

UNITED STATES OF AMERICA
BEFORE THE ATOMIC ENERGY COMMISSION

In the Matter of	X	
The Toledo Edison Company	X	Docket No. 50-346A
and	X	
The Cleveland Electric Illuminating Company	X	
(Davis-Besse Nuclear Power Station)	X	

PETITION AND AFFIDAVIT OF THE CITY OF CLEVELAND, OHIO,
FOR LEAVE TO INTERVENE

The Petitioner, City of Cleveland, Ohio, pursuant to Section 2.714 of the Commission's Rules of Practice, hereby petitions to interve in the above-captioned matter. In support of this petition, Cleveland shows:

1. The City of Cleveland (Cleveland) is a municipal corporation organized and existing under and by virtue of the Constitution and Laws of the State of Ohio and the charter adopted by its people. Cleveland owns and operates a Municipal Electric Utility Generating Plant and an electric distribution system (MELP) and is engaged in competition for electric customers with Cleveland Electric Illuminating Company (CEI).

2. Correspondence, notice and orders may be directed to:

Judge Herbert R. Whiting, Director
Robert D. Hart, First Assistant Director
Department of Law
City Hall
Cleveland, Ohio 44114
Tel.: (216) 694-2000

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Reuben Goldberg, Esq.
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1700 Pennsylvania Ave., NW
Washington, DC 20006
Tel.: (202) 659-2333

3. Toledo Edison Company (Toledo Edison) and CEI (hereinafter referred to jointly as "Applicants") have filed an application for a license to operate the Davis-Besse Nuclear Power Station located in Ottawa County near Port Clinton, Ohio. The Commission has given notice of receipt of the application, of consideration of issuance of a facility operating license, and of opportunity for hearing. Pursuant to said notice, petitions to intervene are required to be filed on or before May 30, 1973.

4. Cleveland has heretofore filed a petition to intervene in the above-captioned matter (Docket No. 50-346A) in connection with the antitrust review aspects of the application under Section 105(c) of the Atomic Energy Act in which Cleveland has requested that the license be conditioned to require Applicants to grant Cleveland ownership or unit power participation in the Davis-Besse Nuclear Power Station. Although it appears to Cleveland that intervention in the operating license aspect of the proceeding may not be required to protect Cleveland's rights in the antitrust review aspects of the proceeding, out of an abundance of caution the instant petition and affidavit are filed fully to protect and preserve the rights of Petitioner in these proceedings. Cleveland's petition to intervene and all matters filed by Petitioner in support of its intervention in the antitrust review aspects of this proceeding are incorporated herein and made a part hereof.

POOR ORIGINAL

5. The Davis-Besse Nuclear Power Station is located in north central Ohio on the shores of Lake Erie approximately 21 miles east of the City of Toledo. The plant is proposed to be jointly owned by Toledo Edison (52.5%) and CEI (47.5%). The estimated construction cost of the unit, including the nuclear fuel inventory for the first core, is \$305,742,000. It is proposed that Toledo Edison have complete responsibility for operation and maintenance of the unit.

6. Toledo Edison is a privately-owned integrated electric utility which serves a 2,500 square mile area in northwestern Ohio. Toledo Edison supplies electric power at retail to 47 municipalities, including the City of Toledo, and also supplies power at wholesale to 15 municipally-owned electric systems.

7. CEI is also a privately owned integrated electric utility which serves a 1,700 square mile area in northeastern Ohio. CEI supplies electric power at retail to 89 municipalities, including part of the City of Cleveland, Ohio. It does not supply power at wholesale to any municipality, and there are only two municipal electric utility operations in the area served by CEI facilities, namely the municipal electric plant of the City of Cleveland and the municipal electric system of the City of Painesville. In 1972 CEI's electric operating revenue was \$293,342,529. CEI's 1972 peak load was 2,822 Mw and its net generation in that year was 15,546,473,000 Kwh of which 14,872,213,045 was sold to ultimate consumers. In addition to a proposed 47.5%

ownership of Davis-Besse, CEI has filed an application to construct and operate Perry Nuclear Plant Units No. 1 and 2 on Lake Erie. CEI has two 345 Kv interconnections with Ohio Edison Company and one each with Pennsylvania Electric Company and the Ohio Power Company. In addition it has three 132 Kv ties with Ohio Edison and a fourth underway.

8. Toledo Edison and CEI are both members of a five company power pool known as CAPCO (Central Area Power Coordination Group) which was organized in 1967. The other three members of the power pool are Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company, a subsidiary of Ohio Edison Company. Through CAPCO the member companies coordinate their operations, interchange power and share reserves. Generation units and transmission facilities for the CAPCO members are planned on the basis of the requirements of the members of the pool as though they constituted a single company. The Davis-Besse Nuclear Power Station is the fourth generating unit (the first nuclear unit) to be planned and constructed by members of CAPCO. CAPCO plans seven new generating unit projects, all scheduled for completion during 1975-1980. Four of these units, including Perry and Davis-Besse, will be nuclear. CEI has ownership interests in six of the seven CAPCO plants. CEI's share of Eastlake No. 5, Mansfield Nos. 1 and 2, and Davis-Besse units will add 814,000 Kw to net system capability by year-end 1976, raising total capability including peaking units to more than 4.6 million Kw.

CAPCO members serve approximately 2 million customers within a 14,000 square mile area. The projected 1971 peak load for CAPCO was 9,023 Mw.

9. MELP supplies about 20% of the Cleveland electric market. In 1971, MELP sold only 504 million Kwh compared to 14,065 million kwh sold by CEI. MELP is an isolated encircled system generating its own power. Its 1971 peak load was approximately 120 Mw. The largest unit in the system generates 80 Mw.

10. Control of all high-voltage transmission lines in the Cleveland area is in the hands of CEI. MELP does not have access to these facilities. Without such access, MELP is unable to participate with other systems in power pooling, reserve sharing, coordinated development and planning of generation and transmission. These arrangements are the rule today among electric utility systems. They make for greater reliability of service and provide economies of operation not otherwise obtainable. Access to coordination with other systems and the consequent ability to utilize large and efficient base-load units constitutes a significant economic advantage. Without access to the area or regional power exchange markets, entities such as MELP, regardless of size and efficiency, cannot achieve optimum economy and reliability and cannot compete effectively with interconnected, integrated systems that have access to the area or regional power exchange market. MELP's isolation from other electric utility

systems, which has been a factor in its inability to realize economies of scale and reliability of operations associated with coordinated development and planning and integrated operations, is not accidental. It is the design of CEI.

11. To a degree seldom encountered in the public utility industry CEI and MELP engage in direct competition for retail trade. Both operate parallel distribution networks throughout the City of Cleveland. They engage in street-by-street and house-by-house competition for customers. It is not unusual to find within the same block one building served by CEI and a neighboring building served by MELP. In this David and Goliath situation petitioner has 20% of the market and CEI has the remaining 80%.

12. In the competition between MELP and CEI, quality and reliability of service have been significant competitive factors. So long as MELP is forced to operate as an isolated system without access to a large bulk power supply and high voltage interconnection the deck will be stacked in favor of CEI. Operation and planning on an isolated basis does not produce power at a cost which permits successful competition for customers. In recent years CEI has steadily enlarged its share of the Cleveland market. While MELP's customers have suffered interruptions in service which could have been avoided if the MELP system were not isolated, similar interruptions did not exist on the CEI system because of its interties with CAPCO.

13. An open CEI company objective, enunciated in a CEI memorandum dated October 9, 1970, from R. H. Bridges to Lee V. Howley, Vice President and General Counsel of CEI is:

"to reduce and ultimately eliminate the tax-subsidized Cleveland and Painesville Municipal Electric System."

As noted above, these are the only two municipal electric utility operations in the areas served by CEI's facilities. CEI has long pursued a policy of anticompetitive practices to eliminate MELP.

14. Although the Federal Power Commission ordered CEI to make an immediate emergency energy open switch non-synchronous connection with MELP, to be energized on request, capable to delivery of 40 MW at 69,000 volts, when an emergency occurred on MELP's system on December 15, 1972 and at 10:00 a.m. the same day a request was made to energize the interconnection, CEI declined to supply emergency power unless Mr. Raymond Kudukis, Cleveland's Director of Public Utilities first agreed to release for approval by the City Council a proposed contract between the City and CEI for street lighting services. The interconnection was not energized until 4 p.m. of December 15, 1972, - 6 hours after the emergency developed.

15. On February 6, 1973, MELP again experienced an outage and requested that the 69 Kv interconnection be energized. MELP needed only 30 MW of electricity from CEI, but the President of CEI refused to energize the interconnection unless the City agreed to take 43 MW.

16. The interconnections for emergency use should not be equated with arrangements required by the City for access to power pooling, reserve sharing, coordinated development and planning, and access to the economies of scale available from participation in large scale generating units such as those enjoyed by CEI, Toledo Edison, and other members of CAPCO. The temporary 69 kv tie and permanent 138 kv tie recently ordered by the FPC do not provide such benefits. Such ties involve delivery only of emergency energy from CEI to MELP. CEI has sought to give the impression that it has stood ready for years to interconnect with MELP in order to give MELP the benefits of coordinated planning and operation, but its representations are misleading. The type of interconnection which CEI has offered is not the type the City has sought and needs -- one which provides the benefits of coordination, access to economies of scale, reserve sharing, etc. The interconnections proposed by CEI would not have provided such benefits and ameliorated MELP's condition as an isolated electric system. The interconnection CEI proposed would have basically provided only for the sale of power and would have had the inevitable result of forever removing the City from contention as a viable competitor of CEI. In fact, CEI imposed a condition on the availability of even such an interconnection which made acceptance impossible: that MELP would raise its rates to the level of CEI's rates.

17. CEI, as Cleveland will prove at the hearing on antitrust review, has employed unfair methods of competition and unfair and deceptive acts against MELP in an effort to destroy MELP as a viable competitor. Such methods and acts have included harassment and coercion of MELP's customers until they agreed to discontinue taking service from MELP and switch to CEI, disconnecting MELP's service facilities to customers without authorization and substituting CEI's services, making of cash payments by CEI to induce existing and potential customers of MELP to take service from CEI, and generating of lawsuits to jeopardize MELP's ability to maintain a competitive stance.

18. Through these and other actions all to be more fully shown at the hearings, CEI alone and acting through CAPCO and Toledo Edison acting through CAPCO and as joint owner of Davis-Besse have pursued a course of conduct which is inconsistent with the antitrust laws and the policies underlying them to foreclose competition by the City or to gain competitive advantage over the City's electric system through denial to MELP of access to low cost bulk power supply, coordinated development and planning, emergency backup, and by the use of unfair methods of competition.

19. The granting of an unconditioned license to operate the Davis-Besse Nuclear Plant will further the concentration of economic power in CEI to the

great detriment of MELP. CEI either as owner or as participant in CAPCO seeks to gain control of all nuclear generation in the north Ohio area and to exclude MELP from ever participating either through ownership of generating facilities or through unit power in the utilization of nuclear power for electrical generation.

20. The additions of additional bulk power, even through a limited operating license, will increase the reliability of the CEI system and contribute to economies of scale on the CEI system. As a direct result, CEI will obtain an overpowering advantage in its competition for customers with MELP.

21. Through its monopoly and control of high voltage transmission facilities which encircle and isolate MELP, CEI will effectively prevent MELP from participating with other parties in the construction of nuclear or conventional plants even assuming all possible sites are not usurped by CEI and CAPCO.

22. The granting of an unconditional operating license and the failure to add conditions to the construction license will result in the creation or maintenance of a situation inconsistent with the antitrust laws. To avoid the creation or maintenance of a situation inconsistent with the antitrust laws, any license issued to CEI and Toledo Edison should be conditioned to require them to grant participation in the Davis-Besse Nuclear Plant to Cleveland either through ownership participation in the plant or through the sale of unit power, together with the transmission services necessary to deliver power to MELP and together with participation with CAPCO members in coordinated operation, reserve

sharing, and development and planning of bulk power supply and transmission

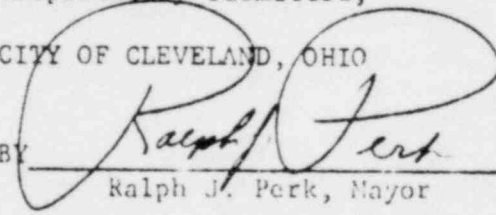
WHEREFORE, Petitioner prays that it be granted leave to intervene with respect to Applicants' application for an operating license, and to participate fully with respect to such matter, and that no operating license be granted unless it is conditioned upon Applicants' granting ownership or unit power participation in Davis-Besse Nuclear Power Station, together with the transmission services necessary to deliver the power to MELP and together with participation with CAPCO members in coordinated operation, reserve sharing, and development and planning of bulk power supply and transmission.

City has heretofore requested a 200 MW share of Davis-Besse's 906 MW. This request was made without regard to the Perry Nuclear Station. Since then, on March 23, 1973, CEI filed an application for a license to construct and operate the Perry Nuclear Plant Units 1 and 2. The City proposes to request access to 150 MW of the Perry Plant. If the City were to secure 150 MW from Perry, City would amend its request for 200 MW from Davis-Besse to 50 MW.

Respectfully submitted,

CITY OF CLEVELAND, OHIO

BY


Ralph J. Perk, Mayor

