

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



9-28-76

In the Matter of)
)
The Toledo Edison Company, and)
The Cleveland Electric Illuminating)
Company)
(Davis-Besse Nuclear Power Station,))
Units 1, 2 and 3))
)
The Cleveland Electric Illuminating)
Company)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-346A
50-500A
50-501A

Docket Nos. 50-440A
50-441A

REPLY OF
CITY OF CLEVELAND
TO BOARD ORDER OF
SEPTEMBER 20, 1976

By its Order of September 20, 1976, the Board directed the parties to file comments regarding the effect, if any, of the proposed acquisition of the Cleveland municipal electric system by CEI on the proposed findings of fact and conclusions of law filed by the parties in these proceedings.

The administration of the City and the management of CEI have apparently reached an agreement in principle with respect to the sale of the City's municipal electric system. According to the Memorandum of Understanding executed by CEI and the City the agreement must be approved by the Board of Directors of CEI not later than October 8, 1976, and by the City Council not later than November 30, 1976. The date of closing is set for January 10, 1977, in

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accordance with the 40-day period citizens to force a referendum on the sale through the initiative process following approval by the City Council. ^{1/} Such a sale must be approved by City Council. As of this date no legislation (which normally requires public hearings and three City Council meetings) has been introduced.

Both CEI and the City have recognized the possibility that the sale might not be consummated. Therefore, they have agreed that all matters sub judice should be pursued as though there were no agreement in principle.

If, for some reason, the proposed sale is not consummated, the City's need and desire for access to nuclear generation on fair and reasonable terms, including access to the full range of coordinated operation and development, would be as great or even greater than it has been in the past.

As Mayor Perk pointed out in the newspaper report, EPA orders and restrictions are making the City take a second look at the electrical system. Confronted with the lack of access to alternate bulk power supplies and therefore faced with continuing operating deficits, sale of the City's electric system now appears to be one solution. As for the sale, it speaks for itself.

The City's proposed findings of fact and conclusions of law are fully supported by the record in this case and the law applicable thereto. The record has now been closed and all parties are awaiting a decision. Nothing in the proposed sale, negotiated in the context of settlement of the City's pending antitrust action against CEI in the United States District Court for

^{1/} These dates may be extended by mutual agreement.

the Northern District of Ohio, derogates from the record support for the City's proposed findings. Prompt resolution of the issues in these proceedings remains in the interest of all parties and the general public. The principles of this case as discussed during eight months of trial and hundreds of thousands of dollars of expense to the City remain the same.

Wherefore, the City urges the Board to adopt the City's proposed findings of fact and conclusions of law and to adopt the license conditions proposed by the City.

Respectfully submitted,

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September 28, 1976

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing "Reply of City of Cleveland to Board Order of September 20, 1976" has been made on the following parties listed on the attachment hereto this 28th day of September, 1976, by depositing copies thereof in the United States mail, first class postage prepaid.

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