



4/17/73
PROC. NO. 50-346A

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE COMMISSION

In the Matter of

THE TOLEDO EDISON COMPANY AND
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY

(Davis-Besse Nuclear Power Station)

AEC Docket No. 50-346A

ANSWER IN OPPOSITION TO PETITION OF
AMERICAN MUNICIPAL POWER-OHIO, INC., TO INTERVENE

Pursuant to 10 CFR, Section 2.714 of the Commission's Rules of Practice, counsel for the AEC Regulatory Staff (Staff) hereby files its answer in opposition to the above captioned petition to intervene.

On July 9, 1971 the Attorney General, pursuant to Section 105c of the Atomic Energy Act of 1954, as amended (the Act), advised the Commission that an antitrust hearing would not be required in this matter. A construction permit was issued on March 24, 1971, subject to Section 105c(8) of the Act, the provision which permits subsequent antitrust review. Pursuant to the Commission's Rules of Practice, the "advice" received from the Attorney General was published in the Federal Register on September 4, 1971. The Federal Register notice stated that any person seeking intervention on antitrust matters was required to submit a petition within thirty (30) days after publication of the notice.

In a petition dated July 6, 1971 and amended July 27, 1971, the City of Cleveland, Ohio, timely requested permission to intervene in this matter as a full party in interest and requested an antitrust hearing. In a

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supplemental answer to the City's petition, the Staff, on April 13, 1973, noted the deficiencies in the petition and recommended to the Commission that:

Additional information is necessary, however, before a determination can be reached on whether petitioner's requests are within the proper ambit of this proceeding. It is believed that the additional information required herein can best be obtained and evaluated by an Atomic Safety and Licensing Board. Therefore, the Staff recommends that this matter be noticed for an antitrust hearing and that the petitioner be required to come forward at the outset of the proceeding with a particularization of its contentions, the relief it deems appropriate and the relationship of the contentions and the relief to the alleged activities under the license. In the event the Board determines that a full antitrust hearing is required herein the Staff also recommends that petitioner be required to come forward with the evidence in support of its allegations and requested relief.

Counsel for petitioner, American Municipal Power-Ohio, Inc., (AMP-0) was also counsel for the City of Cleveland petition, at the time the City filed its earlier referenced petition. The instant petition (AMP-0) was filed on April 4, 1973, sixteen months after the expiration of time for filing petitions in this matter as provided for in the Federal Register notice. Thus there should be no confusion by counsel for AMP-0 over the facts, procedural history and Commission requirements bearing on entitlement to an antitrust hearing in this matter. Such flagrant disregard of the Commission's Rules should not be permitted. AMP-0's petition is patently out of time for this proceeding, and no justification for the delay has been set forth. On this basis alone the petition should be denied.

However, there are other major defects with the AMP-0 petition in addition to the time frame problem. Section 2.714 of the Commission's Rules

of Practice (10 CFR 2.714) provides, inter alia, that a petition to intervene shall set forth the interest of the petitioner, how that interest may be affected by Commission action and the contentions of the petitioner in reasonably specific detail.

The instant petition not only fails to state in any form how the petitioners' interests will be or may be affected by any action taken by the Commission in this matter, but also raises no contentions concerning any antitrust aspects related to the Davis-Besse application. Finally, the petition fails to set forth the relationship of its contentions and the relief it desires from the alleged activities under the license.

In view of all of the foregoing deficiencies, the Staff submits that the petition is grossly deficient in all respects and should be denied.

Respectfully submitted,



Benjamin H. Vogler
Assistant Antitrust Counsel
for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 17th day of April 1973.

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ATOMIC ENERGY COMMISSION

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COMPANY)
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CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER IN OPPOSITION TO PETITION OF AMERICAN MUNICIPAL POWER-OHIO, INC., TO INTERVENE, dated April 17, 1973, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or airmail, this 17th day of April 1973:

Philip P. Ardery, Esq.
Brown, Ardery, Todd & Dudley
Kentucky Home Life Building
Louisville, Kentucky 40202

Gerald Charnoff, Esq.
Shaw, Pittman, Potts, Trowbridge
& Madden
910 Seventeenth Street, N. W.
Washington, D. C. 20006

Robert D. Hoyt, Esq.
Warren D. Hinchee, Commissioner
City of Cleveland
1201 Lakeside Avenue
Cleveland, Ohio 44114

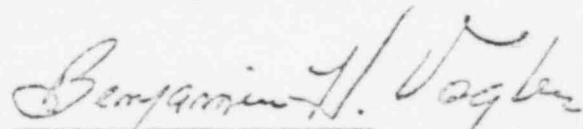
Les Henry, Esq.
Fuller, Henry, Hodge & Snyder
300 Madison Avenue
Toledo, Ohio 43604

Donald H. Hauser, Esq.
Corporate Solicitor
The Cleveland Electric
Illuminating Co.
Post Office Box 5000
Cleveland, Ohio 44101

Joseph J. Saunders, Esq.
Department of Justice
Antitrust Division
Washington, D. C. 20530

Atomic Safety and Licensing
Board Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Mr. Frank W. Karas
Chief, Public Proceedings Staff
Office of the Secretary
U. S. Atomic Energy Commission
Washington, D. C. 20545



Benjamin H. Vogler
Assistant Antitrust Counsel
for AEC Regulatory Staff