

September 9, 1974

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

THE TOLEDO EDISON COMPANY and)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)

(Davis-Besse Nuclear Power Station,)
Unit 1))

THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.,)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-346A ✓
50-440A
50-441A

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
OBJECTIONS TO THE INTERROGATORIES AND DOCUMENT
REQUESTS OF THE CITY OF CLEVELAND

Pursuant to Section 2.740 of the Atomic Energy Commission's Restructured Rules of Practice and Prehearing Conference Order No. 2, dated July 25, 1974, the Cleveland Electric Illuminating Company ("CEI") hereby raises the following objections to the Interrogatories propounded to it by the City of Cleveland ("City") on the grounds stated. These objections are not intended, and should not be construed, as a waiver by CEI of any rights it has in connection with the unresolved procedural issues in this proceeding, specifically the issues relating to the jurisdiction and scope of this proceeding, and all such rights are hereby explicitly reserved.

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ENCLOSURE

FIRE PROTECTION REVIEW
DAVIS BESSE NUCLEAR POWER STATION, UNIT 1

432.0

EMERGENCY PLANNING BRANCH

1. The letter of agreement with the Oak Harbor Fire Department states that they will respond to requests for assistance from the Davis Besse plant. The letter does not provide sufficient evidence of the arrangements and agreements reached with this offsite agency. It is requested that this agreement be revised to more clearly describe the responsibility and authority of the fire department when fighting fires at the site (Regulatory Guide 1.101, Annex A, Section 5.3.2).

2. The Fire Hazard Report, Revision 1, at Table 4-1, (Sheet 9) identifies the training and drills provided for the onsite fire brigades and the Oak Harbor Fire Department. It does not state that the Fire Department will participate in a fire emergency drill at least annually. In addition, the Emergency Plan at sections 3.2.6, 8.5, and 9 is neither specific as to the frequency of the drills to be conducted, nor the training provided. Revise the Emergency Plan, at Sections 8 and 9 to include this information and conform to Regulatory Guide 1.101, Annex A, Sections 8.1.1 and 8.1.2.

MAR 31 1978

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1. Definition No. 1.

CEI raises a general objection to the definition of the term "Company" insofar as it includes "subsidiaries or affiliates" of CEI. Section 2.741(a) of the Commission's Restructured Rules of Practice explicitly limits requests for information served "on any other party" to those materials "which are in the possession, custody or control of the party upon whom the request is served * * * ." Thus, to the extent that the City is seeking production by CEI of documents in the possession, custody or control of "subsidiaries or affiliates" of CEI, such request is improper under the Commission's rules.

Moreover, to sweep into the Interrogatories by use of an overbroad definition non-party entities other than CEI greatly exaggerates the already burdensome nature of the Interrogatories. These other entities should not be forced to conduct a file search of the nature envisioned by the City unless some substantial basis is shown as to the need for such a search and a more detailed specification of the materials sought is made, as required under the Commission's rules dealing with the issuance of subpoenas duces tecum to persons not parties to a proceeding (10 C.F.R. §2.720).

Finally, to the extent that the City's Interrogatories are intended to reach only those materials relating to such affiliated companies which are within the possession, custody

and control of CEI, the effort is objectionable on grounds of remoteness and burdensomeness. Under this interpretation, CEI would have to search its files to determine whether it had any document therein which, for example, related to reliability data for any such affiliated companies under Document Request No. 37(e), or the various cost data requested in Document Request No. 43 for each of these other companies' generating facilities. This type of search would be virtually impossible to accomplish without considerable delay, and, equally important, would have no reasonable relationship to the issues in this proceeding.

Accordingly, CEI requests that the definition of the term "Company" as used in the City's Interrogatories be restricted to CEI, "predecessor companies and any entities providing electric service at wholesale or retail, the properties or assets of which have been acquired by CEI."

2. Definition No. 3.

CEI also raises a general objection to the definition of the term "Electric Utility" as being far too broad to serve any meaningful purpose in this proceeding. No geographic limitation whatsoever is contained in the definition so that dealings of any sort which CEI might have had with "electric utilities" located in areas of the United States far removed from its own service area, or from the Combined CAPCO

Company Territories ("CCCT"), would presumably be dragged into the discovery process.

Furthermore, the definition includes not only those described entities which actually own or control electric power facilities, but also any other such entity which so much as "proposes to own or control" electric power facilities. To hold CEI to the burden of undertaking a file search for documents pertaining to all entities with which it has had some dealing that might, at one time or another, have had under consideration a proposal to own or control electric power facilities is unduly burdensome in the extreme. More likely than not, CEI would not even be aware of such a proposal.

This definition goes well beyond the definitions of "electric entities" used by the Licensing Board in its Order Requesting Clarification of June 28, 1974 (p. 4) and in Pre-hearing Conference Order No. 2 of July 25, 1974 (ft. 10), both of which were restricted as to relevant geographic area and as to actual ownership and control of electric power facilities. CEI requests that the definition of "Electric Utility" in the City's Interrogatories be similarly restricted, with the relevant geographic area being limited to the CCCT.

3. Definition No. 5.

CEI raises a further general objection to the definition of the term "Competition." Basically, this objection is grounded on the fact that the definition as written defies

comprehension. The City has apparently abandoned the dictionary definition of the word -- as "the act or process of competing," or "a contest between rivals" -- in favor of its own formulation which speaks in terms of actual or possible effects on "any other electric utility company" of action taken or contemplated by CEI, and vice-versa. Without regard to the City's listed areas of "action" in its definition, CEI submits that, at the very least, the definition should be revised to make it clear that the reference to "any other electric utility company" includes only such entities which are competitors or potential competitors of CEI, and not all others. Moreover, it is difficult to understand how action "considered" by CEI, but not taken, has any place in the definition of "Competition"; nor should the term be so broadly defined as to include the nebulous reference to "estimated or possible" effects on competitors.

4. Scope of Production.

CEI objects to the scope of production as contemplated in the City's Interrogatories in the following two respects:

(a) The City designates January 1, 1964 as the general starting date for purposes of discovery in this proceeding, and in many instances seeks the production of documents as far back as January 1, 1960. To require CEI to conduct a file search for documents which are ten, and in some instances fourteen, years old is unduly burdensome and wholly unnecessary

to resolve the matters in dispute in the present inquiry. This is not a general antitrust case, such as might be brought in a District Court, requiring review of all aspects of CEI's conduct over an extended period; it is a very narrow hearing under Section 105 of the Atomic Energy Act to ascertain only the anticompetitive impact, if any, of proposed nuclear plants scheduled to come on the line some five years hence. There is no reason to delve into the background files of CEI to determine its competitive capability; such a search is needed only with reference to the City's electric power facility -- that facility's status as "a viable competitor" in the City of Cleveland has alone been placed in issue, and by the City itself. No useful purpose can be served by forcing CEI to conduct an exhaustive examination of stale files which cannot possibly contain information relevant to the present proceeding.

Accordingly, CEI requests that the discovery contemplated in the City's Interrogatories be limited to the period from January 1, 1967 to date. It is within this time frame that CEI and the other Applicants became members of CAPCO and that planning commenced for the construction of the nuclear plants involved here.

(b) CEI requests that no production of documents be required with respect to documents on file and available to the public in the office of the Federal Power Commission, the

Securities and Exchange Commission, the Atomic Energy Commission, the Ohio Public Service Commission, or any other State or Federal regulatory body or office, and further, that no production be required of documents previously furnished to the City of Cleveland and which are available.

In administering the similar provision of Rule 34 of the Federal Rules of Civil Procedure, courts have held that where the information is available to the party other than through discovery, resort to the discovery process will not be permitted. See Reid v. Harper & Brothers, 17 F.R.D. 281 (S.D.N.Y. 1955).

5. Interrogatories Nos. 2, 8 and 9.

The City joined in the interrogatories propounded to CEI by the AEC Staff and the Department of Justice, jointly, and adopted said interrogatories as its own. CEI's objections to Nos. 2, 8 and 9 of those interrogatories, as set forth in Applicants' Objections to the Joint Request, apply with equal force to the City of Cleveland and are incorporated herein by reference.

6. Document Request No. 1(d).

CEI objects to this request for the occupations of CEI's directors and an identification of all their other business affiliations. There exists no conceivable reason why

the City should be provided such information in this proceeding. The separate businesses of CEI's directors are totally irrelevant to the issues raised concerning the possible anti-trust implications of granting a license to construct the subject nuclear facilities. To seek to impose on CEI the undue burden of searching its files for documents showing this information can only be designed to harass this Applicant by requesting that it undertake a wholesale fishing expedition on the City's behalf. If, as is suspected, the City is interested in learning whether CEI's directors are holding positions in other electric utility companies, it should direct a question to that limited point, rather than make a broad, generalized inquiry for documented information unrelated to the subject matter of this proceeding.

7. Document Request No. 16(d).

CEI objects to this request for documents relating to legislation and constitutional revisions which affect certain specified activities of electric utilities. The request is far too broad in scope and without any meaningful relevance to this proceeding. The City's definition of "documents" is sufficiently expansive to include virtually every scrap of paper and record in CEI's voluminous files. If literally construed, compliance with the present request would require CEI to make an exhaustive file search for written references "relating to" any legislation

of the sort described -- whether it be Federal, State or local legislation, and without regard to its relationship to the City. No good reason exists for imposing such a burden on CEI. Certainly, documents relating to legislation and constitutional revisions enacted by other municipalities, for example, can be of no legitimate interest to the City in pursuing the claims it has raised here. Without a more specific showing of relevance, discovery of these materials should be barred.

8. Document Request No. 16(f).

CEI objects to this request, which calls for documents relating to municipal elections, on several grounds. The breadth of the request -- covering elections of any sort in every municipality in the United States which operates an electric distribution system -- is, in and of itself, objectionable. Plainly, the vast majority, if not all, of such materials cannot possibly have anything to do with this proceeding. The Licensing Board has explicitly directed that discovery be limited primarily to ascertaining evidence relevant to the "structure" of the relevant market or submarkets (Pre-hearing Conference Order No. 2, at pp. 7-8). Such evidence of "structure" clearly is not to be found in the type of information sought by this request. CEI should not be put to the onerous task of going through literally millions of documents in search of papers which so clearly are of no real import.

The City is apparently seeking to open up a whole new line of inquiry into the political conduct of CEI. The only conceivable purpose for an intrusion into this area is to harass and embarrass CEI. For, as recognized in the District Court decision in United States v. Otter Tail Power Company, 331 F. Supp. 54, 62 (D. Minn 1971), and left undisturbed by the Supreme Court on appeal (401 U.S. 366, 93 S.Ct. 359 (1973)), campaign activities in municipal elections concerning the establishment of municipal electric systems are immunized from antitrust attack. And see Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 81 S.Ct. 523 (1961); United Mine Workers v. Pennington, 381 U.S. 657, 85 S.Ct. 1585 (1965). To engage in discovery relating to such political matters would thus serve only to delay this proceeding for no useful purpose, and should not be permitted.

9. Document Request No. 16(g).

CEI objects to this request pertaining to litigation documents on the ground that it is excessively broad and calls for privileged materials protected from the discovery process. The City has provided no definitional framework whatsoever in this request. It has not asked for documents pertaining to litigation instituted only by CEI, nor has it specified any particular party defendants, as it might properly have done if it were seeking evidence of "sham" lawsuits within the rationale

of California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513, 42 S.Ct. 609, 613 (1972). It has not given any indication of the types of judicial actions or administrative hearings of interest to the City. Nor has it been content to limit the request to past or present litigation, but has also included possible future litigation under consideration.

To comply with such a broad, generalized inquiry is virtually impossible. CEI has innumerable documents relating to "litigation" of all sorts and involving countless parties other than CEI. Most of this material has absolutely no bearing on the matters raised by the City in its petition to intervene. Without a designation of the documents sought with the reasonable particularity required by 10 C.F.R. §§ 2.741(a) and (c), literal compliance with this request would be extremely burdensome and vexatious, especially in view of the lack of probative value of the documents which CEI would be required to produce.

In addition, even to the extent that this request might be susceptible to a limited construction, CEI objects insofar as it calls for documentation prepared by its attorneys for or during the course of "litigation." Such material constitutes the attorneys' work product and contains, in large part, privileged information protectable from disclosure. CEI cannot be required to produce any material which is subject to the attorney-client privilege.

10. Document Request No. 16(i).

CEI objects to this request for material relating to labor union negotiations involving CEI and/or MELP as being totally irrelevant to the issues in this proceeding. No legitimate purpose can be served by requiring a search of CEI's files for such documents; CEI's labor negotiations can have no conceivable bearing on the charges of anticompetitive behavior levelled against CEI by the City; nor are they relevant to the impact on competition that might result from construction of the subject nuclear plants. This request is but another example of the City's efforts to undertake a prohibited fishing expedition at CEI's expense. Moreover, most of CEI's records regarding labor negotiations are of a highly confidential nature which it should not be required to disclose without a particularized showing by the City of the relevance of this information to the subject matter of the proceeding.

11. Document Request 16(j).

CEI objects to this request for coal, fuel oil and natural gas supply contracts both on grounds of relevancy and of confidentiality. Information as to the quantities of coal, fuel oil and natural gas used to satisfy CEI's electric power plant needs is a matter of public record as reported to the Federal Power Commission in FPC 1. There is thus no need for the City to obtain discovery of the actual supply contracts.

These documents are not themselves germane to the present proceeding.

More importantly, much of the information contained in these contracts is proprietary to the suppliers and to require production of the supply contracts would thus invade business confidences. Such a disclosure would compromise CEI's relationships with those parties with whom CEI must deal and seriously jeopardize its future procurements. Accordingly, without some convincing showing by the City of a legitimate need for access to these supply contracts, they should be protected from the discovery process.

12. Document Request No. 17(a).

CEI objects to this request for documents relating to area growth and site development as being unrelated to the matters at issue and so broadly phrased as to make compliance unduly burdensome and vexatious. While the request is far from clear, it appears to be addressed to documents concerning new areas of growth or development available for service "by electric utilities other than [CEI]." The City's interest in such information, although perhaps intense, clearly has no relevance to this proceeding. Nor should CEI be required in the present context to disclose information to the City pertaining to areas available for possible future expansion. To conclude otherwise would force CEI to betray business confidences with others which

are entitled to protection in the absence of a specific showing of need for the information sought.

If the City can designate with "reasonable particularity" the documents it seeks under this request and state the relevance of this material to the matters in controversy, production might be warranted. As the request now stands, however, it is stated in such broad terms that any effort to comply can only lead to confusion and frustration in searching for the documents requested and attempting to determine whether they are included within the scope of the request.

13. Document Request No. 17(b).

CEI objects to this request for documents pertaining to retail electric service franchises as being entirely irrelevant to this proceeding. As the Licensing Board made clear in Prehearing Conference Order No. 2, the essential focus of the present hearing is on bulk power transactions and the question of access to the benefits of economy of size of large generating facilities as a possible cure for action alleged to be inconsistent with the antitrust laws. Matters which concern retail electric service franchises have no place in this inquiry. Such matters are outside the scope of the issues as framed by the Licensing Board, and the City should not be allowed to sweep them into the discovery process.

14. Document Request No. 18.

CEI objects to this entire request for correspondence with, and other documentation relating to, Edison Electric Institute and National Association of Electric Companies, as being so devoid of definitional framework as to make it virtually impossible to ascertain what documents are being sought. The City has made no pretense of relating this request to the present proceeding. It has not restricted the inquiry to the subject nuclear facilities; nor has it tailored the scope of the request to clothe only those documents relevant to the City's claims. Rather, the City has sought to launch an extravagant fishing expedition involving the whole utility industry at CEI's expense.

To even attempt compliance with this request would measurably delay the proceeding. It would impose on CEI the intolerable burden of examining many rooms of documents, without any assurance that the material produced pursuant to this request would have any relevance to the contested issues. At a time when the lagging economy has already forced virtually all private electric utilities to make drastic budget cuts and to lay off numerous personnel in order to remain operational, it would be oppressive in the extreme to require so onerous a file search when so little is to be gained.

15. Document Request No. 20(e).

CEI objects to this request for unspecified communications with wholesale customers as being entirely too broad to serve any useful purpose in this proceeding. The City has placed no limitation whatsoever on the subject matter of the correspondence requested; nor has it otherwise designated the desired documents with reasonable particularity as required by 10 C.F.R. §§2.741(a) and (c). Until some more precise definition is given to this request, CEI should not be required to assume the heavy burden of conducting a search of its massive correspondence files.

16. Document Request No. 21(c).

CEI objects to this request for documents relating to NERC, ECAR and NAPSIC on the ground that such records have no relevancy to this proceeding. These national and regional associations are not identified as participants in the Davis-Besse and Perry projects. No issue has been raised concerning their activity or behavior. For the City to seek information regarding the formation and activities of these associations aptly serves to demonstrate how far afield the City will go to harass CEI with burdensome discovery and to attempt to prolong the present proceeding.

17. Document Request No. 22.

CEI raises a limited objection to this request for CAPCO organization and operation agreements, as amended. CEI has no difficulty with producing such of those agreements as have been executed, but to require also that CEI turn over those unexecuted agreements which are "under consideration" goes too far. Agreements in the preparatory stages are constantly undergoing revision and alteration. These preliminary drafts become totally inconsequential once the agreement is finalized and executed. Many times the working drafts are discarded; almost always they are incomplete. To require the production of such materials serves no useful purpose. Until executed, draft agreements which are still "under consideration" are of little substantive import. The City will thus have all it needs for purposes of this hearing if it receives the executed agreements.

18. Document Request No. 23.

CEI objects to this request as another example of the City's effort to set forth on a prohibited fishing expedition. The City here seeks production of all minutes of meetings and reports of each committee established under pooling or coordination agreements to which CEI is a party, those of each subcommittee or task force thereof, and documents relating thereto prepared or circulated within CEI. The request totally

abandons any attempt to relate the documents requested to issues in this proceeding. In asking for all documents relating to minutes of meetings of a group without designating or relating the request to matters thought to be contained in such minutes, the request is prima facie overly broad. It provides no basis for determination of whether it is related to the subject matter of the proceeding.

19. Document Request No. 25.

CEI objects to this request, regarding documents referring or relating to the formation of a holding company, as irrelevant to this proceeding. The subject matter of this request is not at issue here, and there is no good reason why the City, whose discovery is limited by its pleadings, should now be permitted to gain access to other remote areas of inquiry having no relevancy to the matters at hand. This is particularly so where -- as in the case with respect to this request -- any such intrusion would compromise business confidences and jeopardize future business relationships. In such a case, it is incumbent upon the party seeking to intrude first to demonstrate that he has a legitimate overriding need which justifies granting him the limited discovery he specifies.

20. Document Request No. 26.

CEI raises an objection to this request, but only insofar as it seeks production of "any power pooling arrangement

under consideration." Such a request for contracts and agreements which are not yet executed but are still under active consideration is objectionable for the reasons already stated in response to Document Request No. 22, paragraph 17 supra.

21. Document Request No. 27.

CEI objects to this request referring to the Interconnection Systems Group as entirely irrelevant. The City does not describe the named group, nor does it indicate that group's relationship, if any, to the parties to this proceeding, or its connection, if any, with the matters in controversy. Without clarification, CEI is unable to determine any basis for this request.

22. Document Request No. 28.

CEI objects to this request on the grounds that (i) such documents requested are not properly designated or described with reasonable particularity, and (ii) compliance with the request would be unduly burdensome in view of the remoteness of the requested material to the subject matter of the proceeding. The City seeks all documents relating to (a) interconnection plans, proposals or agreements with other electric utilities, and (b) expansion of or additions to generating capacity or transmission systems to be solely or jointly owned by CEI.

In view of the definition of the term "document," this request would require production of all relay setting calculations; hundreds of relay test sheets; prints or drawings of relay scheme of substations; design drawings of wiring schemes; purchase request for relays; manufacturers' drawings relating to equipment; circuit breaker analysis reports; hundreds of test reports of all types of transformers and circuit breakers; hundreds of right of way surveys; hundreds of right of way proposals to purchase; test reports on equipment such as transformers and circuit breakers; right of way purchase contracts covering hundreds of miles of transmission lines; condemnation proceeding documents, embracing applications for condemnation, definitive land descriptions, reports of right of way agents with reference to value and condition of land; reports of appraisers; reports of commissioners; court orders; appraisals; purchase contracts; correspondence, agreements, checks and other documents relating to transactions between CEI and numerous counties and/or the State of Ohio relating to the relocation of roads and other public ways in connection with the development of sites for purposes of construction, operation and maintenance of nuclear generating plants; correspondence with or reports of investigations relating to relatives or next of kin of deceased persons interred on proposed construction sites or rights of way; contracts with undertakers, and various

other documents relating to the removal of decomposed bodies located in areas to be utilized for said construction projects; all types of test reports on plant construction, such as for suitability of ground; concrete tests, soil tests, contracts with the State of Ohio for geological surveys, checking faults; contracts, correspondence and reports relating to the employment of geologists and other consultants with reference to investigation and report of the seismic conditions and other geological aspects of large segments of the State of Ohio, including geological maps and aerial photographs, in connection with the selection and determination of sites for nuclear generating plants; all manufacturers' instruction books for operation of generating units, including instrumentation manuals, all of which would embrace hundreds of thousands of pages, such as spare parts manuals and manuals as to use of each part of the equipment; invoices, journals, and ledgers relating to the initiation and maintenance of plant accounts covering all items of plant equipment involved in the construction of generating plants and transmission lines, which would embrace hundreds of thousands, if not millions, of pages of documents; employment files, consisting of employment applications, performance reports, documents relating to discipline, transfer, promotion and changes in rates of pay of hundreds of employees involved in the construction activities of CEI in connection with the

construction of transmission lines and generating plants, together with payroll records, records and documents relating to pension plans, hospital insurance plans, major medical insurance plans, jury service performance and various other matters concerning employees employed in the Construction Department of CEI in connection with its transmission and generating plant construction; copies of contracts with right of way clearing contractors, together with copies of checks, correspondence and other related documents with respect to the clearance of hundreds of miles of transmission line rights of way in various parts of the State of Ohio; correspondence, contracts, inspection reports, insurance coverage, work schedules and various other documents relating to construction activities performed by independent contractors in the construction of the generating plants of CEI; documents embracing thousands of pages, containing specifications relating to the purchase of transformers, circuit breakers, switch gear, switches, conductors, insulators, towers, and other facilities necessary in the construction of transmission line and substation facilities.

The above is just a partial listing of the millions of documents which could be required under the request as written. It is not dissimilar from other listings, equally extensive, that could be made with respect to the other requests objected to by CEI on the ground that they were phrased too broadly.

The City apparently has chosen to take such a broad-brush approach in an effort to use the discovery process in this proceeding as a vehicle for engaging in an extended fishing expedition which will inevitably prolong discovery and unduly delay the proceeding. It has, for the most part, ignored the Commission's admonition in Section 2.741(a) and (c) to request only "designated documents" and identify the item or category of document requested with reasonable particularity.

One of the basic measurements to determine preciseness of a request for production of documents under Rule 34, Federal Rules of Civil Procedure -- the judicial counterpart to the administrative discovery procedures involved here -- is whether a reasonable man would know what documents and things are called for. 4A Moore's Federal Practice, Par. 34.07, at pp. 34-57 (1972). Document Request No. 28 gives CEI absolutely no definitional guidance within which to attempt to comply except in a broad, general manner. So expansive a request can only lead to confusion and frustration in searching for documents arguable within its scope. It imposes an intolerable burden both in terms of conducting an adequate file search for purposes of compliance and in terms of ascertaining what material must be produced. No litigant should be put to the time and expense of undertaking such an onerous task where it is as clear as it is here that the end result cannot possibly serve

the legitimate purposes which pretrial discovery is designed to accomplish.

23. Document Request No. 31.

CEI objects to this request, pertaining to contracts for the sale or exchange of electric power, for the same reason that it found objectionable Document Request No. 26, para. 20, supra, which is almost identically worded.

24. Document Request No. 32(a).

CEI objects to this request for all documents regarding cost studies of nuclear vs. fossil-fueled generation on the ground it is totally devoid of any reference to relate the documents requested to the issues in this proceeding and thus must be viewed, once again, as an attempt by the City to engage in a fishing expedition at CEI's expense. While CEI could furnish the cost studies themselves, this request would require production of a voluminous amount of material which lies behind the cost studies made by CEI in this area, all of which are remote and irrelevant to the issues under review. Moreover, some of this backup material relates to fuel supply information of a highly confidential nature, and no legitimate reason has been articulated for invading those business confidences.

25. Document Request No. 35.

CEI objects to this request for drafts of contracts prepared for proposed interconnection agreements with the Cities of Cleveland and Painesville for the reasons stated in paragraph 20, supra, with regard to Document Request No. 26. Working drafts are not proper documents on which to place reliance; they are usually incomplete and constantly undergoing revision. It is the agreement which is finally executed which is relevant for purposes of ascertaining the nature of an arrangement between contracting parties. CEI has no objection to producing any such executed agreements in its possession, custody or control.

26. Document Request 37(a).

CEI objects to this request, calling for cost analyses or estimates of other Ohio electric utilities' system operations, as unduly burdensome and irrelevant to the issues under scrutiny. Such past analyses or estimates are of little significance to the determination whether the future installation of Davis Besse No. 1 and Perry Nos. 1 and 2 will create or maintain a situation inconsistent with the antitrust laws. Without some stronger showing of relevance than now appears available, CEI should not be burdened with a file search to determine whether it has any such documents.

27. Document Request No. 37(b).

CEI objects to this request which seeks all documents relating to studies of joint ownership or other participation considered, proposed or agreed upon between CEI and other electric utilities with respect to nuclear, fossil-fuel or hydroelectric generating facilities and transmission facilities. Like Document Request No 28, discussed in para. 22 above, this request lacks designation of documents sought with the reasonable particularity required by 10 C.F.R. §2.741(a) and (c), and literal compliance would be burdensome and vexatious in view of the lack of probative value of the documents which CEI would be required to produce. As written, Document Request No. 37(b) would require production of material similar to that described in para. 22, supra, with regard to Document Request No. 28, since it encompasses all material such as contracts for facilities, site surveys, condemnation proceedings, etc., "relating to" studies of joint ownership or other participation between CEI and other electric utilities of generating or transmission facilities.

28. Document Request No. 37(c).

CEI objects to this request, which asks for all "documents" relating to present and future planned interconnections with other utilities. To furnish all of the minutiae required by this request would be extremely burdensome and vex-

atious; certainly such documents have no possible relevance to the issues in this proceeding.

CEI presently maintains a large number of interconnections with other utilities. Each of the transmission lines associated with such interconnections involves various types of activity, including right of way clearance, right of way inspection, line maintenance, replacement and modification; and involves relay settings and other electric operation controls. All of such activity, including the payment for services of employees involved in such activities, is reflected in numerous documents, including payrolls and checks for labor performed in connection with such interconnection facilities; contracts for aerial inspection of such facilities and reports of such inspections; contracts for right of way clearance and reports of right of way clearance; work orders for construction and maintenance of facilities; and various other documents, as described in more detail in the discussion in para. 22, supra, relating to Document Request No. 28.

Document Request No. 37(c) would require the production of all this material. In addition, CEI would have to furnish under this request such records as daily log sheets relating to such tie lines, which would embrace hourly entries showing kilowatt-hour flows and status of switching facilities and would include delemetering and other charts produced on a

continuous basis involving charted documents extending more than 72 inches per day per tie line and which, in the aggregate for the period covered by this request, would embrace charts extending many, many miles.

A requirement for production of such documents should not be ordered where the material sought is not likely to have any probative value with respect to the issues in the proceeding.

29. Document Request No. 37(d).

CEI objects to this request, seeking documents relating to studies or analyses of full generation and/or transmission integration or coordination between CEI and any other electric utility, on the principal ground that the request is unintelligible, ambiguous, incomprehensible, and puts CEI to the burden of undertaking an interpretation without adequate guidance. If interpreted broadly, as we suspect the City intends, the request would require furnishing many of the irrelevant documents listed in para. 22, supra, with regard to Document Request No. 28.

30. Document Request No. 37(e).

CEI objects to this request for all documents relating to its line extension policy as being far too broad in scope and wholly unrelated to the matters in dispute. Such

objection is similar to that stated in para. 22, supra, with respect to Document Request No. 28. Even if the present request were narrowly interpreted, it would require production of all documents relating to the initiation of service to any customer since January 1, 1964, which service required some extension of CEI's line facilities. In excess of 60,000 customers have been added since that date. Production of all documents relating to such line extensions would be burdensome, vexatious and not calculated to produce evidence remotely related to the subject matter of this proceeding.

31. Document Request No. 37(f).

CEI objects to this request which seeks production of all documents relating to reliability data for each generating unit, including forced and planned outages, number of hours of down-time, number of outages, nature of forced outage rate and calculations thereof, and number of hours operated during the past year. The information sought here has no bearing on the issues in this proceeding. Unlike MELP, whose status as a "viable competitor" in the City of Cleveland is called into question, no issue has been raised by the City as to the reliability of CEI's existing generating plants. The detailed data which is the subject of this request plainly contributes neither to ascertaining the structure of the relevant market, nor to determining whether installation of the subject nuclear

plants will maintain or create a situation inconsistent with the antitrust laws. Thus, CEI should not be required to produce this information.

Moreover, the request, as written, is without reasonable particularity and compliance would be unduly burdensome. Literally construed, the City seeks production of all the daily log sheets for each of CEI's generating units for the period in question; all schedules which have been prepared for maintenance of each unit and all correspondence, memoranda, reports and other "documents" between CEI and equipment manufacturers, manufacturers' representatives, consultants and others (including pleadings in civil actions where disputes have arisen), concerning reasons for outages and solutions to such problems. Such request is not even limited to production of documents relating to CEI's generating units but would encompass any report, article or correspondence in CEI's files relating to the outage of any generating unit in the world.

32. Document Request No. 37(g).

CEI objects to this request for all documents relating to "reliability data of transmission lines, including outages per 100 mile per year for each of the various voltage classifications of lines, reason for outages and maximum single occurrence outage time, in hours, during the past year." Such

request is unduly broad. It is not limited to documents relating to CEI's transmission lines; but, even if it were, the request is objectionable in its present form. CEI operates and maintains in excess of 980 miles of transmission lines of various voltage classifications. Such lines during the course of a year are subjected to outages from various causes, including storms, lightning, sleet, snow, automobile collisions, and activities of animals such as squirrels. To undertake to develop the documentation relating to all of such outages is unreasonable and calculated to have no probative value on any of the issues in this proceeding. If it were relevant, CEI would be willing to furnish a summary analysis of the major activities occurring during the course of a year affecting the substantial reliability of its transmission lines.

33. Document Request No. 37(h).

CEI objects to this request for all documents relating to the outage time in 1973 per customer per year in each of CEI's districts and the number of outages per customer per year; the grounds are similar to those stated above with regard to other requests by the City. Documents which would be required to be produced under this request would include, for example, all notations of telephone calls from customers of CEI reporting outages, reports of CEI's personnel checking such outages, reports of action taken including time of outages.

To collect such information from the many offices maintained by CEI across the State of Ohio and produce all such documents would be burdensome in the extreme. CEI can conceive of no purpose to be served by such production which would relate to the issues in this proceeding.^{1/}

34. Document Request No. 37(1).

CEI objects to this request, which seeks all documents relating to financing, (1) method and mix, (2) cost of capital, (3) cost of existing capital, (4) terms and conditions associated with capital, (i) restricted funds and payments thereto, (ii) interest and debt service coverage, (iii) accumulative nature of preferred dividends, and (5) schedules of projected payments on debt, (6) plans for future financing through December 31, 1969. As is apparent on its face, this request lacks reasonable particularity; it is analagous to the request for "financial records" ruled improper by the court in Richland Wholesale Lquors, Inc. v. Joseph E. Seagram & Sons, Inc. 40 F.R.D. 480 (D.S.C. 1966).

Obviously, a massive file search, followed by production of documents potentially swept within so broad a request, would impose an intolerable burden on CEI; under no

^{1/} With respect to the offer to accept a "verified summary of such information," it should be noted that to "verify" any summary which CEI might have in its possession, custody or control would require the expenditure of many hours by CEI personnel to collect all relevant documents, and analyze and compile the results.

circumstances should such a result be countenanced by this Licensing Board. This is particularly so in view of the fact that CEI is a publicly held corporation, and has revealed in prospectuses on file with the Securities & Exchange Commission all the financial information that it is required to make known to the public. That information is readily available to the City; it is not entitled to anything more. Its efforts here to explore financial material outside the jurisdiction of the SEC is a classic example of the sort of fishing excursion prohibited by 10 C.F.R. Part 2, App. A, VI(a).

35. Document Request No. 38.

CEI objects to this request for names of all engineers retained by CEI for any conceivable purpose as overbroad. The City does not indicate any time frame for its request; it does not place any reasonable limitation on the purpose for which said engineers might have been employed; nor does it state what areas of engineering expertise are relevant. Such an open invitation to supply names of individuals obviously unsuited for the presumed purpose of the request requires no response. It is incumbent upon the City first to limit its inquiry to a defined category having some meaningful relationship to the relevant issues.

36. Document Request No. 39.

CEI objects to this request, for such yearly peak flow diagrams through 1985 as may be studied by any power planning or operating groups in which CEI participates, to the extent it seeks to require a file search for such diagrams by groups other than CAPCO. The activities of such other power planning or operating groups in which CEI might participate have no relevance whatsoever to this proceeding and CEI should not be burdened with a file search to ascertain whether or not it has requested material generated by these unrelated groups. As for such yearly peak flow diagrams through 1985 studied by CAPCO, CEI will undertake to determine if any such document is in its files.

37. Document Request No. 40.

CEI objects to this request for, among other things, internal documents describing its bulk power control center. This request, even if given a limited interpretation, could require furnishing numerous reports of studies made by manufacturers as well as consulting engineers relating to the design and installation of electronic equipment and other facilities to be utilized in the carrying out of the economic dispatch function and in determining reliable electric system operations. The documents relating to such matters consist of thousands of separate pieces of paper, many of which could have no relevance

to the subject matter of this proceeding, such as electronic circuit diagrams for computers and telemetering equipment, wiring print of each remote at each substation, wiring diagram of each remote at each generating unit, and wiring diagram of each remote at each tie line or interchange point. All of such documents would have to be housed in several filing cabinets.

CEI further objects to the furnishing of such documents on the ground that much of the information sought is proprietary to parties who have supplied the subject material to CEI, and CEI is contractually bound not to reveal such information without prior approval of the suppliers. Furthermore, many of the documents which would be required under this request are deemed confidential by CEI to assure security and reliability of system operation and to prevent any act of sabotage. Disclosure of such material in a public proceeding would violate the integrity of the system.

38. Document Request No. 41.

CEI objects to this request in its entirety on the same grounds stated in para. 22, supra, with regard to Document Request No. 28. This request seeks all "documents containing or pertaining to" capital and operation and maintenance cost estimating factors used by the Company for a number of categories of facilities, operating costs and other costs. CEI

could never be certain that it had complied with this request since it would require production of all manufacturer catalogues in CEI's possession, invoices of past purchases on which the future costs are estimated, land appraisals for transmission line rights of way, labor contracts and numerous other tools used in attempting to estimate costs. All of such documents pertain to cost estimating factors utilized by CEI.

CEI further objects to furnishing such documents on the basis that it seeks confidential business records of CEI, and such disclosure would compromise CEI's relationship with its "competitors" as well as with third parties with whom it must deal. To reveal all documents used by CEI in establishing escalation factors for labor, fuel, generating equipment, and other matters requested in this item would seriously jeopardize future procurements by CEI and negotiations with others in these areas. CEI submits that the City has the ability to predict future increases in costs associated with the categories for which request is made and that CEI's projections of such cost increases due to escalation is not a proper subject for inquiry in request for production of documents.

39. Document Request No. 43.

CEI objects to this request which seeks "documents showing" the following with respect to each existing

generating unit on CEI's system, and estimates thereof with respect to each unit under construction or planned, and thereafter lists a number of requests which are in the nature of interrogatories. CEI's objection is based in part on the confidential nature of such business cost projections.

In an antitrust proceeding involving parties in competition with each other, courts have held that, under Rule 34 of the Federal Rules of Civil Procedure, such confidential cost information should not be produced which would give one competitor access to the business secrets of another competitor. While much of the information sought with respect to past cost is a matter of public record as a result of the pervasive reporting regulations to which CEI is subjected, information regarding future costs should not be produced since to do so would prejudice the competitive situation. Competitors who share such information on a voluntary basis often find themselves involved in antitrust claims by the Justice Department. Forcing disclosure of such information through Commission proceedings will lead to the same evils which the antitrust laws are designed to prevent. Once a competitor knows all of the business secrets and confidential information of another competitor, the incentive for attempting to achieve economies and efficiencies of operation by one competitor will be destroyed. The court in Service Liquor Distributors v. Calvert Distillers

Corp., 16 F.R.D. 344 (S.D. N.Y. 1954), in ruling upon a request for production of documents under Rule 34, Fed. R. Civ. P., stated (16 F.R.D. at 347):

Certain items from those documents may be relevant, but that is not reason for giving plaintiff a roving commission to get not merely those items but also the details of a business that may have no relevancy to the lawsuit, but which would be delectable nuggets of information for a competitor.

To allow a plaintiff the sweeping investigation into all of the business affairs of its competitor on no more than an unsupported assertion that the plaintiff might find useful evidence in the documents would be perversion of justice.

The production of the documents requested in Document Request No. 43 would denude CEI's files of its plans for future operations and divulge such information to one who purports to compete with CEI. In addition, many of the documents requested herein, especially in subparagraphs (p) and (q) are proprietary to the suppliers of CEI and CEI is contractually bound not to reveal such information without prior approval of such supplier.

Finally, CEI objects to this request on the grounds stated in para. 22, supra, with respect to Document Request No. 28. To effectively comply, CEI would have to produce an unimaginable number of rooms full of material, virtually all of which is unlikely to have any relevance to this proceeding.

40. Document Request No. 44.

CEI objects to this request, which seeks production of documents showing all actual or proposed power purchases and sales for the period 1970-1985, indicating mw and mwh quantities and fixed and variable charges for each such transaction. Even a limited construction of this request appears to require CEI to produce all documents relating to any sale of power, including, among other things, every contract for sale of power to customers at both wholesale and retail. CEI submits that the request as written is not reasonably particularized; it clearly is overly burdensome and vexatious in view of the irrelevancy of the material to the subject matter of this proceeding.

41. Document Request No. 51.

CEI objects to this request for documents relating to the proposed Yankee-Dixie generation and transmission system as being wholly irrelevant to any aspect of the present proceeding. We are here concerned with Davis-Besse Unit 1 and Perry Units 1 and 2. It serves no legitimate purpose to permit the City to use the discovery process available in connection with the Commission's antitrust review associated with those three nuclear facilities in order to explore other areas of inquiry regarding proposals for systems not now under consideration.

42. Document Request No. 54.

CEI objects to this request, which seeks wholesale and retail rate design studies, and any comparative studies of wholesale and retail rates, and documents relating to the decision to file new rates. The City again attempts to launch a fishing expedition into areas of no apparent relevance to this proceeding. Rate design studies and comparative rate studies which are unrelated to the City are called for indiscriminately, as is all the supporting documentation. Not only is this request so overly broad as to be defective; it also seeks to intrude into matters of business confidentiality which are entitled to protection. The City has no proper basis for securing the rate information sought here insofar as it pertains to other entities; nor should CEI be required to compromise the confidence of others by furnishing it. If it is the City's intent to obtain only rate design studies and comparative rate studies which are relevant to MELP's activities within the City limits, it should frame its request with reasonable particularity so as to warrant production thereof.

43. Document Request No. 55.

CEI objects to this request for all cost of service studies relevant to wheeling or transmission service on CEI's system for specified periods as falling wholly outside the scope of this proceeding and therefore being an impermissible

line of inquiry for the City to pursue. The issue of wheeling, in the generic sense of that term, is simply not in this case. Certainly, it has not been raised in the City's petitions to intervene, and thus is not open to the City as a permissible area for pretrial discovery.

At the same time, the wheeling concept has been interjected into these proceedings in a very limited sense, and that was by American Municipal Power-Ohio, Inc. ("AMP-Ohio"), not by the City. The Licensing Board has made it clear that AMP-Ohio is entitled to discovery, if it chooses (and apparently it does not), on the limited question of wheeling 30 mw of PASNY power from New York to the City of Cleveland. The door has not thereby been opened, however, on the much broader issue of wheeling generally. Nowhere in the pleadings in this case has that question been raised, either by the Justice Department, the AEC Staff, or the Intervenors. Accordingly, the subject of wheeling generally is not within the bounds of permissible discovery, and Document Request No. 55 warrants no response.

44. Document Requests Nos. 56-62.

CEI objects to each of these requests which seek production of documents relating to CEI's advertising and promotional activities. It is difficult to perceive how the information sought by the City in these several requests can have any bearing whatsoever on the subject matter of this proceeding.

Undeniably, the activities in question are relevant, if at all, only to the retail competition between CEI and the City within the City limits. They relate to CEI's "conduct," and not in any reasonable way to the matter of market structure.

Discovery directed to "conduct" has been carefully limited by the Licensing Board with the instruction that it be "designed to develop whatever evidence of conduct is needed beyond structure to demonstrate the 'situation' referred to herein" (Prehearing Conference Order No. 2, p. 8). It is therefore necessary for the City to demonstrate in what way the present requests meet that standard before the area of CEI's advertising and promotional activities can be opened to inquiry.

45. Document Requests Nos. 70, 72, 74, 76, 83-88.

CEI objects to each of these requests on grounds of burdensomeness and irrelevancy to the issues involved here. Each request is concerned with specific conduct by CEI at the retail level and thus falls outside the focus of the present proceeding, which is on bulk power transactions and access to the economies of size of large nuclear generating units. For the reasons stated in para. 44, supra, CEI should not be required to comply with these requests without a particularized showing by the City as to how the conduct referred to bears on the matters in controversy.

CEI also objects to each of these requests because they seek to intrude into political activities of CEI, which, as articulated in para. 8, supra, with regard to Document Request No. 16(f), are immunized from antitrust attack.

46. Document Request No. 71.

CEI objects to this request for, among other things, a description of the economic condition of the area served by CEI, and projections of future economic conditions, as being but another example of the City's seemingly endless quest for every scrap of paper in the files of CEI that it can obtain, without regard to the relevance of the information sought. It is apparent on its face that CEI's projections of future economic conditions, or its evaluations of "other potential stimuli of economic growth of the area" served by CEI, is not being sought for any useful purpose it might serve in the present proceeding. There is thus no sound reason to put CEI to the task of searching its files for any such documents.

47. Document Requests Nos. 75 and 78.

CEI objects to these requests which seek the production of documents relating to specific lawsuits as being of no relevance to this proceeding. Compliance with such requests would be extremely burdensome and require the disclosure

of a great deal of privileged material which is entitled to protection from discovery. In light of the fact that the papers produced could have no probative value in the present context, sufficient reason has not been shown to warrant burdening CEI with a file search for their production.

48. Document Requests Nos. 77, 79, 80 and 81.

CEI objects to each of these requests as calling for documents which cannot possibly have any bearing on the present proceeding. Insofar as the names and addresses of all attorneys in Ohio retained by CEI are requested by the City (No. 79), there is absolutely no reason to provide such information; nor is the City entitled under any circumstances to know the basis for any legal retainers of CEI. Such information is a matter of attorney-client privilege. As to the City's request for budget planning reports from January 1, 1965 to date, and the backup documentation thereto (No. 80), much of that information is of a confidential nature, and for the reasons stated in para. 39, supra, with regard to Document Request No. 43, need not be turned over to the City.

49. Document Request No. 89.

CEI objects to this request for documents pertaining to the activities of (a) Greater Cleveland Growth Association, (b) Citizens League, and (c) Electric League, as so

lacking in definition as to be defective on its face. Absolutely no attempt has been made to relate this request to the subject matter of the proceeding, or even to comply marginally with the Commission's rules requiring a designation of documents with reasonable particularity. So broad and ill-defined a request is entitled to no attention.

50. Document Request No. 90.

CEI objects to this request for a list of all banks where CEI and CAPCO have maintained deposits and the average annual balance at each bank. Such information need not be divulged without some showing of its relevance to this proceeding. It plainly has little to do with the issues that have been raised; thus, production of such a list can only serve to satisfy the City's curiosity. That is not a legitimate reason for requiring compliance.

51. Document Requests Nos. 93-112.

CEI objects to each of these requests on the ground that they are of no relevance to the subject matter of this proceeding and, thus, CEI should not have to undergo the considerable burden of conducting an extensive file search for the documents requested. Essentially, the material in question concerns documentation of a number of isolated activities by CEI with regard to retail customers of electric service in the

City of Cleveland. CEI's past "conduct" at the retail level vis-a-vis the City is of little consequence to the issues that are now pending, however; it clearly has no connection whatsoever to future activities under the nuclear licenses being sought for Davis-Besse and Perry. As stated in para. 44, supra, with regard to Document Requests Nos. 56-62, before discovery into such matters will be permitted, the City must demonstrate in what respect it is necessary to look at CEI's past "conduct" for resolution of the antitrust issues that have been raised. In this regard, the words of the Licensing Board in its Pre-hearing Conference Order No. 2, p. 7, bear repeating: "The parties should be mindful that the Board considers the contentions to relate primarily to structure and only incidentally to conduct."

52. Document Request No. 113.

CEI objects to this request which calls for daily diaries, logs, and appointment calendars of the officers and directors of the company. Such a broad, roving request is a most fitting conclusion to the City's Interrogatories. It epitomizes the repeated efforts by the City throughout to engage in an extensive fishing expedition for materials of no relevance to the present proceeding. The overall objective appears to be to harass CEI to the fullest extent possible by forcing it into exceedingly burdensome file searches, with an overall design to prolong discovery and further delay the hearing process. In

order to avoid such a result the City should be required to recast its objectionable document requests so as to make it clear in what way they are relevant to the matters in controversy, this time paying heed to the Commission's requirements in Section 2.741(a) and (c) that the documents sought be designated with reasonable particularity.

53. In conclusion, CEI states that it obviously has not had an opportunity to make even a perfunctory examination of its files to ascertain which documents therein are subject to production under the City's Interrogatories. It is likely that some individual documents within the broad categories requested are entitled to protection from discovery on the ground that they contain matter of a privileged and confidential nature which is legally protected from disclosure. CEI reserves the right to assert the appropriate claim of privilege as to specific documents which are entitled to such legal protection as those documents are found in the course of CEI's file search, and the foregoing general objections to the City's Interrogatories are not intended, and should not be construed, as a waiver of such right.

Respectfully submitted,
SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Wm. Bradford Reynolds
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Counsel for The Cleveland
Electric Illuminating Company

Dated: September 9, 1974.

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
THE TOLEDC EDISON COMPANY and)	
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY)	
(Davis-Besse Nuclear Power Station,)	Docket Nos. 50-346A
Unit 1))	50-440A
)	50-441A
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY, ET AL.,)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "The Cleveland Electric Illuminating Company's Objections To The Interrogatories And Document Requests Of The City Of Cleveland" were served upon each of the persons listed on the attached Service List by U. S. Mail, postage prepaid, on this 9th day of September, 1974.

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Wm. Bradford Reynolds
Wm. Bradford Reynolds
Counsel for The Cleveland
Electric Illuminating Company

Dated: September 9, 1974

UNITED STATES OF AMERICA
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