UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
The Toledo Edison Company The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station)	)	Docket No. 50-346A
The Cleveland Electric Illuminating Company, et al. (Perry Plant, Units 1 and 2)	)	Docket Nos. 50-440A and 50-441A

RESPONSE OF DEPARTMENT OF JUSTICE TO APPLICANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

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November 27, 1974

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RESPONSE OF DEPARTMENT OF JUSTICE TO
APPLICANTS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND ANSWERS TO INTERROGATORIES

The Department of Justice (hereinafter Department) submits the following responses to discovery requests served upon it by Applicants in this proceeding. Answers made herein are complete to the knowledge and belief of the undersigned representatives of the Department as of November 30, 1974. Answers to certain of Applicants' interrogatories involving specific transactions or conduct by Applicants, cannot be answered at this time with the degree of specificity requested since the Department has not yet received documents or answers to interrogatories from Applicants pursuant to the Joint Request of the Atomic Energy Commission Regulatory Staff and Department of Justice for Interrogatories and for Production of Documents by Applicants, served August 23, 1974. The Department's answers

will be supplemented as necessary to comply with Section 2.740(e) of the Commission's Rules of Practice and the October 11, 1974, Order of the Atomic Safety and Licensing Board On Objections To Interrogatories And Document Requests.

RESPONSES TO DISCOVERY REQUESTS

Discovery Request Number 1

By letter of January 11, 1971, the Atomic Energy Commission (hereinafter AEC) requested that the Department render antitrust advice pursuant to Section 105 of the Atomic Energy Act on an application for a license for the Davis-Besse Nuclear Power Station, Unit 1. This request was forwarded to the Public Counsel and Legislative Section of the Antitrust Division for further processing. The following professional staff members participated in the inquiry initiated in response to the AEC's request:

(1) Mr. Joseph Saunders, Chief of the Public Counsel and Legislative Section, who filled a supervisory role;

(2) Mr. Milton Grossman, Assistant Chief of the Public Counsel and Legislative Section, whose duties were similar to those of Mr. Saunders, and

(3) Mr. William Jaegar, Attorney with the Public Counsel and Legislative Section, who handled the day-to-day work associated with this inquiry.

This inquiry was initiated by sending letters to 22 electric utilities located in and adjacent to the Applicants' geographic operating areas. These letters requested specific information with regard to the existence of situations in which Applicants

were involved which might have anticompetitive implications. The Department's files relating to this inquiry only contain one response, from the Bryan Municipal Light and Water Department in Bryan, Ohio.

It appears from the Department's files, however, that responses were also received from Hancock-Wood Electric Cooperative, Inc. in North Baltimore, Ohio, the North-Central Electric Cooperative, Inc. in Attica, Ohio, and the Ohio Cities of Cleveland, Napoleon and Painesville.

This inquiry was concluded on July 9, 1971, when the Assistant Attorney General for the Antitrust Division, Richard W. McLaren, sent a letter to the AEC containing the Department's antitrust advice.

Discovery Request Number 2

A. Copies of the following documents are produced herewith:

1. January 11, 1971, letter from Bertram H. Schur to John N. Mitchell.
2. February 22, 1971, letter from Richard W. McLaren to Bertram H. Schur.
3. March 23, 1971, letter from Bertram H. Schur to Joseph J. Saunders.
4. April 26, 1971, letter from Richard W. McLaren to numerous electric utility companies.
5. Undated and unsigned letter to U.S. Department of Justice.
6. June 2, 1971, letter from Joseph J. Saunders to William L. Jaeger.

7. July 9, 1971, letter from Richard W. McLaren to Bertram H. Schur.

8. July 12, 1971, letter from Bertram H. Schur to Joseph J. Saunders.

9. August 31, 1971, letter from W. B. McCool to National Archives & Records Service.

10. September 10, 1971, letter from Richard W. McLaren to Philip P. Ardery.

B. The Department asserts a claim of privilege with respect to the following documents:

1. May 10, 1971, memorandum written by William L. Jaeger and received by Joseph J. Saunders, files and correspondence relating to activities of the Toledo Edison Company. Privileges asserted: attorney-client, attorney "work product", executive and informers.

2. July 1, 1971, memorandum from Joseph J. Saunders and received by Richard W. McLaren regarding anti-trust advice on the Davis-Besse application. Privileges asserted: attorney-client, attorney "work product", executive and informers.

Discovery Request Number 3

The inquiry conducted by the Department on the Application for the Perry Nuclear Power Plant, Units 1 and 2, utilized information obtained in the inquiry relating to the application for the Beaver Valley Power Station, Unit 2.

By letter of August 10, 1972, the AEC transmitted to the Department information requested by the Attorney General for

antitrust review of the application for a license for the Beaver Valley Power Station Unit 2. This information, together with AEC's request for antitrust advice, was forwarded to the Public Counsel and Legislative Section of the Antitrust Division for further processing. The following professional staff members participated in the resulting inquiry: Messrs. Joseph J. Saunders and Milton J. Grossman, whose titles and duties were the same as those in the inquiry concerning the Davis-Besse application; and Steven M. Charno, Attorney with the Public Counsel and Legislative Section, whose duties were the same as those of Mr. Jaegar in the Davis-Besse inquiry.

On September 6, 1972, letters requesting specific information about the existence of situations in which the Applicants were involved which might have anticompetitive implications were sent to 56 utilities located in or adjacent to the Applicants' geographic operating areas. Answers were obtained from the following:

American Municipal Power-Ohio, Inc. (responding on behalf of its members)
Beach City, Ohio
Bradner, Ohio
Bryan, Ohio
Buckeye Power Co. (responding on behalf of its members)
Cleveland, Ohio
Columbiana, Ohio
Elmore, Ohio
Hancock-Wood Electric Cooperative
Hubbard, Ohio
Hudson, Ohio
Lucas, Ohio
Montpelier, Ohio
Monroeville, Ohio
Morrow Electric Cooperative
Niles, Ohio
Norwalk, Ohio
Orrville, Ohio

Painesville, Ohio
Pioneer Rural Electric Cooperative
Pitcairn, Pennsylvania
South Vienna, Ohio
Wampum, Pennsylvania
Wellington, Ohio
Woodville, Ohio
Zelienople, Pennsylvania

The City of Pittsburgh, Pennsylvania, was also contacted by letter dated January 30, 1973.

Those entities which made comments about situations which might be deemed to be inconsistent with the antitrust laws were selectively asked to supply additional detail. The Department evaluated these responses in light of the information provided by Applicants, as well as certain commitments made by them concerning future conduct. This inquiry was concluded on April 20, 1973, when the Department rendered antitrust advice to the AEC.

By letter of April 2, 1973, the AEC transmitted certain information to the Department and requested antitrust advice on the application for Perry Nuclear Power Plant, Units 1 and 2. This information and request were forwarded to the Public Counsel and Legislative Section of the Department. The same professional staff members enumerated in connection with the Beaver Valley inquiry participated in this inquiry.

Beginning with the complaints received in the Beaver Valley inquiry, additional information was solicited from various complaintants. The City of Cleveland (hereinafter Cleveland) and American Municipal Power-Ohio, Inc. (hereinafter AMP-O) indicated an interest in intervening in any AEC proceeding relating to this application.

Limited discussions with Applicants on alleged anticompetitive situations were held in an attempt to reach an agreement on license conditions which would protect the public interest. These discussions were unproductive. This inquiry was concluded on December 17, 1973, when the Department rendered antitrust advice to the AEC.

Discovery Request Number 4

A. Copies of the following documents are produced herewith:

1. August 10, 1972, letter from Marcus A. Rowden to Richard G. Kleindienst.
2. August 15, 1972, letter from Joseph Rutberg to Joseph J. Saunders.
3. September 6, 1972, letter from Thomas E. Kauper to indicated electric utility companies.
4. September 11, 1972, letter from the City of Painesville (by Joseph Pandy, Jr.) to the Department.
5. September 11, 1972, letter from the City of Norwalk (by Donald P. Ware) to the Department.
6. September 11, 1972, letter from Morrow Electric Cooperative Inc. (by Leonard Wigton) to the Department.
7. September 12, 1972, letter from Pioneer Rural Electric Cooperative, Inc. (by Robert L. Roberts) to the Department.
8. September 12, 1972, letter from the Village of Lucas to the Department.

9. September 14, 1972, letter from the Borough of Wampum (by Robert Aiello) to the Department.

10. September 15, 1972, letter from Orrville Municipal Utilities (by Roy S. Williams) to the Department.

11. September 21, 1972, letter from the Borough of Pitcairn (by Robert F. McCabe, Jr.) to the Department.

12. September 25, 1972, letter from Hubbard, Ohio, (by T. J. Wilson) to the Department.

13. September 25, 1972, letter from Village of Hudson, Ohio, (by S. S. Schweikert) to the Department.

14. September 26, 1972, letter from Deshler Municipal Utilities (by Roy K. Beamand) to the Department.

15. September 26, 1972, letter from Bradner, Ohio, (by Richard Fairbanks et al.) to the Department.

16. September 26, 1972, letter from Village of South Vienna, Ohio, (by David D. Mattes) to the Department.

17. September 28, 1972, letter from the City of Cleveland (by Warren D. Hinchee) to the Department.

18. September 28, 1972, letter from Woodville, Ohio, (by Joyce E. Lemke) to the Department.

19. September 29, 1972, letter from the Borough of Zelienople, Pennsylvania, (by James L. Henderson, Jr.) to the Department.

20. October 2, 1972, letter from Village of Columbiana, Ohio, (by Douglas Moore) to the Department.

21. October 2, 1972, letter from the Village of Monroeville, Ohio, (by Myron J. Gerber) to the Department.

22. October 4, 1972, letter from the City of Niles, Ohio, (by Charles W. Burgess) to the Department.

23. October 9, 1972, letter from Hancock-Wood Electric Cooperative, Inc. (by Paul H. Hutchison) to the Department.

24. October 11, 1972, letter from Bryan Municipal Utilities (by Robert L. Rataiczak) to the Department.

25. October 13, 1972, letter from the Village of Montpelier (by Paul E. Hutchinson) to the Department.

26. October 17, 1972, letter from Wellington, Ohio, (by John Rohr) to the Department.

27. October 19, 1972, letter from the Department to Philip P. Ardery.

28. October 20, 1972, letter from Beach City, Ohio, (by Robert Raff) to the Department.

29. October 27, 1972, letter from Marcus A. Rowden to Richard G. Kleindienst.

30. October 30, 1972, letter from the Village of Elmore, Ohio, (by Judith Damschroder) to the Department.

31. November 3, 1972, letter from Thomas E. Kauper to Philip P. Ardery.

32. November 8, 1972, letter from Philip P. Ardery to Steven M. Charno.

33. November 17, 1972, letter from Philip P. Ardery to Steven M. Charno.

34. November 29, 1972, letter from Thomas E. Kauper to Philip P. Ardery.

35. December 1, 1972, letter from Robert P. Mone to Milton J. Grossman.

36. December 11, 1972, letter from Donald R. Allen to Steven M. Charno.

37. December 12, 1972, proposed letter from Bruce B. Wilson to Donald R. Allen.

38. December 14, 1972, letter from the Village of Columbiana (by Douglas Moore) to the Department.

39. December 14, 1972, letter from the City of Niles, Ohio, (by Charles W. Burgess) to the Department.

40. December 14, 1972, article from Nucleonics Week.

41. December 18, 1972, letter from the Village of Monroeville (by Myron J. Gerber) to the Department.

42. December 18, 1972, letter from Wellington, Ohio, (by John Rohr) to the Department.

43. December 20, 1972, letter from Hubbard, Ohio, (by T. J. Wilson) to the Department.

44. December 20, 1972, letter from Beach City, Ohio, (by Bonnie Feller) to the Department.

45. December 21, 1972, letter from C. Emerson Duncan to Thomas E. Kauper.

46. December 23, 1972, letter from the Village of Lucas, Ohio, (by Robert J. Davis) to the Department.

47. December 27, 1972, letter from Robert P. Mone to Steven M. Charno.

48. January 11, 1973, letter from Philip P. Ardery to Steven M. Charno.

49. January 12, 1973, letter from Howard A. Cummins to the Department.

50. January 22, 1973, letter from Philip P. Ardery to Steven M. Charno.

51. January 30, 1973, letter from Thomas E. Kauper to Albert D. Brandon.

52. April 2, 1973, letter from Marcus A. Rowden to Richard G. Kleindienst.

53. April 20, 1973, letter from Thomas E. Kauper to Bertram H. Schur.

54. April 24, 1973, letter from Thomas E. Kauper to Donald R. Allen.

55. April 24, 1973, letter from Thomas E. Kauper to Donald H. Hauser.

56. April 24, 1973, letter from Thomas E. Kauper to John R. White.

57. April 24, 1973, letter from Thomas E. Kauper to Gerald Charnoff.

58. April 24, 1973, letter from Thomas E. Kauper to Leslie Henry.

59. April 24, 1973, letter from Thomas E. Kauper to John McN. Cramer.

60. April 25, 1973, letter from Paul C. Bender to National Archives and Records Service.

61. April 25, 1973, letter from Thomas E. Kauper to Gerald Charnoff.

62. April 25, 1973, letter from Thomas E. Kauper to Reuben Goldberg.

63. April 30, 1973, letter from Reuben Goldberg to Thomas E. Kauper.

64. May 22, 1973, letter from Thomas E. Kauper to Wallace L. Duncan.

65. May 24, 1973, letter from Wallace L. Duncan to Steven M. Charno.

66. May 30, 1973, letter from Thomas E. Kauper to Gerald Charnoff.

67. June 18, 1973, letter from Wallace L. Duncan to Steven M. Charno.

68. June 27, 1973, letter from Howard K. Shapar to Elliot L. Richardson.

69. July 10, 1973, letter from Maurice E. Messier to The Cleveland Electric Illuminating Company.

70. July 23, 1973, letter from Thomas E. Kauper to Gerald Charnoff.

71. August 2, 1973, letter from Wallace L. Duncan to Steven M. Charno.

72. September 4, 1973, letter from Wallace L. Duncan to Steven M. Charno.

73. September 7, 1973, letter from Reuben Goldberg to Steven M. Charno.

74. September 11, 1973, letter from Joseph Rutberg to Joseph J. Saunders.

75. October 4, 1973, letter from Lee C. Howley to Honorable Herbert R. Whiting (plus three attached letters).

76. December 26, 1973, letter from Thomas E. Kauper to Donald R. Allen.

77. December 26, 1973, letter from Thomas E. Kauper to Wayne R. Milburn.

78. December 17, 1973, letter from Thomas E. Kauper to Howard K. Shapar.

B. The Department asserts a claim of privilege with respect to the following documents:

1. November 30, 1972, memorandum by Steven M. Charno received by Donald I. Baker (Deputy Assistant Attorney General), Joseph J. Saunders, David Leckie (Attorney, Public Counsel and Legislative Section), files and correspondence, containing an evaluation of the activities of Ohio Edison Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

2. December 8, 1972, memorandum by Steven M. Charno received by Donald I. Baker, Joseph J. Saunders, David Leckie, files and correspondence, relating to activities of Ohio Edison Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

3. March 21, 1973, memorandum by Steven M. Charno received by Donald I. Baker, Joseph J. Saunders, correspondence and files, evaluating information gathered in the Beaver Valley inquiry. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

4. July 17, 1973, memorandum by Steven M. Charno setting forth and evaluating the information gathered in this inquiry. Privileges asserted: Attorney "work product."

5. July 17, 1973, memorandum by Steven M. Charno received by Joseph J. Saunders, files and correspondence, discussing and evaluating negotiations with The Cleveland Electric Illuminating Company. Privileges asserted: Attorney-client, attorney "work product" and executive.

6. July 23, 1973, memorandum by Steven M. Charno received by Donald I. Baker, Joseph J. Saunders, files and correspondence, relating to an evaluation of the activities of The Cleveland Electric Illuminating Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

7. August 2, 1973, memorandum by Steven M. Charno received by Joseph J. Saunders, files and correspondence, relating to an evaluation of the activities of The Cleveland Electric Illuminating Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

8. August 17, 1973, letter from Steven M. Charno to Joseph J. Saunders (attaching a memorandum of even date) received by Joseph J. Saunders, files and correspondence. These documents outline and evaluate the information gathered in this inquiry. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

9. October 26, 1973, memorandum by Steven M. Charno received by Joseph J. Saunders, files and correspondence, relating to an evaluation of activities of The Cleveland Electric Illuminating Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

10. December 14, 1973, memorandum by Steven M. Charno received by Joseph J. Saunders, files and correspondence, relating to an evaluation of the activities of The Cleveland Electric Illuminating Company. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

11. January 7, 1974, memorandum by Steven M. Charno received by Joseph J. Saunders, files and correspondence, relating to a conversation concerning The Cleveland Electric Illuminating Company and the Perry license application. Privileges asserted: Attorney-client, attorney "work product", executive and informers.

Discovery Request Number 5

The requested activities of each of the Applicants are listed separately.

A. The Cleveland Electric Illuminating Company (hereinafter CEI)

The Borough of Pitcairn, Pennsylvania (hereinafter Pitcairn), requested participation in the CAPCO Pool in a December 5, 1967, letter to CEI. CEI never responded to this request, thus effectively foreclosing such membership.

On December 12, 1973, CEI explicitly refused to allow Cleveland to participate in the CAPCO Pool.

Although numerous discussions have taken place from 1972 until the present regarding Cleveland's repeated requests for access to the nuclear generating facilities owned by CEI, the Department is unaware of any meaningful offer by CEI relating to Cleveland's possible participation in such facilities.

Cleveland has, since at least January of 1970, sought a permanent interconnection with CEI to permit coordinated operation between the two entities, but no agreement has been concluded between the parties.

On August 30, 1973, after professing at some length its unconditional willingness to negotiate, CEI refused to wheel power for AMP-O to Cleveland. This refusal was explicitly based on anticompetitive grounds. CEI has also informed Cleveland that it would not wheel any power for Cleveland except power from one of CEI's nuclear units.

Numerous other activities have been alleged by Cleveland concerning CEI's anticompetitive activities in the retail sale

of electric power but the Department does not now have available sufficient information to determine whether it may adopt such allegations as well founded.

Since at least June of 1971, the City of Painesville has sought an interconnection with CEI to allow for coordinated operation. To date, no agreement has been reached and it has been questioned whether CEI is negotiating in good faith. The Department was assured by CEI in the course of the Beaver Valley inquiry in early 1973 that such an agreement would be executed within several months. The same situation appears to be true with respect to Painesville's request for access to a CEI nuclear generating facility.

B. Duquesne Light Company (hereinafter Duquesne)

Pitcairn requested participation in the CAPCO Pool in a December 5, 1967 letter to Duquesne. This request was denied by a letter from Duquesne dated January 2, 1968.

Prior to 1968, Duquesne refused to sell bulk power to Pitcairn.

Prior to September 1972, Pitcairn found it impossible to arrange with Duquesne to engage in coordinated operation.

Duquesne, by letter dated December 10, 1973, explicitly refused Cleveland's request to be allowed to join the CAPCO Pool.

C. Ohio Edison Company (hereinafter Ohio Edison)

Prior to September 11, 1972, Morrow Electric Cooperative in Mt. Gilead, Ohio, was unsuccessful in getting Ohio Edison to extend transmission lines a short distance to a new substation.

Pitcairn requested participation in the CAPCO Pool by a December 5, 1967, letter to Ohio Edison. In a reply letter dated January 2, 1968, Ohio Edison refused this request.

In 1968, Ohio Edison refused to become a party to the Power Delivery Agreement which Buckeye Power, Inc. (hereinafter Buckeye) has with six other electric utilities: Ohio Power Company, Columbus & Southern Ohio Electric Company, Cincinnati Gas & Electric Company, Dayton Power & Light Company, Toledo Edison, and Monongahela Power Company. The Power Delivery Agreement provides for the wheeling of power from large-scale fossil generation owned by Buckeye to various distribution systems, some of which are in competition with Ohio Edison.

From June 1968 through January 1973, Ohio Power Company, on behalf of Buckeye, requested that Ohio Edison establish four new delivery points under terms and conditions contained in an agreement between Ohio Edison and Ohio Power Company. Due to allegedly unreasonable demands made by Ohio Edison, none of these delivery points were ever established.

D. Pennsylvania Power Company

Pitcairn requested participation in the CAPCO Pool in a December 5, 1967, letter to Pennsylvania Power Company. By reply letter dated January 2, 1968, Pennsylvania Power Company refused this request.

E. The Toledo Edison Company (hereinafter Toledo Edison)

Pitcairn requested participation in the CAPCO Pool in a December 5, 1967, letter to Toledo Edison. In a reply letter dated December 19, 1967, Toledo Edison refused this request.

On at least two occasions between September 1971 and March 1972, Toledo Edison refused to consider joint ownership with the City of Napoleon of large-scale generating facilities.

On at least three occasions between September 1971 and March 1972, Toledo Edison refused to wheel power from the Ohio Power Company's transmission facilities to the City of Napoleon.

On at least three occasions between September 1971 and March 1972, Toledo Edison refused to engage in coordinated operation with the City of Napoleon.

Toledo Edison and Ohio Power Company are allegedly parties to a wholesale territorial allocation agreement.

Prior to May 1971, Bryan, Ohio, indicated an interest in coordinated operation with Toledo Edison, but all efforts to reach an agreement have been fruitless.

Toledo Edison blocked Bryan, Ohio, from obtaining relatively low cost electric power from North Western Electric Cooperative, Inc., headquartered in Bryan, Ohio, by refusing to allow its transmission facilities to be used for the delivery of this power.

Discovery Request Number 6

The Department maintains that there is a clear, demonstrable nexus between a situation inconsistent with the antitrust laws, comprised, in part, by the specific anticompetitive acts and practice set forth in response to the Discovery Request Number 5, and the activities under the licenses sought in this proceeding.

The Applicants' interrogatory, as presently phrased, is based on the assumption that a party must allege the existence of nexus between each specific anticompetitive act that exists and the activities under the license. This assumption is clearly false. All that is required of a party is an allegation and proof that there is a nexus between a situation inconsistent with the antitrust laws and the activities under the license. For an expanded exposition of the Department's position in the restricted context of a refusal to wheel power, see pages 3 through 9 of Response by the Department of Justice to Applicants' Motion for Summary Disposition, filed October 10, 1974.

Discovery Request Number 7

There are no documents other than those already produced which are producible under this request.

Discovery Request Number 8

A. Copies of the following documents are produced herewith:

1. October 19, 1966, letter (with attachments) from Jack J. Ratcliffe to Donald E. Bootes.
2. February 2, 1970, memorandum to files from Charlie Jack.
3. July 9, 1971, letter (with enclosures) from Claude W. Eppard to Charlie Jack.
4. August 4, 1971, letter from Howard A. Cummins to Claude W. Eppard.
5. September 21, 1971, letter from Charlie Jack to Claude W. Eppard.

6. October 5, 1971, letter from Charlie Jack to Claude W. Eppard.

7. February 28, 1972, letter (with enclosures) from Charlie Jack to William Lewis.

8. May 2, 1973, letter from Howard A. Cummins to Marvin Keck.

9. May 23, 1973, letter from Marvin Keck to Howard A. Cummins.

Documents produced under any of the above requests which would also fall within the scope of this request have not been enumerated herein.

B. The Department asserts a claim of privilege with respect to the following document:

September 14, 1973, letter to Thomas E. Kauper relating to activities of Ohio Edison. Privileges asserted: attorney "work product" and informers.

Discovery Request Number 9

Copies of the following documents are produced herewith:

1. October 5, 1965, letter from John W. King to D. Bruce Mansfield.

2. October 19, 1965, letter from D. Bruce Mansfield to John W. King.

3. December 6, 1965, letter from Howard Cummins to Philip Sporn.

4. January 3, 1966, letter (plus attachments) from Howard A. Cummins to Philip Sporn.

5. April 20, 1966, letter from John W. King to Richard M. Dicke.

6. April 25, 1966, unsigned letter to Leslie Henry.

7. April 29, 1966, letter (with enclosure) from Philip Sporn to John W. King.

8. May 12, 1966, letter from Howard A. Cummins to Ohio Power Company.

9. June 14, 1966, memorandum of discussion with John K. Davis.

10. June 23, 1966, letter from John W. King to Richard M. Dicke.

11. February 28, 1967, letter (with attachments) from A. N. Prentice to John K. Davis, et al.

12. March 10, 1971, letter from Roger Waite to Howard A. Cummins.

13. March 15, 1971, letter from Howard A. Cummins to Roger Waite.

14. December 17, 1971, letter from F. Byron Wortman to David Upp.

15. Press release of December 13, 1971.

16. January 17, 1972, letter from Charlie Jack to John Hayes.

17. June 6, 1973, letter from M. R. Dorsey to Hohn Cloer.

18. June 21, 1973, letter from F. Byron Wortman to Marvin Keck.

19. July 16, 1973, letter from Charlie Jack to F. Byron Wortman.

20. July 23, 1973, letter from Marvin Keck to F. Byron Wortman.

21. July 24, 1973, letter from Howard A. Cummins to Marvin Keck.

22. July 1973 letter from M. R. Dorsey to customers of the City of Napoleon.

23. August 7, 1973, letter from Charlie Jack to Marvin Keck.

Documents which have been produced under other document requests which would also fall within the scope of this request are not enumerated herein.

Discovery Request Number 10

This request need not be answered at this time. See Order on Objections to Interrogatories and Document Requests, docketed October 11, 1974, Item Number 146.

Discovery Request Number 11

As noted in the Perry advice letter, the source of and basis for the quoted statement is an October 9, 1971, Memorandum from R. H. Bridges, CEI Public Information Department, to Lee C. Howley, CEI Vice President and General Counsel; Exhibit 24, City of Cleveland v. Cleveland Electric Illuminating Company (FPC Docket Nos. E-7631, E-7633 and E-7713).

Discovery Request Number 12

On the basis of the information available to the Department at this time, the Department does adopt the stated position. The basis for this position is that at the present time Painesville

has a relatively small, isolated electric power system which does not have available to it the relatively inexpensive electric power available through coordinated operation or development with other utilities. Because it is a small system, it cannot afford to construct nor utilize the large generating units which, because of economies of scale, produce the least expensive electric power available. Painesville must use smaller generating units which produce more costly electric power. Furthermore, since Painesville is an isolated system, it cannot engage in coordinated operation. As such, Painesville is at a very severe competitive disadvantage vis-a-vis CEI, which completely surrounds it and which engages in both coordinated operation and development with the other members of CAPCO and has access to large-scale, low-cost generating facilities. If Painesville is to remain a competitor of CEI, it must therefore gain access to the same benefits of coordinated operation and development now enjoyed by CEI.

Discovery Request Number 13

On the basis of the limited information available to the Department at this time, the Department does adopt the position stated. The same reasons stated in response to Discovery Request Number 12 are applicable here. The present emergency interconnection between CEI and Cleveland does not provide an adequate basis for coordinated operation between the two systems.

By virtue of CEI's stipulated dominance and the anticompetitive acts and practice enumerated in response to Discovery

Request Number 5, a situation inconsistent with, indeed, violative of, the antitrust laws exists. The wheeling of power to Cleveland by CEI, as well as the other aspects of coordinated operation, appears necessary to remedy this situation.

Discovery Request Number 14

The basis of the quoted statement is the enumeration of a number of other anticompetitive acts by Applicants in the Perry advice letter prior to the mention of a refusal to wheel by CEI. Thus, within the context of the Perry advice letter, the refusal to wheel constituted further anticompetitive behavior.

Discovery Request Number 15

Refusals by CEI, a dominent utility possessing monopoly power, to wheel 30 mw of PASNY power to Cleveland is a highly anticompetitive act which is, in turn, a relevant element of a situation inconsistent with the antitrust laws. See the response to Discovery Request Number 6 for a discussion of the necessary nexus between a situation inconsistent with the antitrust laws and activities under the license.

Discovery Request Number 16

This request need not be answered at this time. See Order on Objections to Interrogatories and Document Requests of October 11, 1974, Item Number 146.

Discovery Request Number 17

The basis for that portion of the quoted statement relating to Cleveland was the allegations contained in Applicants' "Application For Subpoenas", and the supporting materials

supplied therewith, filed in the present proceeding on March 27, 1974. The failure to make reference to Painesville's request for access was due to an oversight by the author of the brief; this omission was made without reference to or knowledge of the undersigned.

Respectfully submitted,

Steven M. Charno

STEVEN M. CHARNO

Melvin G. Berger

MELVIN G. BERGER

Attorneys, Antitrust Division
Department of Justice
Washington, D.C. 20530

Subscribed and sworn to before me
this 27th day of November, 1974.

Yvonne Jane

NOTARY PUBLIC

My commission expires July 14, 1978

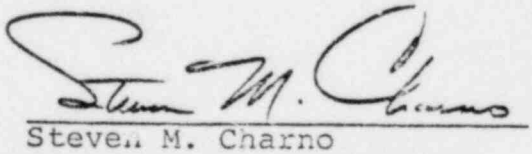
UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
The Toledo Edison Company	)	
The Cleveland Electric Illuminating Company	)	Docket No. 50-346A
(Davis-Besse Nuclear Power Station)	)	
	)	
The Cleveland Electric Illuminating Company, et al.	)	Docket Nos. 50-440A and 50-441A
(Perry Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE OF DEPARTMENT OF JUSTICE TO APPLICANTS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class or airmail, this 29th day of November 1974.



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