UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

In the Matter of	)	
	)	
THE TOLEDO EDISON COMPANY and	)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY	)	Docket No. 50-346A
(Davis-Besse Nuclear Power Station, Unit 1)	)	
	)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.	)	
(Perry Nuclear Power Plant, Units 1 and 2)	)	Docket Nos. 50-440A 50-441A
	)	
THE TOLEDO EDISON COMPANY, ET AL.	)	
(Davis-Besse Nuclear Power Station, Units 2 and 3)	)	Docket Nos. 50-500A 50-501A

1-14-77

MOTION FOR AN ORDER STAYING, PENDENTE LITE, THE ATTACHMENT OF ANTITRUST CONDITIONS

1. With the announcement on January 6, 1977 of the Initial Decision in this antitrust proceeding, the way has been cleared for issuance of the requested operating licenses and construction permits for the subject Davis-Besse and Perry units upon completion of the remaining environmental and safety hearings pertaining thereto. While Applicants recognize that there is authority for imposing the proposed antitrust conditions on such licenses or permits notwithstanding the pendency of an appeal (see 42 U.S.C. § 2133; 10 C.F.R. § 50.50), we believe that it is well within the Commission's power as a proper exercise of its discretion to issue the

operating licenses or construction permits now but stay the imposition of the antitrust conditions until the Atomic Safety and Licensing Appeal Board ("Appeal Board") has heard and decided all exceptions to the Initial Decision. Cf. Consolidated Edison Company of New York, Inc., et al. (Indian Point Station, Units 1, 2 and 3), ALAB-357 (November 10, 1976) (Slip Opinion).

2. Accordingly, pursuant to Section 2.764 of the Commission's Rules of Practice (10 C.F.R. § 2.764) and the authority of the Appeal Board to entertain such motions (see Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-338, NRCI-76/7 10, 12 (July 14, 1976); Northern Indiana Public Service Company (Bailly Generation Station, Nuclear 1), ALAB-192, 7 A.E.C. 420 (1974)),[1/] Applicants

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1/ Applicants candidly admit that they are requesting this Board to grant a stay, rather than filing their motion with the Licensing Board, because they believe the latter body has necessarily decided (albeit erroneously in our view) the relevant questions to be answered in this context adversely to Applicants. It can hardly be expected, for example, that the Licensing Board will recognize that its Initial Decision is in error both as to certain findings of fact and as to certain conclusions of law. Nor do we believe it is realistic to think that the Licensing Board, in light of the Initial Decision, can appreciate the nature of the harm to Applicants if antitrust conditions are imposed during the pendency of an appeal, or will admit to the absence of any material harm to non-Applicant entities if a stay should be granted. And finally, we see no hope of receiving an objective evaluation from the Licensing Board of the public interest factor in this context, since it has already decided that the public interest requires the attachment of the proposed license conditions.

For these reasons, Applicants believe it is essential that they seek a stay from this Board, which is not already predisposed to reject Applicants' requests for interim relief -- no matter how meritorious.

hereby move the Appeal Board to stay the effectiveness, pendente lite, of the Initial Decision of the Atomic Safety and Licensing Board ("Licensing Board") insofar as it orders the attachment of specified conditions to the licenses for the Davis-Besse and Perry facilities. As set out more fully below, good cause does exist for issuing the requested stay; the four criteria by which to measure whether an adequate showing for such relief has been made, as enumerated by the United States Court of Appeals for the District of Columbia Circuit in Virginia Petroleum Jobbers Association v FPC, 259 F.2d 921, 925 (1958), are satisfied in the present case.

3. Proceedings in this consolidated docket were initiated on July 6, 1971, when the City of Cleveland filed a petition to intervene. On March 15, 1974, the Licensing Board granted that intervention petition and consolidated the Davis-Besse Unit 1 and Perry proceedings; the Davis-Besse Units 2 and 3 proceeding was subsequently consolidated by order of July 30, 1975. The evidentiary hearing began on December 8, 1975, and continued until the close of the record on July 2, 1976.[2/] The Licensing Board's Initial Decision was issued on January 6, 1977.

4. In its Initial Decision the Licensing Board found, inter alia, that "issuance of licenses for the nuclear units

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2/ The record was left open for the limited purpose of concluding certain specified matters identified by the Licensing Board at the hearing on July 2, 1976.

involved in these proceedings without appropriate license conditions will lead to the creation and maintenance of the proscribed situation inconsistent with the antitrust laws" (Slip Op. at 254). Accordingly, the Licensing Board devised a sweeping, and in many respects novel, set of license conditions, and ordered that they be attached to the five nuclear licenses in question (Slip Op. at 255-64).

5. We have been advised by the NRC Staff that it is already in the process of amending the outstanding construction permit issued for Davis-Besse Unit 1 to include the antitrust conditions ordered by the Licensing Board. Moreover, construction of Davis-Besse Unit 1 is now essentially complete; issuance of an operating license for that facility so that fuel loading can begin is expected in February, 1977. Similarly, construction pursuant to limited work authorizations has been ongoing at the Perry Units 1 and 2 site; it is expected that the Perry construction permit can properly issue towards the end of the first quarter of 1977. Given these plant schedules, it is clear that additional nuclear licenses will issue and, in the absence of a stay, that the Licensing Board's antitrust conditions will attach thereto prior to the time necessary for Applicants to secure review from the Appeal Board of the Initial Decision. In such circumstances Applicants believe it appropriate for the Appeal Board to issue an order staying the

effectiveness of the proposed license conditions while Applicants challenge the validity of the underlying Initial Decision, as well as the propriety of the specific conditions proposed by the Licensing Board.

6. The Commission has previously cautioned that the "groundbreaking nature of the initial decisions in this new area of the Commission's responsibility" requires careful analysis of each case (see Louisiana Power & Light Company (Waterford Steam Electric Generating Station, Unit 3), CLI-73-7, 6 A.E.C. 48, 49 (1973)). As recently recognized by the Supreme Court of the United States, one should not jump too quickly to talismanic solutions when dealing with unique antitrust considerations involving business relationships not previously subjected to judicial scrutiny (see United States v Topco Associates, Inc., 405 U.S. 596, 607 (1972); White Motor Co. v United States, 372 U.S. 253, 263 (1962)). It hardly needs to be stated that the law to be applied in antitrust hearings under Section 105c of the Atomic Energy Act (42 U.S.C. § 2135(c)) still remains in its early gestation period. Aside from the present case, only one other contested antitrust proceeding has advanced to the initial decision stage (see Consumers Power Company (Midland Plant, Units 1 and 2), LBP-75-39, 2 N.R.C. 29 (1975)). In that case the licensing board reached conclusions of law, and even made findings of fact on similar matters,

contrary to those reached here. In this relatively unsettled state of the law, it makes better sense, we believe, both in terms of the private and the public interests involved, to defer imposition of the license conditions proposed here by the Licensing Board until this Appeal Board has had an opportunity to examine fully the findings and conclusions challenged by the parties (or any of them) as erroneous.

7. While the Licensing Board's decision permits immediate issuance of the requested license or permit (10 C.F.R. § 2.764), the Commission's Rules of Practice explicitly recognize that an initial decision is a non-final order of the Commission when a party aggrieved by the order files exceptions (10 C.F.R. § 2.760(a); see also 10 C.F.R. §§ 2.762, 2.770(b)). Applicants fully intend to file exceptions to the January 6, 1977 antitrust decision. Given the very limited scope accorded by the rules to an initial decision on appeal and the groundbreaking nature of this proceeding, the present case is one where exercise of the Appeal Board's discretion to issue a stay is, we submit, singularly appropriate. In this regard, this Board has adopted the criteria set forth in Virginia Petroleum Jobbers, supra, as the standard by which a motion seeking a stay should be measured (Public Service Company of New Hampshire, supra, NRCI-76/7 at 13 and cases cited therein). Those criteria are discussed seriatim.

A. Has the movant made a strong showing that it is likely to prevail on the merits of its appeal?

8. While it may well be difficult for the Appeal Board to gauge the extent to which the Initial Decision rendered by the Licensing Board is in error without making a detailed examination of the record below, Applicants believe there are sufficiently numerous errors of law and fact apparent even upon the most cursory reading of the Licensing Board's decision to indicate that Applicants are likely to prevail on the merits of their appeal. Some of the more glaring examples are listed below:

(a) The failure of the Licensing Board to take into account the significant economic and legal barriers to competition in the electric utility industry which requires evaluation of antitrust principles on other than the "procompetitive presumption" relied upon below;

(b) The failure of the Licensing Board to make any assessment as to whether competition between electric entities in the electric utility industry is in fact in the public interest;

(c) The failure of the Licensing Board to follow in a meaningful manner the direction of the Commission that there be a "substantial connection" between the alleged anticompetitive practices and the subject nuclear facilities, opting instead for a simplistic and overly-glib nexus standard that

bears no relation to the practicalities of the electric utility industry;

(d) The failure of the Licensing Board to find, and thereby apprise the reviewer of fact, whether Applicants possess monopoly power in any relevant market or possess a degree of market power sufficient to suggest a dangerous probablility that they will acquire monopoly power in any relevant market;

(e) The failure of the Licensing Board to indicate if the conduct found to be inconsistent with the antitrust laws constituted monopolization, attempted monopolization, or conspiracy to monopolize;

(f) The failure of the Licensing Board to indicate in which (if any) of the three product markets and six geographic markets it enumerated as relevant, the challenged conduct constituted monopolization, attempted monopolization, or conspiracy to monopolize;

(g) The failure of the Licensing Board to determine whether any of the alleged restraints on alienation or alleged refusals to interconnect, wheel power, or offer pool membership where unreasonable within the meaning of the antitrust laws;

(h) The inclusion of numerous findings of fact not supported by substantial evidence on the record considered

as a whole;[3] and

(i) The imposition of license conditions that exceed the jurisdictional authority of the Licensing Board and the Commission by, inter alia, requiring relief as to "future" nuclear facilities not the subject of the present proceeding and requiring the provision of services that bear no relation to participation in, and operating arrangements of, the five specific nuclear facilities under consideration.

9. While the above list is by no means exhaustive, it is representative of the serious infirmities found throughout the Initial Decision.[4] Moreover, it allows the Appeal Board to gauge, even at this incipient stage of the appellate

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3/ Detailed consideration of this claim would require thorough review of the record which is clearly impossible, and most probably inappropriate, at this time. Applicants will, of course, fully apprise the Appeal Board of their position on this question at a later date. For now, however, Applicants believe special note should be made of this claim, because, in our view, the errors are so numerous and deep-seated as to raise serious questions about the entire fact finding process. A measure of the error is evident from a reading of the Initial Decision. The consistent failure of the Licensing Board even to recognize, let alone grapple with and evaluate, most of the evidence introduced by Applicants during the course of the seven months of evidentiary hearings bears particular note. Rather, the Licensing Board habitually bases its findings on the direct testimony of witnesses offered during the direct case of our adversaries, or on a clear misreading of documents, or, on numerous occasions, without any reference at all to the record.

4/ Applicants are, of course, still in the process of analyzing the Initial Decision with a view toward filing exceptions. As reflected in our Motion For An Extension Of Time, we are not yet close to being in a position to articulate all the errors, but can simply highlight those which are obvious on the basis of our preliminary review of the Licensing Board's opinion.

process, the likelihood of Applicants' success on the merits (compare Public Service Company of New Hampshire, supra, NRCI-76/7 at 13-14). On this basis alone, the stay is warranted. Moreover, even if such an assessment could not be so easily made, the three other criteria enumerated in Virginia Petroleum Jobbers (id. at 14-15) would fully support the present motion.

B. Has the movant shown that, without such relief, it will be irreparably injured?

10. If Applicants' request for a stay is denied, and Applicants are eventually successful on appeal, the premature implementation of the Licensing Board mandated license conditions will cause injury to these private utilities which is not only particularly unique and significant, but which also cannot be repaired in any meaningful sense. Moreover, by refusing the stay, this Board will place Applicants in the untenable position of being forced to live with a set of conditions which they are challenging on very practical, as well as legal, grounds, as being in certain respects virtually impossible to perform. Fundamental considerations of due process require that Applicants not be denied their opportunity to argue their position forcefully by reason of an implementation order that compels them in advance to do that which they cannot realistically do and should not in law or fact be required to do.

11. Most obviously, denial of the requested stay will have an unsettling impact on all relationships between Applicant and non-Applicant entities. At the present time, those relationships are governed by various contractual commitments, all of which are on file with the Federal Power Commission ("FPC"). To change those commitments in any respect requires an amendment to the existing FPC-filed contracts or a filing with the FPC of new contracts. A flurry of such activity such as is likely to be touched off by the imposition of the referenced license conditions serves no legitimate purpose if at some date in the not-too-distant future those amendments or filings will have to be redone because the ground rules again have changed. Moreover, the costs and expenses involved in negotiating, and then renegotiating, contracts with non-Applicant entities can be considerable, and it is, of course, the consumer of electricity, i.e., the public at large, who bears the brunt of this needless expense.

12. There is an additional, and perhaps far more serious, financial injury to Applicants and the customers they serve throughout Ohio and Pennsylvania that will follow a denial of the requested stay. It seems clear to Applicants that the mandated license conditions give non-Applicant entities preferential access to the assets of Applicants' systems.

This is most easily seen from the requirement that Applicants must make available up to 10% of the capacity of the Davis-Besse and Perry Units (or 20% of future units) without regard to the size or the needs of the requesting entities.[5/] Apparently, such a requirement is premised on a finding that preferential access is necessary to cure some situation (although we are not advised which one) that the Licensing Board found to be inconsistent with the antitrust laws. If that finding is later reversed, or if it is determined that, even in the face of such a finding, the Commission is not authorized to require preferential access, immediate imposition of conditions affording preferential access will result in irreparable financial loss to Applicants and their customers.

13. In this connection, we note that the uncontroverted evidence of record in this proceeding reflects that making available to requesting entities more than their proportional share[6/] is discriminatory and would constitute an

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5/ Applicants would point out that the last sentence of license condition 9a is totally ambiguous (Slip Op. at 263). Though an absurd result, that provision could be read to mean that ten requesting entities (or five in the case of a future unit) could take all the power from Davis-Besse or Perry, using that which they needed for their own load and selling the rest to entities outside the area. And even if that provision is read to mean that all requesting entities, in toto, can take only up to 10% of the Davis-Besse or Perry output, the Licensing Board has given no hint as to what should be done if entities request more than 10% thereof.

6/ Proportionate access was defined in the prepared testimony of Dr. Pace (which the opposing parties did not contest in any respect) to mean that a "system seeking to share in the new [nuclear] unit would have to be limited to obtaining no greater proportion of its requirement from the new unit than that which the constructing system would obtain" (A-190 (Pace) 13-14).

unacceptable preference for the customers of requesting entities to the distinct detriment of Applicants' customers (see A-190 (Pace) 9, 11-13, 14-18, 20). Since the Licensing Board appears to have adopted a position that the amount of participation a requesting entity desires in the nuclear units need bear no relationship to that entity's own system needs, it is likely that Applicants may now find their current capacity plans wholly inadequate to meet the sudden demands on their systems. In light of the concededly long lead-times that are needed in order to plan for future capacity additions, the availability now to other entities of these antitrust conditions would require Applicants to make irretrievable commitments of resources and time to new facilities which could well prove to be entirely unnecessary after review by this Board. The waste caused by such planning in response to an anticipated flood of "premature" requests will, of course, be passed through to Applicants' customers in the form of higher rates.

14. Moreover, Applicants conceivably could suffer this fate without the entities in the area receiving a direct benefit. Under the Licensing Board's proposed conditions, there is nothing to prevent entities within the so-called Combined CAPCO Companies Territory ("CCCT") from deliberately requesting an amount of excess capacity for the purpose of transmitting that "extra" power out of the area to entities that cannot

themselves obtain participation in the Davis-Besse and Perry nuclear facilities. Undeniably, Applicants did not plan and construct these units on any such basis, and, therefore, requests of this nature would necessarily undermine the ability of Applicants to meet their own load requirements, thereby further increasing the cost of power to their customers. And, not insignificantly, this very real prospect will cause Applicants and their customers to suffer irreparably not for the benefit of any entity within the area, but for the benefit of outside entities that even the Licensing Board decided were not entitled to participation.

15. Finally, Applicants and their customers will suffer a similar harm as a result of the Licensing Board mandated wheeling condition if a stay is not granted. Pursuant to the wheeling condition, non-Applicant entities may be able to preempt capacity on Applicants' transmission facilities and even require reductions of 5%, and more, in the transmission capacity-allocations previously planned for use by Applicants. The requirement of reducing available transmission capacity either means a reduction in reliability for all systems in the area (and not just Applicants' systems) or a need for the construction of additional transmission capacity. Again, this latter alternative contemplates the commitment of resources and time during the course of this appeal that will later be wasted if Applicants are successful on the merits.

C. Would the issuance of a stay substantially harm other parties interested in the proceeding?

16. To the extent that Applicants will suffer irreparable injury if the requested stay is denied because non-Applicant entities would receive unjustified preferential treatment under the license conditions ordered by the Licensing Board, one could perhaps argue that issuance of the stay might result in harm to the non-Applicant entities by denying them such preferential treatment during this interim period. Such an argument, however, does not address the sort of injury intended under the third criterion referenced in Virginia Petroleum Jobbers, supra. That injury is independent of the harm shown to exist in the event a stay is denied and centers around whether there is something unique about maintaining the status quo that would work to the disadvantage of parties other than the movant.

17. Assuming that the stay is granted, the only change in the status quo that would result if the operating license or construction permit were issued without antitrust conditions, pendente lite, would be the operation of the Davis-Besse Unit 1 facility, and the further construction of the Perry Units 1 and 2 facility during the pendency of the appeal. For an initial period of at least five months, Davis-Besse Unit 1 will not be put into commercial operation; instead,

fuel loading and low level power testing will take place. Even after the Davis-Besse plant commences generation of commercially useful power, however, issuance of the stay will not prejudice the rights of any entity wishing to obtain access to the benefits of that nuclear power. Applicants long ago formally committed themselves to affording requesting entities within the CCCT reasonable participation in Davis-Besse Unit 1, including necessary transmission services, reserve sharing arrangements, and replacement power and energy to meet emergency, maintenance or refueling needs (see Applicants Exhibit A-44). These commitments still stand; they allow entities participating in Davis-Besse Unit 1 to coordinate operation and development with respect to that unit (Mayben 7601 (4-8)). Thus, granting the stay for the period of this appeal will not in any material way harm the interests of any other party with respect to the Davis-Besse Unit 1 license.

18. Obviously, the policy commitments of Applicants that support a conclusion of no harm from staying the attachment of conditions to the Davis-Besse license, also support a similar conclusion with respect to staying the attachment of license conditions to the Perry permit. In addition, however, it is clear that no power will actually be generated from the Perry units during the pendency of the appeal. Thus, there

is no conceivable basis to argue that staying the Perry conditions will cause harm to other parties. And this conclusion would be equally true for the Davis-Besse Units 2 and 3 construction permits, even assuming that they were likely to issue during the pendency of this appeal.

D. Where lies the public interest?

19. The final factor to be evaluated in passing on Applicants' request for a stay is a determination of what action is in the public interest. The fact that Applicants are likely to succeed on the merits of their appeal (see ¶¶ 8-9, supra), that in the absence of a stay Applicants and their customers will suffer irreparable harm (see ¶¶ 10-15, supra), and that the interests of other parties will not in any meaningful sense be harmed if the stay is issued (see ¶¶ 16-18, supra), are all demonstrative of an overriding public interest in favor of granting the instant motion.

20. There is, morever, one further factor that merits some consideration. The Commission and this Appeal Board can no longer ignore the growing view in many quarters of the electric utility industry that the manner in which the Department of Justice, the Staff of the Commission, and Intervenors are implementing Section 105(c) of the Atomic Energy Act, as amended (42 U.S.C. § 2135(c)), constitutes "nuclear blackmail" and almost universally requires settlement so that plant schedules

are not disrupted (see Wall Street Journal, Feb. 5, 1976; Weekly Energy Report, April 19, 1976).[7/] Given this leverage already exercised by the other side, if applicants for nuclear licenses believed that during the time it took to appeal an initial antitrust decision, license conditions would not be stayed, there is even less likelihood of any applicant exercising its right to seek a hearing on alleged antitrust charges. It plainly is not in the public interest to encourage such a result.

21. Also not to be discounted is the fact that Commission antitrust review is being used as an excuse to conduct a full-blown antitrust inquiry into all aspects of an Applicant's business, with little or no regard for the nexus requirement. The far-reaching license conditions imposed in this proceeding underscores this approach. We would submit that the public interest is better served by refraining from

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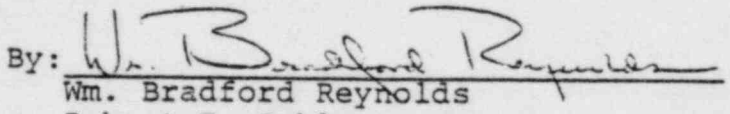
7/ Applicants anticipate that the opposing parties may respond that our motion for an extension of time reflects an intent on our part to delay unnecessarily the appeal process and thus forestall the imposition of the Licensing Board's conditions. This is not our intent; our motion for more time is made on the basis of a careful and good faith estimate of the time needed to evaluate the Initial Decision and to carefully formulate and present to this Board our exceptions thereto and the reasons therefor. We would note, moreover, that Applicants do not suggest during the pendency of the appeal that they operate Davis-Besse Unit 1 or construct Perry Units 1 and 2 without affording non-Applicant entities in the CCCT access to those plants. Rather, access to those facilities is readily available to the other entities during the pendency of this appeal in accordance with Applicants' commitments set forth in Exhibit A-44 (copy attached).

imposing on Applicants harsh penalities that may well be unjustified until this Board is satisfied that a proper evaluation of the facts of record warrant such a result when assessed in light of the legal standards articulated by the Commission in its two Waterford decisions.[8/]

WHEREFORE, Applicants request the Appeal Board to issue an order staying, pendente lite, attachment of the conditions mandated by the Initial Decision of the antitrust Licensing Board.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: 
Wm. Bradford Reynolds
Robert E. Zahler

Counsel for Applicants

Dated: January 14, 1977.

8/ See Louisiana Power & Light Company (Waterford Steam Generating Station, Unit No. 3), CLI-73-7, 6 A.E.C. 48 (1973) (Waterford I); and CLI-73-25, 6 A.E.C. 619 (1973) (Waterford II).

EXHIBIT A-44

APPLICANTS' PROPOSED LICENSE CONDITIONS

FOR

DAVIS-BESSE NUCLEAR UNIT 1 AND PERRY NUCLEAR UNITS 1 AND 2

Definitions

"Company" means _____/ or any successor or assignee of this license and includes each present or future wholly-owned electric subsidiary and any successor thereto.

"Applicable area" means that area within or to which Company is presently providing retail or wholesale or transmission service on a regular basis and any area immediately adjacent thereto within which Company could reasonably be expected to extend such service.

"Participation power" means the bulk power generated by the licensed nuclear generating unit, to which unit an entity has a contractual right to a portion of the output thereof and/or the ownership of an interest therein.

"Unit power" means participation power without an ownership interest.

"Entity" means a financially responsible person, private or public corporation (other than Applicants for this license), governmental agency or authority, municipality,

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_/ Insert Applicant's corporate identity or identities.

rural electric cooperative, joint stock association, business trust, or lawful association of the foregoing, owning, operating or proposing in good faith to own or operate facilities for the generation, transmission or distribution of electricity, provided that, except for municipalities, governmental agencies or authorities or rural electric cooperatives, entity is restricted to those which are or will be public utilities under the laws of the state in which the entity transacts or will transact business or under the Federal Power Act, and are or will be providing electric service under a contract or rate schedule on file with and subject to the regulation of a state regulatory commission or the Federal Power Commission.

"Participating entity" means any entity which participates in the ownership of or power output from Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2].

"Reserves" means the excess of the net capability of Company, or of a participating entity, after adjustment for firm purchases and sales, over the maximum load requirements (peak load as of any time) of Company, or of a participating entity.

Commitments

1. Company shall offer to entities in the applicable area which have heretofore made a timely request therefor an opportunity to participate in Company's allocated share in Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2]. Such participation shall be in reasonable amounts, and may be either by an ownership interest, by a contractual prepurchase of power arrangement, or by a unit power purchase, as mutually agreed upon by Company and the participating entity. Any entity heretofore making a request for participation must enter into a firm commitment (the validity and enforceability of which shall be acceptable to independent counsel agreed upon by the Company and the entity) to participate in Davis-Besse Unit No. 1 prior to _____, 1975 [in Perry Units Nos. 1 and 2 prior to February 1, 1976].

2. (a) Company shall interconnect, pursuant to agreement, with any participating entity in the applicable area which makes a reasonable request for such interconnection for one or more of the following purposes:

(i) to deliver participation power from Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2];

(ii) to provide replacement power and replacement energy as necessary to carry

load up to an amount equal to the participating entity's share of participation power in Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2] when the output of this nuclear unit is unavailable because of an emergency or by reasons of maintenance or refueling; or alternatively,

(iii) at the option of a participating entity, and on appropriate notice to Company, to transmit or wheel power from an entity outside the applicable area to the participating entity within the applicable area as necessary to carry load up to an amount equal to the participating entity's share of participation power in Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2] when the output of this nuclear unit is unavailable because of an emergency or by reason of maintenance or refueling;

(iv) to provide transmission services for the above.

Company shall provide to each participating entity that is a party to an interconnection agreement the above services

to the extent that Company can do so without impairing service to its customers, including other electric systems to which it has firm commitments.

(b) Interconnections pursuant to this license will not be limited to lower voltages when higher voltages are requested and are economically and technically feasible. Interconnection agreements will not embody provisions which impose limitations upon the use or resale of capacity and energy sold or exchanged pursuant to the agreement except as may be necessary to protect the reliability of Company's system. The entry into an interconnection agreement hereunder will not prohibit the parties thereto from entering into other interconnection or coordination agreements, but appropriate provisions may be included in interconnection agreements under this license to ensure that (i) Company receives adequate notice of such additional interconnection or coordination, and (ii) the parties shall jointly consider and agree upon such measures, if any, as are reasonably necessary for safety to protect the reliability of Company's system.

3. (a) Company and each participating entity shall enter into an arrangement for reserves which shall jointly establish the minimum reserve requirement to be installed and/or provided under contractual arrangements as necessary to maintain for each party a reserve margin sufficient to

provide adequate reliability of power supply. The parties shall jointly establish criteria for determining such minimum reserves for each party, which criteria shall reflect the relevant load and capacity characteristics of the respective parties, provided that, if no agreement can be reached on the criteria for determination of reserves, the participating entity's minimum reserve requirement shall be determined on the basis of the smallest reserve requirement which Company has agreed to under other similar reserve arrangements then in effect, but in no event shall the participating entity's minimum reserve be less than its largest single block of nuclear capacity, whether from Davis-Besse Unit No. 1 [Perry Units Nos. 1 and 2] or from some other nuclear facility.

(b) The parties to such a reserve arrangement shall provide such amounts of operating (ready and spinning) reserve capacity as may be adequate to avoid the imposition of unreasonable demands on the others in meeting the normal contingencies of operating their systems.

4. Company and participating entities are to be compensated, in accordance with effective agreements and rate schedules, for all facilities required and/or services rendered. The rate schedules may recognize the extent to which mutuality of such services is available to each participating

entity. Rate schedules, as required to provide for the facilities and arrangements needed to implement the license conditions herein, including provisions as are reasonably necessary to protect the adequacy and reliability of the electrical system, are to be submitted by Company to the regulatory agency having jurisdiction thereof. Company agrees to include a provision in new rate submissions associated with these license conditions, so that if the rates become effective prior to the resolution of the contested issues (associated with the rate schedules) and are thereafter reduced in accordance with the regulatory proceedings and findings, appropriate refunds (including interest) would be made to retroactively reflect the decrease. The cost of installing each connection and the cost of maintenance thereof shall be shared on the basis of net benefits to be derived from the interconnection by each party, as determined or accepted and approved by the appropriate regulatory authorities.

5. The foregoing license conditions are to be implemented in a manner consistent with the provisions of the Federal Power Act to the extent applicable, and any applicable State or local laws, and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Motion For An Order Staying, Pendente Lite, The Attachment Of Antitrust Conditions" were served upon each of the persons listed on the attached Service List, by hand delivering copies to those persons in the Washington, D. C. area, and by mailing copies, postage prepaid, to all others, all on this 14th day of January, 1977.

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: W. Bradford Reynolds
Wm. Bradford Reynolds
Counsel for Applicants

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THE TOLEDO EDISON COMPANY and THE CLEVELAND ELECTRIC ILLUMINATING COMPANY (Davis-Besse Nuclear Power Station, Unit 1)	)	Docket No. 50-346A
	)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL. (Perry Nuclear Power Plant, Units 1 and 2)	)	Docket Nos. 50-440A 50-441A
	)	
THE TOLEDO EDISON COMPANY, ET AL. (Davis-Besse Nuclear Power Station, Units 2 and 3)	)	Docket Nos. 50-500A 50-501A

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