter of The Toledo Edison Co. and the Cleveland Electric Illuminating Co., et al.*, 5 NRC 133, 1977 NRC LEXIS 199 (1977); *aff'd as modified*, 10 NRC 265, 1979 NRC LEXIS 40 (1979). The purpose of the antitrust conditions was to deter further anti-competitive conduct by the Operating Companies.⁴

The license conditions were imposed on what are now the FirstEnergy Operating Companies as vertically integrated utilities, before the numerous subsidiaries that exist today were established. When initially imposed, the conditions applied equally to those Operating Companies' generation, transmission, and distribution services and assets. Although much has changed in the electric industry since the antitrust conditions were imposed, the antitrust conditions are important, even as a second line of defense, to protect the interests of FirstEnergy transmission customers, including AMP-Ohio and its members. The conditions remain a safeguard for relatively small, municipal electrical

⁴ The investigation before the Commission was initiated upon the recommendation of NRC staff in response to applications by Toledo Edison and CEI to construct and operate Davis-Besse Unit 1. *See* 5 NRC 133, 1977 NRC LEXIS at *9-10. The investigation was consolidated with antitrust investigations of Toledo Edison, CEI, Ohio Edison, Penn Power, and the Duquesne Light Company related to their applications to construct and operate nuclear generating facilities at the Perry Nuclear Power Plant and the Beaver Valley Power Station. *Id.* at *11-15. At the time, these five companies had established a power pool as members of the Central Area Power Coordination Group ("CAPCO"), in which they agreed to operate their systems as a unified system throughout the CAPCO Company Territories ("CCCT"). *See id.* at *19-20, n. 8.

systems that compete with FirstEnergy and the Operating Companies for generation and transmission services and are, at the same time, dependent upon access to the FirstEnergy transmission system for the transmission of energy to their systems for delivery to their customers.

A superficial review of the applications may not reveal that FirstEnergy, through the proposed transfer of its licenses and Nuclear assets, is deliberately attempting to abrogate, modify, or avoid the substantive provisions of the antitrust licensing conditions. Upon closer examination, however, it becomes clear that a substantial narrowing of its obligations is FirstEnergy's goal. It should not be permitted to attain that goal *sub rosa* in the guise of a corporate restructuring.

The Commission is no doubt aware that this is not the first time that FirstEnergy has attempted to shed its license condition obligations. Approximately twelve years after the license conditions were imposed, three of the Operating Companies (Ohio Edison, Toledo Edison, and CEI) filed a petition at the Commission for suspension of those conditions. *See In the Matter of Ohio Edison Co., et al.*, 36 NRC 269; 1992 NRC LEXIS 52 (1992). The Operating Companies argued that ownership of and the output from the nuclear assets were expensive and, due to this expense, the concerns of the Licensing Board that the Operating Companies would engage in further anti-competitive conduct as a result of their enhanced ability to exercise market dominance through ownership of the nuclear assets were no longer viable. *Id.* at *23.

The Licensing Board disagreed with the Operating Companies' contentions and rejected their application to suspend the conditions. *Id.* at *77-78 (upholding recommendation by NRC Staff that the Operating Companies' application to suspend the

antitrust conditions be rejected). On review before the United States Court of Appeals for the D.C. Circuit, the Court acknowledged the Commission's factual findings in the initial antitrust investigation revealing that, at the time the antitrust conditions were imposed, the Operating Companies enjoyed numerous competitive advantages, including "almost complete dominance of the generation, transmission, and sale of electric power" within their service areas. *City of Cleveland, Ohio v. U.S. Nuclear Regulatory Commission*, 68 F.3d 1361, 1368 (D.C. Cir. 1995). The Court upheld the Commission's denial of the Operating Companies' application for suspension of the conditions.

FirstEnergy seeks to camouflage its intent to escape the reach of most of the license conditions, affirmatively representing to this Commission that it is not seeking changes to the antitrust conditions and stating that "[t]he existing antitrust conditions in the licenses will continue in effect." See "Application (May 18, 2005), Enclosure No. 1 at 15; Application (June 1, 2005), Enclosure No. 1 at 19.⁵ AMP-Ohio's concern, however, is not whether the conditions will remain "in effect." AMP-Ohio's concern is that, despite FirstEnergy's assurances, FENGenCo, which is not engaged in fossil generation, transmission, or distribution, will not be in a position to ensure ongoing compliance with licensing conditions related to those activities. Thus, the conditions could be "in effect" in a vacuum and therefore be unenforceable.

FirstEnergy's contentions in the parallel proceeding at FERC support the need for NRC action here. Accompanying FirstEnergy's initial filing at FERC were unexecuted Assignment and Assumption Agreements in which each of the FirstEnergy Operating

⁵ Similarly, none of the black-lined license pages accompanying FirstEnergy's application indicate that FirstEnergy is proposing substantive revisions to the antitrust license conditions. See Application (May 18, 2005), Enclosure 1, Exhibit A, Attachment 3; Application (June 1, 2005), Enclosure 1, Exhibit A, Attachments 3 and 4.

Companies assigns its nuclear interests to FENGenCo. Each agreement specifically provides, *inter alia*, for the assignment of each Operating Company's "right, title and interest in" NRC licenses to FENGenCo. Assignment and Assumption Agreement, Pennsylvania Power Company, Section 1(e). According to the Assignment and Assumption Agreement, FENGenCo expressly assumes "[l]iabilities related to the transferred interest in the [nuclear facilities] under the NRC Licenses." *Id.* at Section 3(i). The term "Liabilities" is defined, for purposes of the Assignment and Assumption Agreement, to include "obligations" and "commitments" but does not expressly refer to the antitrust conditions. It was not clear whether they are intended to be included. *Id.* at Section 11(s).

Because FirstEnergy's filings at FERC (and at this Commission) were ambiguous with respect to FirstEnergy's intentions regarding the antitrust conditions, AMP-Ohio filed an intervention and comments with FERC, recommending, for the reasons similar to those expressed above, that FERC decline to approve the proposed asset transfer except on the condition that the antitrust conditions remain applicable to the entire family of FirstEnergy companies. Motion for Leave to Intervene and Comments of American Municipal Power-Ohio, Inc., FERC Docket No. EC05-84-000 (June 8, 2005). AMP-Ohio believed at the time that FirstEnergy may not have been seeking to alter its responsibilities (or those of its Operating Companies) with respect to the licensing conditions, so its intervention and comments were relatively neutral. That initial belief was soon dashed, however, and AMP-Ohio was disconcerted by FirstEnergy's response to AMP-Ohio's comments.

FirstEnergy refused to clarify that the antitrust conditions would continue to apply to each of its subsidiaries, including the Operating Companies, following the transfer to FENGenCo, claiming instead that such a condition is “unnecessary” and “overbroad.” Response of FirstEnergy Corp. to Motion for Leave to Intervene and Comments of American Municipal Power-Ohio, Inc. and the City of Cleveland, FERC Docket No. EC05-84-000 (June 21, 2005) (“FirstEnergy Answer”) at 2. Clearly, this resistance to a modest clarification revealed that FirstEnergy is well aware of the fact that once FENGenCo is established and the NRC authorizes transfer of the licenses to it, the remainder of its generation, in addition to all of its transmission and distribution, no longer would be subject to the license conditions.⁶

While refusing at FERC to permit its subsidiaries to be bound to the antitrust conditions following the transfer of the Nuclear Assets and the licenses to FENGenCo, FirstEnergy hollowly attempted to allay the concerns of AMP-Ohio and its members by claiming that their interests would be protected without such a commitment.

In its Answer to AMP-Ohio’s Motion to Intervene and Comments at FERC, FirstEnergy cited to an agreement among the City of Cleveland, Ohio, and FirstEnergy. Cleveland, an AMP-Ohio member that owns and operates Cleveland Public Power (“CPP”), had objected to the 1997 merger between Ohio Edison and Centerior Energy Company (formerly Toledo Edison and CEI) that created FirstEnergy, except on the condition that, *inter alia*, the antitrust conditions remain in effect and enforceable.

⁶ This Commission appears to agree. In the Notices published in the Federal Register with respect to the Ohio Operating Companies’ Licenses and interests in Davis-Besse and Perry, as well as Penn Power’s License and interest in Perry, the Commission states that once the respective Operating Companies have been removed from the license, the Operating Companies, “as non-licensees would no longer be subject to the antitrust conditions.” See p. 3, *supra*.

Cleveland and FirstEnergy entered into a settlement agreement dated as of June 11, 1997 pursuant to which Cleveland agreed to withdraw its opposition to the merger, and FirstEnergy agreed, among other things, that the antitrust conditions “shall continue to apply to all dealings between the FirstEnergy Operation Companies and CPP irrespective of the agreements or tariffs pursuant to which such dealings shall occur. . . .” FirstEnergy also agreed that “it shall not seek to modify the operative terms and conditions” of the antitrust conditions. Agreement Among Centerior Energy Corporation, the Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, FirstEnergy Corporation, and the City of Cleveland, Ohio (June 11, 1997) at page 21, paragraph 20. The FERC conditioned its own approval of the Ohio Edison/Centerior merger on the fulfillment by the Operating Companies of the commitments made in the settlement agreement. *See Ohio Edison Co.*, 81 FERC ¶61,110 at p. 61,407-08 (1997).

In response to Cleveland’s contention that only the “Operating Companies,” and no other subsidiaries, would be obligated under the settlement agreement, FirstEnergy also “clarified” that the settlement agreement commitments regarding the licensing conditions made by FirstEnergy “will continue to apply to the FirstEnergy affiliates that have acquired or will acquire ownership of the generation and transmission assets formerly owned by the FirstEnergy Operating Companies,” not just to the “Operating Companies” themselves, as provided in the settlement agreement. FirstEnergy Answer at 6. FirstEnergy specified that its commitment would include ATSI and FENGenCo. *Id.*

While it appears that FirstEnergy effectively expanded its prior commitment in a way that provides protection to Cleveland, neither the settlement agreement nor the “clarification” and further commitment applies to AMP-Ohio or any of its other

members, which were not parties to the settlement agreement. There is no basis in the license conditions, or the NRC findings that led to the conditions, for providing less protection to the other thirty-eight AMP-Ohio members within the FirstEnergy control area in Ohio.

FirstEnergy's other attempt to convince FERC that AMP-Ohio and its members are fully protected (at least as to non-nuclear generation), an attempt that it will no doubt repeat here, is equally unavailing. It contended in its answer at FERC (at 4-5) that all of the output of its generators "is and will continue to be" sold to its subsidiary, FirstEnergy Solutions ("Solutions"), and that Solutions is required by an operating agreement (not with AMP-Ohio or its members but with another FirstEnergy subsidiary) to comply with the conditions.

FirstEnergy chose not to quote that agreement, for good reason. The relevant section reads:

2.1.3 Performance of Regulatory Obligations.

ATSI and Solutions shall comply with transmission operation and planning obligations of the FirstEnergy Operating Companies imposed by federal or state laws or Regulatory Authorities including all transmission related obligations adopted by FERC in *Ohio Edison, et al.*, 81 FERC §61,110 (1997), and license conditions imposed by the Nuclear Regulatory Commission or its predecessor, until such time as such obligations are changed or revised to relieve the FirstEnergy Operating Companies or ATSI in whole or in part of such obligations.

The preamble of this section mentions compliance with "transmission operation and planning obligations," with no mention of generation obligations. One possible reading of this section, therefore, is that all that follows (after "including") is transmission and

operation related. Moreover, in the phrase “all transmission related obligations adopted by FERC in *Ohio Edison, et al.*, 81 FERC §61,110 (1997), and license conditions imposed by the Nuclear Regulatory Commission,” the words “all transmission obligations” could be read to modify both “obligations adopted” by FERC and the “conditions imposed” by the NRC.

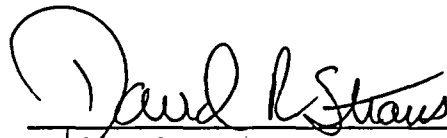
Even if this provision of an operating agreement (which can be changed) applied to generation obtained by Solutions, there is no reason to assume or believe that all of FirstEnergy’s generation will in the future be sold to Solutions. In fact, it may become necessary that it be sold to AMP-Ohio or its members to comply with a license condition, but only if FirstEnergy is stopped in this proceeding from limiting them to its nuclear generation subsidiary.

The antitrust conditions are essential to ensuring that the Operating Companies and other FirstEnergy subsidiaries do not discriminate against or engage in anticompetitive conduct directed toward municipalities and remain relevant to the preservation of the right of municipalities to compete in the marketplace for generation and transmission services. AMP-Ohio requests the Commission to require an explicit commitment by FirstEnergy that the antitrust conditions will continue to be honored by FirstEnergy and all of its subsidiaries and affiliate companies after the transfer of the licenses to FENGenCo and the corporate reorganization by FirstEnergy of its Operating Companies’ ownership interests in the Nuclear Assets.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, AMP-Ohio respectfully requests that the Commission (i) grant its Petition for Leave to Intervene in the above-referenced proceedings and (ii) condition its approval of the transfer of the licenses to FENGenCo to require that the antitrust license conditions remain applicable to FirstEnergy and all of its subsidiaries and affiliates, regardless of the corporate structure of the FirstEnergy companies.

Respectfully submitted,



David R. Straus
Margaret E. McNaul

Attorneys for American Municipal Power-Ohio, Inc.

Law Offices of:

Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167
202-585-6900
202-585-6969 (facsimile)

August 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have on this 22nd day of August, 2005, caused a copy of the foregoing document to be sent by electronic and United States mail to the following parties designated for service in the proceedings referenced above:

David W. Jenkins, Esq.
FirstEnergy Corp.
76 South Main Street
Mail Stop A-Go-18
Akron, OH 44308
djenkins@firstenergycorp.com

General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
OGCLT@NRC.gov

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff
HEARINGDOCKET@NRC.gov


Margaret E. McNaul

*Attorney for American Municipal Power-
Ohio*

Law Offices of:

Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, D.C. 20006-1167
202-585-6900
202-585-6969 (facsimile)