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 Richard W. McLaren

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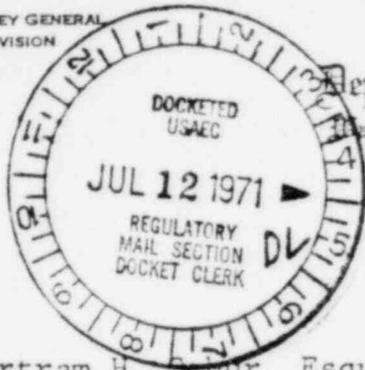
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Department of Justice
Washington, D.C. 20530



JUL 9 1971

Bertram H. Schur, Esquire
Associate General Counsel
United States Atomic Energy Commission
Washington, D. C. 20545

Re: Toledo Edison Company and Cleveland Electric
Illuminating Company - Davis-Besse Nuclear
Power Station, AEC Docket No. 50-~~346~~346
Department of Justice File 60-415-23

Dear Mr. Schur:

You have requested our advice pursuant to the provisions of Section 105 of the Atomic Energy Act of 1954, as recently amended by P.L. 91-560 (December 19, 1970), in regard to the above cited application.

1. The Applicants

The Davis-Besse Nuclear Power Station will be a 872 megawatt unit located in north central Ohio on the shores of Lake Erie, approximately 21 miles east of the City of Toledo. The plant will be jointly owned by two investor owned utilities: Toledo Edison Company (52.5%) and Cleveland Electric Illuminating Company (47.5%). The estimated construction cost of the unit, including the nuclear fuel inventory for the first core, is \$305,742,000. It is scheduled for commercial operation on December 1, 1974. Toledo Edison will have complete responsibility for operation and maintenance of the unit.

Toledo Edison Company

Toledo Edison is a privately owned integrated electric utility which serves a 2,500 square mile area in northwestern Ohio. Toledo Edison supplies electric power at retail to 47 municipalities, including the City of Toledo, and also supplies power at wholesale to 15 municipally owned electric systems. In 1969 Toledo Edison's electric operating revenue was \$85,884,000. Toledo Edison's 1970 peak load was

939 mw at which time it had thermal generation of 1,003 mw and net interconnection purchases of 70 mw for a total dependable capacity of 1,073 mw. The largest generating unit presently operated by Toledo Edison has a capacity of approximately 220 mw.

Cleveland Electric Illuminating Company

Cleveland Electric Illuminating Company (CEI) is also a privately owned integrated electric utility which serves a 1,700 square mile area in northeastern Ohio. CEI supplies electric power at retail to 89 municipalities, including part of the City of Cleveland, and surrounding areas. CEI does not supply power at wholesale to any municipality. In 1969 CEI's electric operating revenue was \$218,497,611. CEI's 1970 peak load was 2517 mw at which time CEI had total thermal dependable capacity of 2,726 mw. The largest generating unit presently operated by CEI has a capacity of approximately 650 mw.

2. The CAPCO Pool

Toledo Edison and CEI are both members of a five company power pool known as CAPCO which was organized in 1967. The other three members of the pool are Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company, a subsidiary of Ohio Edison Company. CAPCO provides the framework within which the members coordinate their operations, interchange power and share reserves. Generation and associated transmission facilities for the CAPCO members are planned on the basis of the requirements of the pool as a single system. The Davis-Besse nuclear station is the fourth generating unit -- and the first nuclear unit -- to be planned and constructed by members of CAPCO. The CAPCO members serve approximately 2 million customers within a 14,000 square mile area. The 1971 projected peak load for CAPCO is 9023 mw.

3. Competitors of the Applicants

The smaller competitors of the applicants include a number of municipal electric systems and rural electric cooperatives distributing electric power and energy within or adjacent to the service areas of Toledo Edison and CEI.

Rural Electric Cooperatives

All the rural electric distribution cooperatives operating in the State of Ohio receive their bulk power from Buckeye Power, Inc. under long term contracts.

Buckeye is a wholesale supply company wholly owned and controlled by the 28 rural electric cooperatives in Ohio. Buckeye owns one of two 600 mw generating units installed at the Cardinal Plant of the Ohio Power Company. Through contractual arrangements with various investor owned utilities in Ohio, including Toledo Edison, Buckeye utilizes the transmission systems of these companies to deliver power to the cooperatives. Buckeye has no contractual arrangements with CEI, because there are no cooperatives in CEI's area.

Our investigation revealed that no rural electric cooperative has sought an ownership participation in the Davis-Besse plant. Apparently this is attributable to the fact that Buckeye has given the cooperatives in Ohio access to the economies of scale from large generating units. Those cooperatives in Toledo Edison's area which responded to our inquiries were of the view that Buckeye permits them to compete for load growth with investor owned utilities in Ohio.

Municipally Owned Electric Utilities

The municipally owned electric utilities in Ohio have not been granted access to Buckeye or any similar arrangement. Consequently, they obtain power either by self generation or purchase from investor owned utilities. Toledo Edison supplies power at wholesale to 15 municipally owned electric systems in its service area, 13 of which purchase their total power requirements from Toledo Edison. Our investigation revealed that none of these municipal systems have sought ownership participation in the Davis-Besse plant.

CEI does not supply power to any municipally owned electric system. There are only two such systems within CEI's service area. One is the City of Painesville which operates its own generation. Painesville has informed us that it is not interested in participation in the Davis-Besse plant. The second municipal electric system is the City of Cleveland's Division of Light and Power, which distributes electric power at retail to approximately 55,000 consumers within the city limits of Cleveland which are not served by CEI. Cleveland is one of the rare cities where there are two suppliers of electric power.

The Cleveland municipal electric system is an isolated system which generates its own power supply and is not interconnected to any other utility. Its 1971 peak load will be approximately 120 mw. It operates generating units with a capacity of approximately 195 mw, including its largest unit which can generate up to 80 mw. Currently, some of the municipal system's generating units are shut down so that it is generating only about 90 mw. It is purchasing the remainder of its power needs from CEI pursuant to a load transfer agreement which provides that CEI will supply power to the municipal electric system at specified points from which the municipal system distributes the power to its customers in certain specified portions of its service area.

The Cleveland municipal system has sought a permanent interconnection with CEI since at least January of 1970 when the Cleveland City Council passed a resolution authorizing the City's Director of Law to apply to the FPC to order a permanent interconnection between the City and CEI. At that time CEI indicated a willingness to discuss an interconnection so the City did not file an application with the FPC. Subsequently, a dispute arose between CEI and the City concerning the amount the City had to pay for the load transfer service furnished by CEI to the City. CEI began to furnish such service in January of 1970 and is doing so at this time. After making some initial payments, the City asserted that the rate being charged was not the rate approved by the City Council and refused to make further payments. The amount now owed by the City is approximately \$1.5 million.

CEI took the position that it would not do any further work on a permanent interconnection, until it was paid for the load transfer service then being furnished to the City. This stalemate was broken in May of 1971 when CEI filed a notice of cancellation of the load transfer agreement with the FPC; the City in turn filed an application with the FPC seeking a permanent interconnection with CEI. Thus the matter is now within the jurisdiction of the FPC which can order a permanent interconnection. CEI has assured us that it will work toward making an interconnection, as long as it is paid for the load transfer service it has furnished to the City.

Cleveland's municipal electric system has also informed us that it would like to obtain an ownership participation in the Davis-Besse plant, although it has made no such request to either CEI or Toledo Edison nor formulated the

terms of a specific proposal for such participation. The City indicated that it may file a formal request with the Atomic Energy Commission to participate in the unit, but we are not aware of such a filing at this time. Participation in the Davis-Besse unit would, of course, be dependent upon the securing of a permanent interconnection with CEI.

4. Economics of the Electric Utility Industry

We are not aware of any studies which indicate real economies of scale in the retail distribution of electric power, but bulk power supply has significant scale economies. Power to be commercially marketable must have a guarantee of a high degree of continuity in supply. Such power is marketed as "firm". As the electrical and mechanical generating and transmission elements of a bulk power supply system are subject to forced outages in varying degrees, it is necessary to provide against this risk. It is less expensive to deal with risk collectively. Under the law of large numbers (the same principle as insurance), if the outages occur at random a predictable, and smaller, amount of reserves will supply a satisfactory degree of service continuity. Thus, interconnection with other systems to share this risk enables each utility to maintain a smaller individual amount of idle reserve capacity.

This interconnection arrangement also provides benefits in planning new generating capacity. While load growth is on a gradual curve, generating capacity needed to meet it is "lumpy" in the economic sense. Costs are mainly incurred on or before the unit commences operation, and ordinarily the entire generating unit output becomes available shortly after construction and testing, long before it is fully needed for system requirements. Arrangements to share with other systems the unneeded portion of output thus also contributes substantially to the most economical operation.

High voltage transmission is the integrating and coordinating medium. It integrates and coordinates generation to take advantage of dealing with risk collectively; it integrates and coordinates load so that facilities can be planned to meet pooled load growth. Such reserve sharing, coordinated development, and other types of coordination available through high voltage and extra high voltage transmission make possible the economies of scale in bulk power supply to systems participating in such coordination.

Thus, existence of a generating and transmission system, together with access to the low cost energy available through coordination with other systems, may determine whether a firm will be able to compete with others in bulk power sales at wholesale. These economies also may be determinative of competition for load growth at retail between a bulk power supplier and its wholesale customers in the same area.

5. Likely Competitive Effects of Granting the Application

In our antitrust review we have focused principally upon the effects which granting the present application would have upon the rural electric cooperatives and municipally owned utilities operating within or adjacent to the service areas of the applicants. As previously discussed, the rural electric cooperatives in Ohio receive low cost power through Buckeye Power, Inc. which permits them to compete with the applicants. Thus they will not be placed at a competitive disadvantage by the Davis-Besse unit. The municipally owned utilities in Ohio, however, have not been granted access to Buckeye and do not have access to any similar low cost power sources.

Our investigation reveals that the City of Cleveland's municipal electric system is the only competing municipal utility which has expressed an interest in obtaining an ownership share of the Davis-Besse plant. We do not, however, regard the presence or absence of such requests as determinative of our antitrust inquiry. CEI and Toledo Edison, through their membership in the CAPCO pool and their interconnections with adjacent major utilities, have obtained, to a substantial degree, the benefits of coordination and the resulting low cost power for wholesale and retail marketing. The municipally owned electric utilities, on the other hand, have no transmission network and cannot benefit from reserve sharing and pooled load growth without some measure of access to applicants' transmission network and to coordination with applicants. Thus we think it is necessary to analyze the actions of Toledo Edison and CEI toward these municipal systems to determine whether they have attempted to prevent the municipal systems from obtaining such access.

CEI states that the only request for service it has received from municipal utilities was for the load transfer service which it agreed to provide the City of Cleveland's municipal system. Subsequently the City submitted an application to the Federal Power Commission under section 202

of the Federal Power Act for an order requiring CEI to interconnect and co-ordinate its system with the municipal system. CEI has informed us by letter that it will not oppose this application if it is paid the amount due for the load transfer service. Thus it now appears that this matter can be promptly resolved by the Federal Power Commission.

Toledo Edison states that it has not denied any requests for service or supply of power to municipally owned utilities in its area. Toledo Edison has supplied emergency power to all its municipal wholesale customers and recently accepted a request of Hancock-Wood Rural Electric Cooperative for an additional delivery point under the Buckeye Power agreement. Based on data submitted by Toledo Edison and on our investigation, it appears that the cost of power supplied by Toledo Edison to its municipal electric customers is at rates higher than those of neighboring utilities. However, we have no evidence that Toledo Edison has sought to prevent its wholesale customers from obtaining power from alternative sources. Competition for sale of power at wholesale to municipally owned utilities in Ohio is further clouded by an Ohio Statute (Ohio Revised Code Section 4905.261) which prohibits a utility from serving a customer presently served by another, unless the customer has been disconnected from his former supplier for 90 days or an order permitting the transfer is granted by the Ohio Public Utilities Commission. There is considerable doubt whether this statute would apply to the transfer of a wholesale customer. In any event, based on data submitted to us by Toledo Edison and CEI, it appears that the estimated cost of producing power at the Davis-Besse plant will be about the same as the applicants' average system costs and higher than the estimated production costs of at least one of the similar sized fossil fuel plants being constructed by CAPCO members. Davis-Besse, therefore, will apparently not give Toledo Edison or CEI a significant cost advantage which could be used to impose a price squeeze on wholesale customers.

6. Conclusion

As detailed above, the City of Cleveland's municipal electric system is the only utility competing with the applicants which has expressed an interest in participating

in the Davis-Besse unit. The City, however, has made no formal request to the applicants for participation nor has formulated the terms of such a proposal. Without a concrete request, it is too early to ascertain CEI's and Toledo Edison's reaction to it, and this situation can be only a speculative factor affecting our immediate advice. The City has put its request for interconnection with CEI before the FPC, which has jurisdiction to resolve the issue. CEI is willing to make such an interconnection provided it is compensated for the costs of the interconnection and for the past load transfer services rendered to the City. In these circumstances we presently are of the view that an antitrust hearing would not be required pursuant to the reservation of authority contained in the Commission's construction permit.

Sincerely yours,



RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division