

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
THE TOLEDO EDISON COMPANY and)	NRC Docket Nos. 50-346A /
THE CLEVELAND ELECTRIC ILLUMINATING)	50-500A
COMPANY)	50-501A
(Davis-Besse Nuclear Power Station,)	
Units 1, 2 & 3))	
THE CLEVELAND ELECTRIC ILLUMINATING)	NRC Docket Nos. 50-440A
COMPANY, ET AL.)	50-441A
(Perry Nuclear Power Plant,)	
Units 1 & 2))	

NATURE OF CASE TO BE
PRESENTED BY NRC STAFF

Pursuant to paragraph (2) of Prehearing Conference Order No. 4, dated April 29, 1975 this Board has directed the parties other than Applicants to inform Applicants with respect to the nature of the case they intend to present at hearing, now scheduled to commence October 30, 1975. That Order indicated the vehicle for so informing Applicants may be answers to interrogatories served August 16, 1974. In any event, statements of ultimate issues and summaries of evidence were to be included. At a subsequent conference call, it became clear that the Board expected information as to relief to also be included.

Staff has reviewed the orders and interrogatories in view of the nature of its case and has decided that the most appropriate vehicle for Staff to inform Applicants is to address in detail the issues set forth in Prehearing Conference Order No. 2 dated July 25, 1974.

BROAD ISSUE A

Whether the structure of the relevant market or markets and Applicants' 1/ position or positions therein gives them the ability, acting individually, together, or together with others, to hinder or prevent:

- (1) Other electric entities 2/ from achieving access to the benefits of coordinated operation 3/ either among themselves, or with Applicants:
- (2) Other electric entities from achieving access to the benefits of economy of size of large electric generating units by coordinated development, 4/ either among themselves, or with Applicants:

Staff will demonstrate that each of the Applicants has the ability both individually and acting together to hinder or prevent other electric entities in various markets from achieving access to the benefits of coordinated operation and coordinated development. Staff will demonstrate through expert engineering testimony that each Applicant has numerous options to select the power supply arrangements and joint ventures needed to obtain an economic and reliable power supply system. Expert engineering testimony will also establish that other electric entities

(Where a footnote is preceded by quotation marks it is a verbatim quotation from the Licensing Board's Statement of the Issues.

- "1/ Applicants are the five participants in the Davis-Besse and Perry Nuclear Units: Cleveland Electric Illuminating (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company. The Applicants are also the five members of CAPCO, referred to below."
- "2/ Other electric entities refers to commercial firms, (other than the five Applicants), cooperatives, governmental units or similar organizations that generate, transmit or distribute electric power within the relevant market(s)."
- "3/ Coordinated operation includes but is not limited to such activities as reserve sharing, exchange or sale of firm power and energy, deficiency power and energy, emergency power and energy, surplus power and energy, and economy power and energy."
- "4/ Coordinated development includes but is not limited to joint planning and development of generation and transmission facilities."

lack most of the options needed to obtain an economic and reliable power supply system. Through expert engineering testimony Staff will demonstrate that Applicants, individually and collectively, engage in numerous power supply transactions and joint enterprises (both with each other and with non-CAPCO electric entities) which significantly reduce the costs of their bulk power supply systems while maintaining or enhancing the reliability of their systems. This expert testimony will also demonstrate that absent suitable arrangements with Applicants, most of the other electric entities do not have the ability to engage in the power supply transactions and joint enterprises in which Applicants engage, because of the size, location, and lack of facilities of these other electric entities or because Applicants have neither provided them with the necessary services as requested, nor permitted them to enter into joint arrangements with Applicants. Thus in summary, Staff will demonstrate that as a result of the capability and expanse of their transmission systems, generation capacities, and power exchanges with other electric entities Applicants individually, and as a group, have the ability to grant or deny power supply options and opportunities to other electric entities. Staff witness M, an engineer, will support this position through expert testimony, by referring in part to Applicants' responses to the Attorney General's 20 Questions, FPC Forms 1 and 12, discovery documents produced by Applicants with particular emphasis on Applicants' written contracts and power supply arrangements including all CAPCO agreements and all agreements between individual Applicants and non-CAPCO electric utilities, and other factual data.

Finally, based in part on the engineering testimony as above described, Staff witness E, an economist and an expert witness on behalf of the Staff will review the structure, so established, in terms of: (a) the market power enjoyed by Applicants, individually and as a group with others within relevant market areas, (b) the economics of the nuclear units as unique resources in relation to the market activities of the Applicants, and (c) the significance of the exercise of market power by Applicants in terms of the objectives of antitrust policy.

BROAD ISSUE B

If the answer to Broad Issue A is yes, has Applicants' ability been used, is it being used, or might it be used to create and maintain a situation or situations inconsistent with the anti-trust laws or the policies underlying these laws.

Staff will demonstrate that Applicants individually have used, are now using, and are in a position to continue to use, their ability to create and maintain a situation inconsistent with the antitrust laws. Staff will also demonstrate that Applicants collectively have used and could continue to use their ability and dominant position to refuse necessary services when requested by other electric entities. At the same time applicants have collectively prevented these other electric entities from engaging in joint arrangements with them. Staff will focus on the individual Applicants in their relationship with other power entities in the relevant markets with particular reference to the following:

Duquesne Light Company -

- (a) Refusal to sell bulk power at wholesale to the Borough of Pitcairn.
- (b) Refusal to interconnect or reach an interconnection agreement with the Borough of Pitcairn.

- (c) Refusal to permit access to the Beaver Valley Nuclear Unit #2 to the Borough of Pitcairn.
- (d) Refusal to permit the Borough of Pitcairn access to bulk power services through power pool membership.
- (e) The historical relationship between the Duquesne Light Company and municipal electric entities resulting in the present situation in which only one other electric entity (Pitcairn) remains in operation in the territory served by Duquesne.

Thus, Staff will demonstrate that Duquesne has used and has the present ability to further use its ability, acting alone and in combination with others, to create and maintain a situation inconsistent with the antitrust laws. Staff will support this position with factual testimony and introduce into evidence a number of documents produced by Duquesne on discovery.

Ohio Edison Company "OE"

- (a) A policy of requiring some of its wholesale customers to participate in customer allocation agreements which are inconsistent with the antitrust laws.
- (b) A past and present policy of refusing to provide or discuss the possibility of providing transmission services ("wheeling") of power over its transmission lines for the benefit of certain wholesale customers, notwithstanding a written request on behalf of its wholesale customers requesting such services on August 11, 1972.
- (c) A past and present policy of effectively frustrating competition between OE and with its wholesale customers for industrial loads.
- (d) A policy of imposing long-term capacity restrictions in contracts with wholesale customers which restrictions have an adverse effect on the operation and growth of the systems of said customers in a manner inconsistent with the antitrust laws.

Staff will support this position with fact witnesses (A and B), who have directly experienced this exercise of market power by Ohio Edison and introduce into evidence examples of contractual provisions contained in contracts between OE and certain of its wholesale provisions which Staff feels are inconsistent with the antitrust laws.

Pennsylvania Power Company

This company is a wholly-owned subsidiary of Ohio Edison. It is Staff's position that license conditions imposed upon the parent would also directly apply to its subsidiary. Nevertheless, the parent would also be responsible for actions inconsistent with the antitrust laws engaged in by the subsidiary. Staff will not present direct testimony relating to Pennsylvania Power, but is advised that direct evidence will be introduced at the hearing relating to:

- (a) Refusal to sell the town of Grove City, Pennsylvania partial requirements firm power for resale on certain terms.
- (b) Refusal to sell Grove City other partial requirements power for required maintenance of its system.

CLEVELAND ELECTRIC ILLUMINATING COMPANY

- (a) A general policy of refusing to wheel power for other electric entities.
- (b) Past and present refusals to wheel 30 mw of PASNY power for the benefit of the City of Cleveland or AMP-0, thereby (a) denying other electric entities access to power supply sources and options beyond the control of CEI and (b), thereby denying other such entities the ability to "wheel-out" any excess capacity.
- (c) Refusals to make either maintenance power or a range of interconnection services available to the City of Cleveland.
- (d) Refusals to provide a synchronous interconnection to the City of Cleveland.
- (e) Refusals to permit access to the Perry and Davis-Besse nuclear plants as requested in writing on April 11, 1973 by the Law Director of the City of Painesville, Ohio.
- (f) The terms and provisions of the CEI-Painesville agreement dated April 28, 1975 are anticompetitive.

Staff plans to support this with the testimony of four witnesses. The first such witness, an engineering expert, will describe the bottleneck created by the physical relationships and analyze the contractual provisions as above described. The next three witnesses will provide factual data with specific reference to (i) the relationship between CEI and the City of Cleveland; (ii) the relationship between CEI and the City of Painesville; (iii) the relationship between CEI and AMP-0, and its members.

TOLEDO EDISON COMPANY ("TE")

- (a) The effective refusal to provide transmission and other interconnection services as requested by the Cities of Napoleon and Bowling Green, Ohio.

Staff will present one witness testifying to facts in support of the above. Staff is advised that direct evidence will be introduced at the hearing relating to the following:

- (b) Toledo Edison entering into a customer allocation agreement with Consumers Power Company, which agreement is inconsistent with the antitrust laws.

- (c) Toledo Edison has required certain anticompetitive provisions in approximately 13 (now 9) contracts with its wholesale customers, pertaining to (i) competition for industrial loads and (ii) TE approval for extension of service.
- (d) Toledo Edison is a party to the Buckeye Agreements the provisions of which as enforced by TE in dealing with certain of its municipal customers are inconsistent with the antitrust laws.

MATTERS IN CONTROVERSY UNDER BROAD ISSUES A AND B

- (1) Whether the Combined CAPCO-Company Territories (CCCT) ^{5/} is an appropriate geographic market for analyzing the possible creation or maintenance of a situation inconsistent with the antitrust laws or the policies underlying those laws.

Staff will demonstrate by the use of expert economic testimony that the Combined CAPCO-Company Territories (CCCT) is a relevant geographic market for antitrust analysis.

^{5/} The Combined CAPCO Company (Central Area Power Coordination Group) Territories (CCCT) refers to the region bounded by the outer perimeters of the geographic territories of the five CAPCO members, as shown on the map submitted by CEI as Exhibit F to Information Requested by the Attorney General for Antitrust Review in connection with the Perry Nuclear Power Plant Units 1 & 2. (The map is entitled "Principal Facilities of CAPCO as of October 31, 1969" and was prepared by Duquesne Light & Co.).

- (2) Whether there are any relevant geographic submarkets, and, if so, what are the boundaries.

Staff will demonstrate that the relevant geographic submarket includes the area reached by each of the Applicant's transmission facilities.

In so demonstrating, Staff will primarily utilize testimony of its economic expert, its engineering expert and other engineering testimony and factual data that will also be presented.

- (3) Whether any or all of the following are relevant product markets for analyzing the possible creation or maintenance of a situation inconsistent with the antitrust laws or the policies underlying those laws:
 - (a) Regional power exchange transactions within power pooling arrangements involving exchanges and/or sales of electric power for resale.
 - (b) Bulk power transactions involving individual contracts for sale-for-resale of firm electric power or for emergency, deficiency or other types of wholesale power.
 - (c) Retail power transactions involving sales of electricity to ultimate consumers.

The relevant product market upon which Staff will primarily rely in its antitrust analysis is (b), i.e., the bundle of bulk power transactions, or bulk power services that are required for coordinated operation and development. Staff may also rely upon evidence relating to the contractual provisions of wholesale (bulk power) contracts which restrict or limit competition for industrial customers.

- (4) Whether Applicants' stipulated 6/ dominance 7/ of bulk power transmission facilities in the CCCT gives them the ability to hinder or preclude competition in the transmission of bulk power.

Staff will demonstrate that dominance of bulk power transmission facilities gives Applicants the ability to hinder or preclude competition in relevant markets in the transmission of bulk power by foreclosing bulk power options to the effected power entities. Staff has reviewed Applicants stipulation 8/ as to transmission dominance, and finds it equivocal as to all Applicants but CEI. Accordingly, Staff will establish dominance in fact over transmission facilities by Applicants utilizing engineering and economic testimony. Staff will then demonstrate, in a similar manner, that Applicants' transmission systems, individually and collectively, give them the ability to grant or deny power supply options and opportunities to other electric entities. Staff will then demonstrate that the transmission systems of applicants are "essential resources" under U.S. v. Terminal Railroad Association, 224 U.S. 386 (1912).

6/ Transcript pp. 448-451; 473; 483-484.

7/ Dominance here and below refers to percentage shares of 75% or more in relevant service market areas."

8/ See note 5 supra.

- (5) Assuming the answer to (4) is yes, whether Applicants have, do or could use their ability to preclude any electric entities within the CCCT from obtaining sources of bulk power from other electric entities outside the CCCT.

With reference to Staff's response to "Broad Issue B", Staff will demonstrate the following:

- a. That CEI has had, does presently have, and most certainly in the absence of appropriate license conditions could continue in the future to have the power to preclude other electric entities, such as the City of Cleveland from obtaining alternative sources of bulk power.
- b. That Ohio Edison has refused to wheel for, or to discuss wheeling with other electric entities or to admit they wheel for other investor-owned utilities. Thus OE has denied, and may continue to deny other electric entities access to bulk power sources from other entities outside the CCCT, without appropriate license conditions.
- c. That Toledo Edison has and could, without appropriate license conditions, preclude electric entities from obtaining sources of bulk power from other electric entities outside the CCCT.
- d. Only one electric entity (Borough of Pitcairn, Pennsylvania) currently exists in the geographic submarket dominated by Duquesne Light Company. The dominance of Duquesne gives it the ability in the absence of appropriate license conditions to preclude that entity from obtaining sources of bulk power from other electric entities outside the CCCT.

- (6) Assuming that the answer to (4) is yes, whether Applicants have exercised, are exercising, or intended to exercise, their ability to prevent other electric entities in the CCCT from achieving:
- (a) the benefits of coordinated operations either among themselves or with Applicants.
 - (b) access to the benefits of economy of size from large nuclear generating facilities.
 - (c) any other benefits from coordinated development either among themselves or with Applicants.

With reference to Staff's response to "Broad Issue B" and the previous responses to issues 4 and 5 above, Staff will demonstrate the following:

a. That CEI has, and continues to exercise its ability to prevent the Cities of Cleveland and Painesville, Ohio from achieving the benefits of coordinated operations and development. CEI has denied, continues to deny, and may continue to deny without appropriate license conditions the City of Painesville access as requested, to the economies of size of large nuclear generating units.

b. That Ohio Edison has prevented, and without appropriate license conditions has the ability to continue to prevent other electric entities from achieving the benefits of coordinated operations and development.

c. That Toledo Edison has prevented in the past and without appropriate license conditions has the ability to continue to prevent other electric entities such as Napoleon and Bowling Green, Ohio from achieving the benefits of coordinated operations and development.

d. That Duquesne Light Company has denied and has the ability to continue to prevent other electric entities such as the Borough of Pitcairn, from achieving the benefits of coordinated operations and development without appropriate license conditions. In addition, Duquesne had denied access to the benefits of the economy of size from the Beaver Valley No. 2 nuclear unit to Pitcairn.

- (7) Assuming the answer to (6) is yes, has this ability to hinder or preclude competition been exercised for the purpose or effect of eliminating one or more of the other electric entities in the CCCT.

Staff will present factual evidence indicating a high mortality rate among other electric entities in the relevant geographic market and submarkets. It will also present factual evidence as to the policy or policies of Applicant companies which may have contributed to this situation.

- (8) Whether Applicants' stipulated dominance of bulk power generation in the CCCT gives them the ability to hinder or preclude competition in one or more relevant markets.

This matter in controversy is the same as number (4) above, except it focuses on Applicants dominance of bulk power generation, as opposed to item (4) above which focused on transmission. Staff hereby incorporates by reference that part of its response to number (4) which deals with the significance of dominance as an aspect of this case. Staff will also establish dominance over generation facilities utilizing engineering and economic testimony. In addition, Staff will establish that the Davis-Besse Units 1, 2, and 3 and the Perry Units 1 and 2 will materially maintain and indeed enhance Applicants dominance and their ability to hinder or preclude competition in relevant markets.

- (9) Assuming the answer to (8) is yes, whether Applicants have exercised control over bulk power facilities to deny to other electric entities in the CCCT:
 - (a) access to the benefits of coordinated operation, either among themselves, or with Applicants.
 - (b) access to the benefits of economy of size of large electric generating units.
 - (c) access to any other benefits from coordinated development, either among themselves or with Applicants.

Staff herein incorporates by reference its response to number (5) and (8) above. Staff will demonstrate that Applicants' dominance of bulk power generation (as well as transmission) has given them the ability to hinder or preclude competition in the relevant markets by foreclosing bulk power options and the benefits of coordinated operation and development to the affected power entities.

- (10) Whether Applicants' policy or policies with respect to providing access to their nuclear facilities to other electric entities in the CCCT, that are or could be connected to Applicants, deprives these other electric entities from realizing the benefits of nuclear power.

Staff will demonstrate that the policies of both the Cleveland Electric Illuminating Company with respect to the Cities of Cleveland and Painesville and Duquesne Light Company with respect to the Borough of Pitcairn deprives the designated electric entities from realizing the benefits of nuclear power.

- (11) Whether there are logical connections between the activities under the proposed licenses for the nuclear facilities and each of the matters in contention (1) through (10) that meet the nexus test established by the Atomic Energy Commission. ^{9/}

Staff will demonstrate the relationship between the "situation inconsistent with the antitrust laws" and the "activities under the license". After development of the factual context, the Board will be in a position to make a determination as to the existence of a reasonable nexus. [See In the Matter of Alabama Power Company, (Joseph M. Farley Nuclear Plant, Units 1 and 2), 6 A.E.C. 5 at p. 88 (February 9, 1973)]. By "situation" Staff refers to proof of "the anticompetitive situation" pursuant to the holding of the Atomic Safety and Licensing Appeal Board in Wolf Creek. ^{10/}

^{9/} The original footnote setting forth this issue referenced the nexus test of the Atomic Energy Commission to the Waterford decisions, RAI 73-2-48, (February 23, 1973 and RAI 73-9-619 (September 28, 1973). Since that time of those decisions, the body of law within the Commission has further developed, and Staff also deems instructive the decision of the Atomic Safety and Licensing Appeal Board, In the Matter of Kansas Gas and Electric Company and Kansas City Power and Light Company (Wolf Creek Generating Station, Unit No. 1), ALAB-279, June 30, 1975, NRCI-75/ ___, at p. _____.

^{10/} Ibid.

That anticompetitive situation will be established by proof of the structure of the relevant markets and Applicants position therein, as well as a description of the market power, and its use by Applicants.

The relationship between that "situation" and the "activities under the license", i.e., the planning, building, and operation of the nuclear facilities plus the integration of the nuclear facilities in the bulk power supply systems, will likewise be demonstrated by expert testimony.

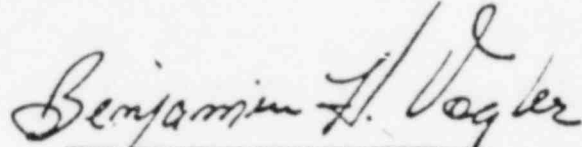
12. Remedy

At a conference call with the Chairman, it was concluded that Applicants should be advised of the nature of relief to be sought. Staff will propose license conditions which, the Staff feels will be sufficient to remedy the situation inconsistent with the antitrust laws that will be maintained or created by the activities under the license. ^{11/}

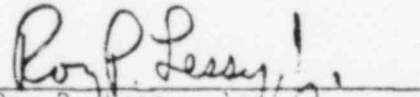
Attached is a set of conditions which the Staff believes to be appropriate in this matter. Of course, the record as developed may modify the license conditions Staff will ultimately recommend in its Proposed Findings. On the basis of the evidentiary record Staff may ultimately recommend additions to or modifications of these conditions.

^{11/} Staff will address in its pre-trial brief the broad discretion the Board has to fashion remedies it feels appropriate to remedy a situation inconsistent with the antitrust laws.

Respectfully submitted,



Benjamin H. Vogler
Assistant Chief Antitrust
Counsel for NRC Staff



Roy P. Lessy, Jr.
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of September 1975.

SAMPLE STATEMENT OF BULK POWER SUPPLY POLICIES

I. Definitions

(a) "Applicable area" means those counties in the State of _____ and any other state in which, now or in the future, the Company engages in generation, transmission and/or distribution of electric power and those areas reasonably proximate thereto.

(b) "The Company" means _____ or any successor corporation, or any assignee of the Company.

(c) "Neighboring entity" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which owns, contractually controls or operates or in good faith proposes to own, contractually control, or operate facilities for the generation or transmission of electricity, which meets each of the following criteria: (1) its existing or proposed facilities are technically feasible of interconnection with those of the Company; (2) its existing or proposed facilities are fully or partially within the applicable area; (3) it is, or upon commencement of operations, will be subject to regulation with respect to rates and/or service under applicable state law, or under the Federal Power Act, or it is legally exempted from such regulation.

(d) "Neighboring distribution system" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which engages or in good faith proposes to engage in the distribution of electric energy at retail, whose existing or proposed facilities are technically feasible

of connection with those of the Company, and which meets each of the criteria numbered (2) and (3) in subparagraph (c) above.

II. Interconnections

(a) The Company shall interconnect and operate in parallel pursuant to written agreements with any neighboring entity.

(b) Interconnection agreements shall not be limited to lower voltages when higher voltages are requested and available and shall not be limited to higher voltages when lower voltages are requested and available.

Interconnection agreements shall provide for the necessary operating procedures and control equipment as required for the safe and prudent operation of the interconnected systems.

(d) Interconnection agreements shall not embody provisions which impose limitations upon the use or resale of capacity and energy except as may be necessary to protect the reliability of the Company's system.

(e) Interconnection agreements shall not prohibit the parties from entering into other interconnections or coordination agreements, but may include appropriate provisions to protect the reliability of the Company's system, and to insure that the Company is compensated for additional costs

resulting from such other interconnections or coordination agreements.

III. Reserve Coordination

(a) The Company and neighboring entities with which it interconnects shall mutually establish a level of minimum reserves to be installed or provided as necessary to maintain a total reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems. The minimum reserve margin thus determined shall be stated as a percentage of the estimated annual peak load (adjusted for purchases and sales of firm power) of the interconnected systems. No party to the interconnection shall be required to install or provide more than such percentage of its adjusted peak load as its minimum reserve margin.

(b) The Company shall sell emergency power to any neighboring entity which maintains the minimum reserve margin established pursuant to paragraph (a) above. The Company shall engage in such sales when requested if and when capacity and energy are available from its own generating resources or from those of interconnected electric systems, but only to the extent that it can do so without impairing service to its customers. Emergency power shall be furnished to the fullest extent available from the supplying party and desired by the party in need.

(c) The parties to reserve coordination transactions pursuant to this section shall maintain such amount of operating reserves as may be adequate to avoid the imposition of unreasonable demands on any other party(ies) in meeting the normal contingencies of operating their systems. However,

in no circumstances shall a party's operating reserve requirement exceed its minimum reserve requirement established pursuant to paragraph (a) above.

(d) The Company, if it has generating capacity in excess of the amount called for by its own reserve criteria, shall promptly offer, any such excess to a neighboring entity to meet such entity's own minimum reserve margin.

(e) The Company shall prepare with neighboring entities who request to do so, joint maintenance schedules and shall engage in sales of maintenance power and energy when it can reasonably do so.

IV. Other Power Exchanges

Should the Company have on file, or hereafter file, with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, intermediate-term capacity and energy, long-term capacity and energy, economy energy, or other forms of capacity and energy, the Company shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity. The Company shall respond promptly to inquiries of neighboring entities concerning the availability of capacity and energy from its system.

V. Wholesale Power Sales

The Company shall sell power on a full or partial requirements basis to any neighboring distribution system. Wholesale power sales agreements

shall not restrict use or resale of power sold pursuant to such agreements except as may be necessary to protect the reliability of the Company's system. Such power will be delivered at the voltage requested if available. The Company shall not be required to make any such sale if it does not have available sufficient generation or transmission to provide the requested service.

VI. Transmission Services

(a) The Company shall transmit power (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected, (2) between two or among more than two neighboring entities or sections of a neighboring entity's system which are geographically separated with which, now or in the future, Company is interconnected, (3) between a neighboring entity with whom, now or in the future, it is interconnected and one or more neighboring distribution system(s) with which, now or in the future, it is connected, and (4) between any neighboring entity or neighboring distribution system(s) and any other electric system engaging in bulk power supply outside the applicable area between whose facilities the Company's transmission lines and the transmission lines of other electric systems form a continuous electrical path. Any neighboring entity or neighboring distribution system(s) requesting such transmission service shall give reasonable advance notice to the Company of its schedule and requirements. The Company shall not be required to provide transmission service if to do so would jeopardize the Company's system reliability.

(b) The Company shall include in its planning and construction programs such increases in its transmission capacity as may be required for the transactions referred to in paragraph (a) of this Section, provided any neighboring entity or neighboring distribution system gives the Company sufficient advance notice as may be necessary to accommodate its requirements from a technical standpoint.

VII. Access to Nuclear Generation

(a) The Company shall afford any neighboring entity or neighboring distribution system that has made a written request prior to _____, an opportunity to participate in the ownership of or to purchase a portion of the output from Davis-Besse Units 1, 2 & 3 and Perry Nuclear Units 1 & 2, whichever the requesting party elects, up to a reasonable amount of kilowatts. This participation shall be on a basis that will compensate the Company for its costs, incurred and to be incurred. The Company shall provide promptly any requesting entity with sufficient data to enable such entity to make a feasibility study as to its participation.

(a) The Company shall afford up to a reasonable amount in kilowatts any neighboring entity or neighboring distribution system that makes a timely written request, an opportunity to participate in the ownership of or to purchase a portion of the output, whichever the requesting party elects, from any other nuclear generating unit of the Company or in which the Company obtains an ownership interest. The Company shall mail to all neighboring entities and neighboring distribution systems, no later than

the date of its public announcement of the proposed construction of any such unit(s), all available data relevant to the nuclear facility (including estimates and projections) to enable any such entity or system to make a feasibility study as to its participation. A request for participation with respect to such nuclear units shall be deemed timely if made within 270 days after the public announcement by the Company of the proposed construction of such units.

(c) Any neighboring entity or neighboring distribution system making a timely request for participation in any nuclear unit of the Company, including the Davis-Besse Units 1, 2 & 3 and Perry Units 1 & 2, must enter into a legally binding and enforceable agreement within one year from the date the Company, in fact, provides the data as required in Section VII (a) and (b) above. The Company may require the inclusion in any ownership agreement provided for in this Section of provisions for (1) a prorata payment at the time of the signing of the agreement of all costs incurred up to that date and (2) additional prorata payments thereafter as The Company becomes obligated to expend funds for the planning or construction of said units and facilities.

(d) The Company shall transmit power from the Perry and Davis-Besse Units, or any future nuclear unit it may own, operate or participate in, to any neighboring entity or neighboring distribution system which is a participant in such unit, consistent with the requirements of Section VI of these commitments.

VIII. Regulatory Aspects

Rate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies herein, are to be submitted by Company to the regulatory agency having jurisdiction thereof. Company agrees to include a provision in new rate schedule submissions associated with these license conditions, so that if the rates become effective prior to the resolution of 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.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NATURE OF CASE TO BE PRESENTED BY NRC STAFF, dated September 5, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail, this 5th day of September 1975:

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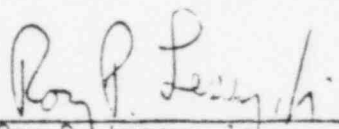
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