

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

6/23/76

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
The Toledo Edison Company and)	
The Cleveland Electric Illuminating)	Docket Nos. 50-346A
Company)	50-500A
(Davis-Besse Nuclear Power Station,)	50-501A
Units 1, 2 and 3))	
)	
The Cleveland Electric Illuminating)	Docket Nos. 50-440A
Company, et al.)	50-441A
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

AMENDMENT TO THE RESPONSE OF THE DEPARTMENT
OF JUSTICE TO APPLICANTS' INTERROGATORIES

Pursuant to the June 16, 1976 order of this Atomic Safety and Licensing Board (Tr. 11,750-757) and to Section 2.740(e) of the Commission's Rules of Practice (10 C.F.R. §2.740(e)), the Department of Justice hereby amends its response of September 5, 1975, to the Applicants' interrogatories, in order to conform that pleading to the evidence now of record.

The Department's answer to Interrogatory Number 2 should be amended by adding at the end of part C the following statements:

Beginning in at least 1965, Ohio Edison refused to wheel power from Buckeye Power, Inc. to Buckeye's member

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electric distribution cooperatives. This refusal, together with Ohio Edison's failure until June 1968 to enter a contract with Ohio Power Company which would allow the distribution cooperatives to secure power from Buckeye, resulted in the elimination of Buckeye as a source of bulk power supply for its member distribution cooperatives for a period of at least six months.

Beginning in at least September, 1965, Ohio Edison and Toledo Edison engaged in a territorial allocation agreement, thereby foreclosing competition in supplying electric power.

In 1966, Ohio Edison attempted to negotiate a territorial allocation agreement with Columbus and Southern Ohio Electric Company.

Beginning in at least 1966, Ohio Edison and Dayton Power and Light Company engaged in a territorial allocation agreement, thereby foreclosing competition in supplying electric power.

From 1961 until at least 1967, Ohio Edison and Holmes-Wayne Rural Electric Cooperative engaged in a territorial allocation agreement, thereby foreclosing competition in supplying electric power.

In 1973, Ohio Edison refused to consider entering into an arrangement with Orrville for the

transmission of power by Ohio Edison either to or from Orrville.

The Department's answer to Interrogatory Number 2 should be further amended by adding at the end of part E the following statements:

Since at least the early 1960's, Toledo Edison and Ohio Power Company have engaged in a territorial allocation agreement, thereby foreclosing competition in supplying electric power.

In at least 1973, Toledo Edison and Ohio Power Company had an agreement that the two companies would not serve in the same franchise town.

The Department makes the foregoing amendments pursuant to its obligations under the Rules, in that, at the time of its initial answer, it was unaware of the facts underlying the amended answers. The Department further asserts good cause for the amendments in that information relating to all but one of the above-stated allegations is contained, in substantial part, in documents which were part of a class sought from the Applicants during discovery but not produced until February 24, 1976. The Department of Justice was not aware of the information underlying the remaining allegation, concerning Orrville, until the appearance of William Lewis to give testimony on February 26, 1976.

The Department further amends its answer to Interrogatory Number 2 as permitted by the Board's June 16, 1976 order. The first sentence of the second paragraph on page 8 (in part C)

which reads "Prior to 1972, Ohio Edison . . . than ten years" should be deleted and the following language substituted:

Prior to 1972, Ohio Edison entered into ten-year contracts with its municipal wholesale customers, some of which allowed early cancellation if the municipal system generated its entire power requirements.

Because a term of that length was not necessary to protect Ohio Edison's investment (and because conversion by a municipal system from the purchase of its power requirements to isolated self generation is not generally feasible), the contracts unreasonably limited the municipal systems' ability to obtain alternate sources of bulk power.


In addition, the first paragraph on page 12 (in part E) which reads "Toledo Edison blocked Bryan . . . on anticompetitive terms" should be deleted; at the end of the first full paragraph on page 11 (in part E) which reads "Toledo Edison . . . Buckeye Power", the following language should be substituted:

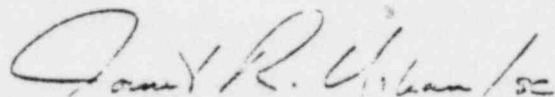
At least two municipal wholesale customers of Toledo Edison (Bryan and Napoleon) were interested in obtaining bulk power from Buckeye Power, Inc. The anticompetitive contract provisions eliminated Buckeye as a practical alternative source of bulk

power supply for Toledo Edison's municipal wholesale customers.

Respectfully submitted,


STEVEN M. CHARNO


MELVIN G. BERGER


JANET R. URBAN

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

June 23, 1976

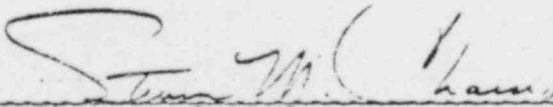
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CERTIFICATE OF SERVICE

I hereby certify that copies of AMENDMENT TO THE RESPONSE OF THE DEPARTMENT OF JUSTICE TO APPLICANTS' INTERROGATORIES have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class, airmail or by hand this 23rd day of June 1976.


STEVEN M. CHARNO
Attorney, Antitrust Division
Department of Justice

ATTACHMENT

Douglas V. Rigler, Esq.
Chairman, Atomic Safety and
Licensing Board
Foley, Lardner, Hollabaugh
and Jacobs
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Ivan W. Smith, Esq.
Atomic Safety and Licensing
Board
Nuclear Regulatory Commission
Washington, D.C. 20555

John M. Frysiak, Esquire
Atomic Safety and Licensing
Board
Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Reuben Goldberg, Esq.
David C. Hjelmfelt, Esq.
Goldberg, Fieldman &
Hjelmfelt
1700 Pennsylvania Avenue, N.W.
Suite 550
Washington, D.C. 20006

James B. Davis, Director of
Law
Robert D. Hart, 1st Assistant
Director of Law
City of Cleveland
213 City Hall
Cleveland, Ohio 44114

Gerald Charnoff, Esq.
Wm. Bradford Reynolds, Esq.
Robert E. Zahler, Esq.
Jay H. Bernstein, Esq.
Shaw, Pittman, Potts &
Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Frank R. Clokey, Esq.
Special Assistant, Attorney
General
Room 219
Towne House Apartments
Harrisburg, Pennsylvania 17105

Donald H. Hauser, Esq.
Victor A. Greenslade, Jr., Esq.
The Cleveland Electric
Illuminating Company
55 Public Square
Cleveland, Ohio 44101

Leslie Henry, Esq.
Michael M. Briley, Esq.
Roger P. Klee, Esq.
Paul M. Smart, Esq.
Fuller, Henry, Hodge & Snyder
Post Office Box 2088
Toledo, Ohio 43604

Russell J. Spetrino, Esq.
Thomas A. Kayuha, Esq.
Ohio Edison Company
47 North Main Street
Akron, Ohio 44308

Steven B. Peri, Esq.
Terence H. Benbow, Esq.
A. Edward Grashof, Esq.
Steven A. Berger, Esq.
Winthrop, Stimson, Putnam
& Roberts
40 Wall Street
New York, New York 10005

Thomas J. Munsch, Esq.
General Attorney
Duquesne Light Company
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219

David Olds, Esq.
William S. Lerach, Esq.
Reed, Smith, Shaw & McClay
Union Trust Building
Box 2009
Pittsburgh, Pennsylvania 15230

Lee A. Rau, Esq.
Joseph A. Rieser, Jr., Esq.
Reed, Smith, Shaw & McClay
Madison Building - Room 404
1155 15th Street, N.W.
Washington, D.C. 20005

Edward A. Matto, Esq.
Richard M. Firestone, Esq.
Karen H. Adkins, Esq.
Antitrust Section
30 E. Broad Street
15th Floor
Columbus, Ohio 43215

Christopher R. Schraff, Esq.
Assistant Attorney General
Environmental Law Section
361 E. Broad Street
8th Floor
Columbus, Ohio 43215

James R. Edgerly, Esq.
Secretary and General Counsel
Pennsylvania Power Company
One East Washington Street
New Castle, Pennsylvania 16103

John Lansdale, Esq.
Cox, Langford & Brown
21 Dupont Circle, N.W.
Washington, D.C. 20036

Michael R. Gallagher, Esq.
Gallagher, Sharp, Fulton,
Norman & Mollison
630 Bulkley Building
Cleveland, Ohio 44115

Jack R. Goldberg, Esq.
Benjamin H. Vogler, Esq.
Roy P. Lessy, Jr., Esq.
Office of the General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Joseph Rutberg, Esquire
Office of the Executive
Legal Director
Nuclear Regulatory Commission
Washington, D.C. 20555

William J. Kerner, Esquire
Office of the General Attorney
The Cleveland Electric
Illuminating Company
Post Office Box 5000
Cleveland, Ohio 44101