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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
The Toledo Edison Company and	)	Docket Nos. 50-346A
The Cleveland Electric Illuminating	)	50-500A
Company	)	50-501A
(Davis-Besse Nuclear Power Station,	)	
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)	)	

STATEMENT OF THE CITY OF CLEVELAND  
INFORMING APPLICANTS OF THE NATURE OF  
THE CASE TO BE PRESENTED

This Statement is filed by the City of Cleveland (Cleveland) in response to Prehearing Conference Order No. 4 and to furnish Applicants with statements of ultimate issues to be tried and a summary description of evidence to be introduced relating to each of these issues. With respect to summary descriptions of evidence contained herein, Cleveland wishes to make it clear that such statements are simply summaries and that Cleveland would reserve the right to offer evidence not specifically referred to in the summaries contained herein. Cleveland is still in the process of reviewing and evaluating the documents and depositions obtained during the discovery. Between September 5, 1975 and October 30, 1975, Cleveland anticipates that the evi-

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dence to be presented will undergo further refinement in the form of additions to or deletions from the evidence referred to in the summaries.

For the convenience of the Board and the parties to this proceeding, Cleveland will follow the format of the Matters in Controversy delineated by the Board in Prehearing Conference Order No. 2.

(1) Whether the combined CAPCO-Company Territories (CCCT) 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.

Cleveland believes that the CCCT is a relevant geographic area for antitrust analysis with respect to regional power exchange market. It is in this area that most coordinating transactions occur. Cleveland believes the relevant wholesale and retail geographic markets are the service areas of the individual CAPCO companies.

Cleveland does not intend to offer expert economic testimony but will rely upon the testimony offered by economic experts testifying for the Department of Justice (Department) and/or the Nuclear Regulatory Commission (Staff). Cleveland will present factual evidence showing the nature and extent of the transactions occurring in the regional power exchange market including documents showing that the CAPCO companies have engaged in short term power transactions, emergency power transactions, joint construction of generating facilities, staggered construction,

reserve sharing, maintenance energy transactions, joint construction and ownership of transmission facilities, coordinated planning and coordinated operations with each other and with other companies who participate from time to time in the regional power exchange market. Cleveland will also rely upon the numerous interconnection agreements entered into by the Applicants which form the contractual framework in which the aforementioned transactions occur. Cleveland also will rely on minutes of various CAPCO executive meetings and minutes of the CAPCO planning and operating committees to further show the nature and extent of the regional power exchange market. In addition, Cleveland will rely upon the CAPCO Memorandum of Understanding, Basic Generating Agreement and other CAPCO agreements, such as agreements for the purchase of short term power and installation of short lead time capacity. Cleveland may also rely upon matters developed in various depositions which further describe transactions occurring in the regional power exchange market. Cleveland will rely on offers by PASNY and Buckeye to sell power to the City of Cleveland.

With respect to the geographic limits of the wholesale power market Cleveland will rely on documents showing the areas in which wholesale transactions can occur. In this regard, Cleveland will rely on documents pertaining to wholesale power sales made or offers to make wholesale power sales to municipalities or REA distribution coop-

eratives. Cleveland will also rely on documents showing requests by potential wholesale customers for the purchase of power at wholesale. Included in the latter category is the request of the Borough of Pitcarin for wholesale services from Dusquesne Light Company. Cleveland believes that the evidence will demonstrate that the relevant geographic market is coterminous with the geographic service area of individual CAPCO companies. Cleveland will also rely upon certain portions of depositions, the Buckeye Agreement, and the agreement between Ohio Edison Company and Ohio Power for the transmission of Buckeye Power.

With respect to the relevant retail market(s) Cleveland will focus primarily on its relationship with CEI. Cleveland will produce witnesses who will testify to the nature and extent of retail competition between CEI and the City of Cleveland, including the areas in which competition occurs, the number of customers who change suppliers, and limitations on Cleveland's ability to compete for retail suppliers. Cleveland may also rely on documents and depositions describing retail competition between CEI and the City of Painesville, Ohio.

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

Cleveland will present no expert economic testimony with respect to the definition of any submarkets and is not prepared to make any

contentions regarding submarkets. Cleveland will rely upon economic testimony offered by witnesses presented by Department and/or Staff. Cleveland believes the evidence summarized under Matter in Controversy (1) above is also relevant to Matter in Controversy (2).

(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.

Cleveland believes that the relevant product markets for antitrust analysis are the regional power exchange market, the wholesale power market and the retail market. Cleveland believes that transactions in the regional power exchange market are not limited to transactions within power pooling arrangements. For example, such transactions may occur between pools on a pool to pool basis as between CAPCO and PJM or between CAPCO and APS

or AEP or the Michigan Pool. Transactions in the regional power exchange market may also occur between individual electric utilities and between individual electric utilities and power pools. A power pool is simply an arrangement in which the parties coordinate and engage in many regional power transactions with each other. Generally, pool members look first to each other before dealing with non-pool members.

Cleveland believes that the products and services exchanged in the regional power exchange market are in effect by-products of the production and transmission of electricity and that the market functions to increase the reliability and reduce the cost of the principal product, firm power, for sale at wholesale and retail. In this regard, Cleveland believes the regional power exchange market exists as a distinct market involving products and services which are not readily substitutable for firm power. Rather the products and services are a class of factors of production of firm power.

Cleveland will not offer expert economic testimony with respect to the definition of product or service markets. Cleveland will rely upon the economic testimony of witnesses for the Department and/or Staff. In addition, Cleveland will rely upon the evidence summarized under Matter in Controversy (1) above. Cleveland will also rely on documents obtained during discovery which demonstrate the reduction in cost and increased reliability obtained by applicants by engaging in transactions in the regional power exchange. For example, Cleveland will offer documents showing that as a result of the Sammis-Avon Agreement, CEI and Ohio Edison installed generating units in the magnitude of 600 Mw although acting individually neither

would have installed units greater than 300 Mw. Cleveland may also rely on various depositions describing the benefits derived by the CAPCO members as a result of regional power transactions. Cleveland may offer evidence of the small amount of non-firm, i. e., interruptible sales made by the CAPCO companies. Cleveland will offer witnesses who will describe the increased costs and decreased reliability of the City Light System as a result of its inability to gain access to the regional power exchange market.

Cleveland believes that the wholesale power exchange market is relevant for antitrust analysis. However, Cleveland believes that the wholesale market is a market for firm power which may include deficiency power but does not include emergency power. Emergency power is ordinarily sold on an as, if and when available basis. Accordingly, emergency power is sold in the regional power exchange market. Cleveland believes that wholesale power sales are made to a distinct class of customers and is not readily substitutable for the power transactions which occur in the regional power exchange market. For example, a firm power sale at wholesale is not substitutable for an economy energy exchange.

Cleveland will not offer expert economic testimony with regard to the definition of the wholesale power exchange market. Cleveland will rely upon the evidence summarized under Matter in Controversy (1) above and on the expert economic testimony of witnesses for the Department and/or Staff.

Cleveland believes that the retail power market is a relevant market for antitrust analysis in this case.

Cleveland will not offer expert economic testimony with respect to the retail power market but will rely upon the testimony of witnesses presented by the Department and/or Staff. Cleveland will also rely upon matters set forth in the summary of evidence under Matters in Controversy (1). In addition, Cleveland will rely on evidence from witnesses, documents and depositions showing the relationship of Cleveland's exclusion from the regional power exchange market and nuclear generation to competition at retail and more particularly to CEI's efforts monopolize the retail market in and around the City of Cleveland. In this regard, Cleveland will show that CEI referred to its membership in CAPCO and participation in nuclear power as part of its efforts to sell power to new retail customers and to induce existing customers of the City of Cleveland to become customers of CEI. CEI also relied upon its superior reliability and economy of scale based upon its access to the regional power exchange market in its efforts to acquire by purchase or lease the Cleveland City Light Plant.

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

Cleveland understands the stipulated dominance to be (a) that each of the CAPCO companies owns more than 75% of the miles of transmission line and more than 75% of the transmission capacity within its respective service area, and (b) that CEI's transmission facilities encircle the Cities of Cleveland and Painsville, and Cleveland and Painsville must either obtain access to CEI's transmission or construct new transmission if they are to deal with parties other than CEI.

Cleveland believes that this issue should not be grounded solely upon the stipulated dominance of transmission by applicants but should include such factors as the joint planning of transmission additions by CAPCO, opposition by the applicants to the construction by Buckeye of a competing transmission grid, CEI opposition to the construction by Cleveland of a transmission line to Painsville, Applicants' study of possible 765 Kv transmission interconnections with other power pools, and the influence of competition on Ohio Edison's willingness to establish new delivery points under the Buckeye arrangement. The foregoing factors establish the context of Applicants' transmission dominance and goes beyond a mere numerical stipulation with regard to miles and capacity.

Cleveland will offer evidence through documents on the above issues. Cleveland may also offer evidence regarding the feasibility of constructing a competing transmission grid. Cleveland will also present testimony showing the necessity of access to the CAPCO transmission grid and Applicants' transmission if Cleveland is to participate in the regional power exchange market. Cleveland may also rely on information obtained during depositions with regard to the aforementioned matters.

(5) Whether Applicants have, do, or could use their ability to preclude any other electric entities within the CCCT from obtaining sources of bulk power from other electric entities outside the CCCT.

Cleveland believes the issue should be whether Applicants individually have, do, or could use their ability to preclude any other electric entities within the CCCT from obtaining sources of bulk power from other electric

utilities inside or outside the CCCT. Electric entities within the CCCT should have the ability to participate in such transactions with other electric entities inside the CCCT as well as those outside of the CCCT. For example, Cleveland should be able to engage in power transactions with Painsville as well as with PASNY or the City of Richmond, Indiana.

Cleveland will introduce testimony showing that CEI has the power to prevent and has prevented Cleveland from dealing with parties inside or outside the CCCT. In particular, Cleveland will show that CEI has refused to wheel approximately 30 Mw of PASNY power to the City of Cleveland. Cleveland will also show that CEI has refused to wheel seasonal power from Buckeye to Cleveland. Cleveland will also show that Toledo Edison has utilized its transmission dominance in conjunction with the Buckeye arrangement to prevent the City of Napoleon from obtaining a new source of wholesale power.

Cleveland will also show that for many years CEI refused to have any interconnection with the City unless Cleveland entered into a price fixing scheme which would have eliminated all rate competition for retail customers. It was only after Cleveland's rates had risen to nearly equal those of CEI and FPC decisions made it clear that an interconnection was inevitable that CEI dropped its price fixing scheme as a condition precedent to an interconnection. Even then CEI sought to avoid "like the plague" a parallel interconnection, necessary if Cleveland were to obtain access to other bulk power suppliers on competitive conditions.

The CAPCO companies have refused to permit the Cities of Cleveland and Pitcarin to join CAPCO. As members of CAPCO, Cleveland and Pitcarin

would have had access to CAPCO transmission and thus the ability to obtain bulk power supplies from other electric entities inside or outside the CCCT. Cleveland will present documents and testimony which show not only that both Cleveland and Pitcarin were denied membership in CAPCO but that in both instances the CAPCO companies conspired to exclude those cities from CAPCO. Moreover, in each instance the City so excluded from CAPCO has been selected as a target for possible acquisition by one of the CAPCO companies.

(6) Whether Applicants have exercised, are exercising, or intend to exercise, their ability to prevent other electric entities in 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.

Cleveland will offer evidence by way of documents, depositions and testimony which will show that Applicants have utilized their dominance of transmission in the CCCT to prevent other electric utilities from obtaining the benefits of coordinated operations and development and access to the economies of scale. The primary focus of Cleveland's presentation will be with respect to the relationship of CEI and Cleveland and CAPCO and Cleveland. It will be shown that through CAPCO, Applicants have been able

to construct units exceeding 1,000 Mw of capacity while operating independently none had installed units larger than the 300 Mw range. CEI and Ohio Edison engaged in staggered construction under the Sammis-Avon agreement to jump to 600 Mw units with mutual backup arrangements. Cleveland will introduce studies made by Dusquesne and the CAPCO companies together showing the benefits to be derived from CAPCO.

Cleveland will also offer evidence showing a calculated, concerted effort by the CAPCO companies to prevent municipalities from obtaining membership in CAPCO and thus gaining access to economies of scale and coordinated operations and development. In this regard, Cleveland will rely on the carefully orchestrated responses to the requests of Pitcarin and Cleveland for membership in CAPCO and the CAPCO members agreement not to offer wheeling to municipalities. Cleveland will rely on evidence showing that CAPCO studied the effect of its generating capacity allocation scheme on the City of Cleveland's reserve requirements should Cleveland join CAPCO prior to adopting that scheme. Dusquesne Light considered a method of rating existing capacity which would be most burdensome to any municipality joining CAPCO. Dusquesne Light offered Premise #2 in part to increase the burden, i. e., extract some of the benefit, on any new electric utility joining CAPCO. In determining the method of allocating operating reserves the CAPCO companies considered the effect the allocation would have on the City of Cleveland should it join CAPCO. The most burdensome method was chosen. Although the earlier CAPCO units were allocated by negotiation rather than by the CAPCO formula, it was urged that CAPCO hasten to a

formula allocation to place a greater burden on any new member joining CAPCO. Thus, the CAPCO companies have on the one hand refused to permit municipalities to join CAPCO and on the other have taken steps to increase the burden of CAPCO membership on a new member as an economic disincentive to join CAPCO. Both actions have the effect of denying to other electric utilities the opportunity to enjoy benefits of scale or to engage in coordinated operations and development.

Cleveland will also rely upon the history of CEI's refusal to interconnect and operate in parallel with the City except on terms which required Cleveland to engage in price fixing. Cleveland will also rely upon CEI's refusal to wheel power for the City. Cleveland may also rely on Toledo Edison's refusal to interconnect and operate in parallel with the City of Waterville. Cleveland will rely upon CEI's opposition to a proposed transmission line to link the Cities of Painsville, Cleveland and Orrville.

(7) Has the 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 ?

Cleveland will show that the ability to prevent electric utilities from engaging in coordinated operations and development and from obtaining access to the economies of scale has been used and is being used for the purpose or effect of eliminating other electric entities in the CCCT.

Cleveland will offer evidence showing that Toledo Edison has a informal corporate policy of acquiring municipal electric systems in its service area. One of its employees, Mr. Schwalbert, a man with long experience in acquiring

municipal electric systems, admitted on deposition that keeping a municipal electric system isolated is a step in acquiring it. That very tactic was followed with regard to Waterville. In that instance, Toledo Edison declined to sell power at wholesale or otherwise interconnect with Waterville since Toledo Edison desired to and ultimately did acquire the Waterville System.

Dusquesne Light has followed similar tactics in acquiring municipal systems in its service territory. So successful has Dusquesne Light been that only one such system, Pitcarin, remains. Dusquesne Light has refused even to make wholesale power sales to Pitcarin and refused to permit it to join CAPCO. A limited interconnection was finally obtained after Pitcarin sought the assistance of the Federal Power Commission.

CEI has long been desirous of purchasing or leasing the Cleveland City Light System. CEI has made several offers to purchase the City System. It has also supplied to the Little Hoover Commission information regarding the alleged benefits which would accrue to the City from the sale of City Light. CEI has made many, many studies pertaining to the acquisition of the Cleveland Light System. Although many of those studies are presently being hidden behind a claim privilege, Cleveland will present evidence showing that studies were made concerning the integration of the two systems, methods of acquisition, need for regulatory approval of an acquisition, use which could be made of the City generating plant, use which could be made of the City distribution system, pension coverage of existing City Light employees, effect of acquisition on CEI bond indenture, effect of acquisition on CEI-CAPCO allocations, and prices paid for other municipal systems. CEI has gathered

copies of leases used by other investor-owned utilities in acquiring municipal systems and has itself drafted a lease to be used in acquiring the City system.

CEI has established an in-house group to work on problems relating to the acquisition of the municipal light plant. CEI has conducted studies to determine the most important factors involved in competition at retail with Cleveland. Those factors are rates and reliability. Up until approximately 1967, when reliability became the most important factor, CEI attempted to eliminate the City's competitive advantage by refusing to interconnect with the City unless the City agreed to enter into a price fixing conspiracy which would eliminate all rate competition. CEI sought advice of Cleveland's bond counsel with regards to methods by which this price fixing scheme could be effectuated. During the early to mid-1960's when Cleveland announced plans to install an economical 75 Mw generating unit, CEI attempted to forestall installation of that unit by offering to interconnect and sell power to the City. CEI did not state a price but argued that it could sell power to the City more cheaply than the City would be able to generate. At the time that allegation was made CEI possessed facts that made it clear that the proposed unit would be more efficient than the system average of CEI making it impossible for CEI to sell power to the City for less than the City could produce power absent a special rate designed solely to forestall the installation of competing generation.

When Cleveland installed the 75 Mw generating unit, it was unable to obtain an interconnection with CEI to provide emergency backup for the unit.

The only interconnection offered was one requiring the City to join a price fixing conspiracy. When the City experienced operating problems with its 75 Mw unit, it was unable to obtain emergency backup and experienced a number of serious system outages. As a result of the declining reliability of the City system, reliability became the prime factor in retail competition between Cleveland and CEI. After each City outage, CEI sales personnel would descend upon the affected City customers and urge them to switch to CEI. The CEI sales personnel would point out to the City's customers that CEI reliability was assumed because of its interconnections and participation in CAPCO. Thousands of customers transferred to CEI.

During the late 1960's and continuing today, Cleveland Light System has experienced the same rapid increase in costs as have other electric utilities. Unlike most utilities, the flight of City customers to CEI has left Cleveland with a declining revenue base. The City has been forced to raise its rates to a level which has eliminated price as an important factor in retail competition. In fact, in order to remain competitive and stay in business Cleveland has been forced to incur large operating deficits.

In 1969, the City of Cleveland approached CEI seeking to interconnect so that the City could purchase deficit power at wholesale for several months while the City installed pollution control equipment. Believing public opinion would demand cooperation, CEI agreed but only after devising a load transfer scheme to avoid a parallel interconnection. CEI knew that a parallel interconnection would provide backup to the City's large unit. This would have permitted the City to base load the large unit to capacity and realize a \$600,000 a year reduction in operating costs. Although the City's engineers

did not want a load transfer arrangement, CEI undertook to convince the City to settle for load transfer rather than a parallel interconnection.

During the Christmas season of 1969, while the matter of the load transfer service was yet unresolved, Cleveland's 75 Mw unit experienced a forced outage causing a major outage to all of the City's customers. Because the City was still being forced to operate in isolation it had no emergency backup for its 75 Mw unit and was unable to carry its load. The City was forced to accept the load transfer arrangement as the quickest engineering solution to its power supply problem. Under the load transfer arrangement, the City's distribution system was divided into approximately 5 segments. Depending upon the amount of power that Cleveland could produce, 1 or more of those segments would be served by CEI's distribution network. The load transferred would be operated in isolation from the remainder of the City's electric system and would in effect become a part of CEI's distribution. Each transfer of load was made as a "dead load" transfer. That is, the City would drop the load causing an outage to its customers and then CEI would pick up the load. Some days CEI would require daily transfers of the load. The numerous outages caused by the load transfer arrangement resulted in a continuing flight of customers from the City to CEI. During this period Cleveland continued to experience a shrinking of its revenue base.

Cleveland then filed a petition with the FPC seeking to require CEI to interconnect with Cleveland and operate in parallel. CEI was aware that the inevitable outcome was some sort of interconnection. A variety of interconnections were considered -- the best operationally for Cleveland was

never proposed. Among the factors considered by CEI in formulating a proposal were (i) avoiding a parallel interconnection, (ii) offering enough to satisfy the FPC without really doing anything to assist the City, (iii) maximizing the burden of interconnection expenses on Cleveland, (iv) limiting the capacity of the interconnection so as to avoid providing backup which would allow utilization of the 75 Mw unit to full capacity, (v) designing a rate for interconnection service which would change a possible \$600,000 a year operating expense decrease to the City from the interconnection into a \$1,200,000 operating expense increase if a parallel interconnection could not be avoided, and limiting the type of service to be provided over the interconnection.

CEI was exceedingly successful before the FPC. The FPC ordered a two step plan (maximized the burden) which required the installation of a temporary 69 Kv interconnection limited to 40 Mva (not sufficient capacity to backup the full capacity of the City's 75 Mw unit). The 69 Kv line was operated by CEI as an additional load transfer point, thus robbing the City of any real benefit. The permanent parallel 138 Kv intertie was ordered at rates designed by CEI to bleed the financial viability of the Cleveland System. Moreover, the service over the 138 Kv intertie was limited and does not provide Cleveland access to other bulk power supplies or coordination.

CEI is now playing a waiting game. It sells expensive emergency power to Cleveland, draining off the financial resources of the City Light Plant. At the same time, it utilizes its monopoly power over that unique resource, its transmission system, to preclude the City from obtaining low

cost power from PASNY or Buckeye or any other source. CEI is well aware that the City now must raise its rates to a level greater than that of CEI which will further increase the flow of customers to CEI reducing the City's revenue base and necessitating a further rate increase and so on until the system collapses or the City must incur substantial operating deficits until it collapses.

(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.

Cleveland does not intend to rely solely upon the stipulation that "Each of the Applicants is dominant as to the generation of power in their service areas."<sup>1/</sup> Rather, Cleveland would anticipate showing the quality as well as the quantity of that generation. Cleveland believes it necessary to consider the access of each of the Applicants to economies of scale, nuclear power and the regional power exchange factors of producing firm bulk power for sale in order to understand the Applicants' ability to hinder or preclude competition in one or more relevant markets.

Although Cleveland does not intend to offer expert economic testimony on this issue it will rely on economic testimony of witness for the Department and/or Staff. Cleveland does expect to present testimony in the nature of documents, depositions and witnesses showing the economies of scale available to the Applicants which gives them a competitive rate advantage or eliminates any rate advantage otherwise available to municipal electric systems. Cleve-

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<sup>1/</sup> Tr. 441.

land will show that only Applicants have access to the regional power exchange market to increase the reliability of and reduce the cost of their bulk power.

(9) 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.

Cleveland believes that this issue cannot be considered without reference to Applicants' monopoly power over transmission. In fact, Applicants' monopoly power over transmission has been used to further their monopoly power with respect to bulk power generation and vice versa. It must be remembered that transmission performs a variety of functions. It ties together generating facilities for mutual backup and support. It gathers electric loads necessary to support large generating plants and it provides a medium for regional power exchanges with other electric utilities.

Cleveland will show that access to the economies of scale of bulk power production obtained by Applicants are not available to municipal electric systems operating in the CCCT. In fact, these economies are not available to Applicants' acting individually. Cleveland will show that the CAPCO agreement precludes the individual CAPCO companies from engaging in coordinated development of bulk power supplies with non-CAPCO members.

Further, CAPCO's policy of generating its own power limits CAPCO as a market for surplus power on long term sales needed if non-CAPCO electric utilities in the CCCT were to attempt to obtain economies of scale through staggered construction. At the same time Applicants have conspired to preclude municipal electric systems from joining CAPCO and thus obtaining access to coordinated operations and development and the economies of scale.

In addition, Applicants, while freely wheeling power for each other and for other power pools outside of the CCCT, have refused to wheel power for municipal electric utilities within the CCCT. This refusal to wheel has precluded the development of competing bulk power supplies capable of obtaining the economies of scale obtained by Applicants.

Applicants have utilized the availability of reliable energy produced with economies of scale and economies achieved from access to the regional power exchange to acquire other entities, both utilities and industries, which at one time generated their own power. Frequently, such generating entities have discovered that it is less expensive to purchase their power from Applicants than to continue to generate without access to economies of scale and coordinated operations and development.

Further, CEI has utilized its bulk power monopoly powers to take retail customers away from the City of Cleveland. This reduction in Cleveland's load both reduces Cleveland's demand for power limiting the size of generating units that it can install and reduces its revenue base needed to finance installation of bulk power generating units.

Although no matter in controversy has been delineated with respect to Applicants' utilization of its monopoly power over bulk power production for the purpose or effect of eliminating one or more of the other electric entities in the CCCT, Cleveland believes this to be the case and will offer evidence showing this to be true.

(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.

Cleveland submits that this issue has already been decided in the affirmative by the Atomic Safety and Licensing Appeal Board in Kansas Gas and Electric Company and Kansas City Power and Light Company, Docket No. 50-482A, ALAB-279, NRCI-75/6, page 559. The Board should so rule. Accordingly, Cleveland believes that this issue need not be set for hearing. The Board should also rule on this point.

If this issue is set for hearing Cleveland will offer expert engineering testimony showing that the form of "access" offered by Applicants is a sham intended to maximize the benefits obtained by Applicants and minimize the benefits obtained by non-CAPCO parties. It is a classic example of the exercise of monopoly power to prevent the benefits of nuclear power from accruing to a competitor.

(11) Whether there are logical connections between the activities under the proposed licenses for the nuclear facilities and each of the matters in connection (1) through (10) that meet the nexus test established by the Commission.

Cleveland believes that this issue should be restated. Cleveland does not believe that it is necessary that each or any single matter in contentions (1) through (10) meet the nexus test. Rather, the issue should be whether there is a nexus between the situation inconsistent with the anti-trust laws and the activities under the license.

Cleveland does not expect to present evidence on nexus qua nexus. The evidence presented by Cleveland on all of the issues taken as a whole will clearly demonstrate that the requisite nexus does exist.

(12) What license conditions should be imposed to eliminate the situation inconsistent with the antitrust laws?

This is an additional issue which should be added to alleviate the need for a bifurcated hearing.

Cleveland has previously circulated a set of proposed license conditions. It is in the process of considering whether a further refinement of those proposed conditions may be required. Cleveland will present expert engineering testimony describing the required remedies and explaining how they will ameliorate the existing situation inconsistent with the antitrust laws.

It is obvious that the case Cleveland will present will focus on the relationship of Cleveland to CAPCO and Cleveland to CEI. Cleveland anticipates that Department and Staff will present cases of a different nature with the emphasis on CAPCO rather than the relationships with Cleveland. Cleveland reserves the right to rely on evidence offered by the Department

and Staff as well as such additional matters as will be adduced during cross-examination of Applicants' witnesses.

Respectfully submitted,

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September 5, 1975

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Statement of the City of Cleveland Informing Applicants of the Nature of the Case to be Presented, has been made on the following parties listed on the attachment hereto this 5th day of September, 1975, by depositing copies thereof in the United States mail, first class or air mail, postage prepaid.

David C. Hjelmfelt  
David C. Hjelmfelt

Attachment

ATTACHMENT

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