UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of	)	
	)	
THE TOLEDO EDISON COMPANY and	)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY	)	Docket No. 50-346A
	)	
	)	
(Davis-Besse Nuclear Power Station)	)	

ANSWER OF AEC REGULATORY STAFF TO PETITION OF THE CITY OF CLEVELAND TO INTERVENE AND FOR A HEARING

Pursuant to Section 189 of the Atomic Energy Act and Section 2.714 of the Commission's "Rules of Practice," the City of Cleveland (Petitioner) filed a petition dated July 6, 1971, to intervene in the above matter and request for a hearing. An amendment to the petition was filed, dated July 27, 1971.

By a letter dated July 9, 1971, the Attorney General, pursuant to §105(c) of the Atomic Energy Act of 1954, as amended (Act), advised the Commission that an antitrust hearing would not be required pursuant to the reservation of authority contained in the construction permit issued for this facility on March 24, 1971. That permit is conditioned, pursuant to §105(c)(8) of the Act, to provide for an antitrust review by the Attorney General and related Section 105c requirements.

The Petitioner operates an isolated system which generates its own power supply and is not interconnected to any other electric utility. The Petitioner claims that, in order to have continued reliability and protection of Cleveland residents, it must have a permanent interconnection with the Applicant (Cleveland Electric Illuminating Company).

Pursuant to a load transfer agreement, Cleveland Electric Illuminating Company (CEI) has been supplying power to Petitioner, but has tendered a Notice of Termination and Cancellation of the electrical services which it supplied to Petitioner. Petitioner filed a complaint with the Federal Power Commission requesting, in part, a permanent interconnection with CEI. Hearings at the Federal Power Commission are scheduled to commence on April 11, 1972, to resolve the issues raised by Petitioner, including an allegation of unfair methods of competition.

Petitioner alleges in its filings here that it:

1. is surrounded by CEI;
2. has tried unsuccessfully to obtain sources of power other than its own generation;
3. has been unable to negotiate an interconnection with CEI because CEI has engaged in delaying tactics;
4. has been unsuccessful in negotiating the purchase of bulk power from others because it did not have an interconnection with CEI; and
5. has not been able to participate in the CAPCO pool because it is an isolated system.

Petitioner also states that it is vitally interested in the matter of allocation of power from Davis-Besse and that it is willing and able to pay its proportionate share for construction, operation, maintenance, and all other operating costs should it obtain an allocation of power from Davis-Besse.

CEI denies that it has refused to negotiate with Petitioner a permanent interconnection and states that it is willing to make such an interconnection provided it is compensated for the costs of the interconnection and for the past load transfer services it has rendered to Petitioner. CEI, in a general denial, disputes the allegations of anti-competitive practices made by Petitioner.

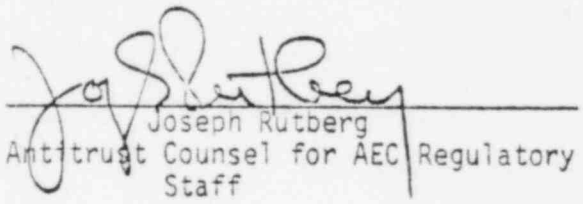
CEI states that Petitioner is precluded by Ohio law from participating in the ownership of Davis-Besse and, even if allowed by Ohio law to participate, it is financially unable to do so. CEI also asserts that allegations made by Petitioner that it must obtain advantages of scale such as will be achieved by Davis-Besse in order to remain a competitor of CEI are wholly wrong. The filings reflect that Petitioner made its first request to participate in the Davis-Besse facility in its petition to intervene.

CEI asserts that the Commission does not have jurisdiction to grant the relief requested by Petitioner because Petitioner has not set forth any contentions which relate the activities under the license to the creation or maintenance of a situation inconsistent with the antitrust laws.

The staff believes that the contentions in the petition raise antitrust questions, and that intervention should be granted and a hearing held, as requested in the petition, to determine whether the granting of the application in this matter will create or maintain a situation inconsistent with the antitrust law.

It is further recommended that, since a construction permit has already been granted under the exemption authorized in §105(c)(8), any hearing held in this matter be postponed until the Federal Power Commission issues a final decision on the question of the interconnection, provided that such postponement does not extend for more than ninety days beyond the receipt of the operating license application for Davis-Besse. By following this procedure, the record in the Federal Power Commission proceeding and the conclusions reached therein should be available. This could obviate duplication of efforts and materially assist the Commission in considering the antitrust contentions raised in this matter.

Respectfully submitted,



Joseph Rutberg
Antitrust Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 7th day of February, 1972.