

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



may 25, 1974
In the Matter of

The Toledo Edison Company and
The Cleveland Electric Illuminating
Company
(Davis-Besse Nuclear Power Station

Docket No. 50-346A

The Cleveland Electric Illuminating
Company, et al.
(Perry Plant, Units 1 and 2)

Docket Nos. 50-440A
50-441A

JOINT STATEMENT OF AEC REGULATORY STAFF, DEPARTMENT OF
JUSTICE, AND INTERVENORS REGARDING THE CONTENTIONS AND
MATTERS IN CONTROVERSY

Pursuant to the order of the Atomic Safety and Licensing Board issued on April 11, 1974, the above parties have held meetings to consider common issues which could be adopted as a Joint Statement of Matters in Controversy. The AEC Regulatory Staff, the Department of Justice, and the Intervenors, City of Cleveland and American Municipal Power-Ohio, agree that these issues should be the guidelines for determining the scope of discovery, and the basis of determinations regarding relevancy. The issues are divided into two categories, Broad Issues and corresponding Matters In Controversy.

Broad Issue I:

A. Whether Applicants ^{1/} have the ability in the relevant markets to hinder or prevent:

1/ "Applicants" refers to Applicants acting individually, together with each other, or with others.

- (1) other electric entities from achieving access to the benefits of coordinated operation ^{2/}, either among themselves, or with Applicants or other electric entities:
 - (2) other electric entities from achieving access to the benefits of economy of size of large electric generating units by coordinated development ^{3/}, either among themselves, or with Applicants or other electric entities.
- B. In the event that such ability is shown to exist, has it been; is it being or can it be used to create or maintain a situation or situations inconsistent with the antitrust laws or the policies clearly underlying these laws.

Matters in Controversy Under Broad Issue I

- (1) What are the relevant product and geographic markets for anti-trust analysis in this proceeding.
- (2) Whether Applicants have control over bulk power transmission facilities in the relevant markets.
- (3) Whether access to Applicants' bulk power transmission facilities is necessary to achieve the benefit of:
 - (a) Coordinated operation, or
 - (b) Coordinated development.

^{2/} "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.

^{3/} "Coordinated development" includes but is not limited to joint planning and development of generation and transmission facilities.

- (4) Whether Applicants have exercised control over bulk power transmission facilities to deny to other electric entities:
 - a. Access to the benefits of coordinated operation, either among themselves or with other electric entities, or
 - b. Access to the benefits of economy of size of large electric generating units by coordinated development, either among themselves or with other electric entities, or
 - c. The benefits enumerated in subparts a. or b. for the purpose or effect of eliminating one or more of the other entities in its service area.
- (5) Whether Applicants dominate the generation of bulk power in the relevant markets.
- (6) Whether Applicants' policy has been not to offer or sell unit power or ownership shares in nuclear units to other electric entities, thus depriving such other electric entities that are connected or could be connected with Applicants of the benefit of power from such nuclear units.
- (7) Whether Applicants have in any other way failed to grant access to the benefits of coordinated operation or coordinated development.
- (8) Have the Applicants engaged in any other activities or manifested any other policies having the purpose or effect of restraining actual or potential competition in the relevant markets.
- (9) Whether a situation or situations inconsistent with the antitrust laws or the policies clearly underlying these laws are created or maintained by one or more of matters (1) through (8).

Broad Issue II

Whether Applicants have achieved dominance in the relevant wholesale area ^{*/} retail markets so as to create or maintain a situation inconsistent with the antitrust laws, or whether the activities under the proposed license will create or maintain one or more of the situations described in Broad Issue I.

Matters in Controversy Under Broad Issue II

- (9) The relationship of activities under the proposed licenses for the nuclear units in question to transmission of electric power in bulk.
- (10) The relationship of activities under the proposed licenses for the nuclear units in question to coordinated operation among and between other entities.
- (11) The relationship of activities under the proposed licenses for the nuclear units in question to coordinated development among and between other entities.
- (12) The relationship of activities under the proposed licenses to the supply and cost of power in the relevant geographic market.

^{*/} The wholesale market includes, but is not limited to, various recognized forms of energy exchanges and sale and transfer of firm and non-firm bulk power.

Remedies

BROAD ISSUE III

A. If it is found that the activities under the license will create or maintain a situation inconsistent with the antitrust laws, what action should the Commission take, upon considering that conclusion, along with other factors as are necessary to protect the public interest, including the need for power in the affected area?

MATTERS IN CONTROVERSY
UNDER BROAD ISSUE III

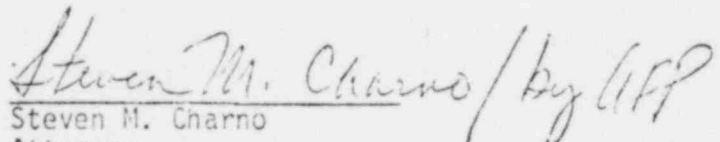
- (A) Should the Applicants be required to make available to other electric entities any or all of the following in connection with the Matters in Controversy under Broad Issues I and II.
- (1) Ownership of an appropriate portion of the licensed unit or unit power therefrom.
 - (2) The necessary transmission services to transmit this power to the other electric entities at a point or points on Applicants' transmission system to which the other electric entities are or may be interconnected.
 - (3) Transmission services to facilitate the exchange of bulk power between and among other electric entities with which Applicants are or may be interconnected.
 - (4) Other forms of coordinated development, including but not limited to joint planning.
 - (5) Emergency service and/or scheduled maintenance service.
 - (6) Firm power and energy to meet all or a portion of other electric entities needs.

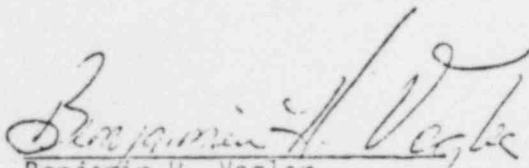
- (7) Interconnection arrangements for equalized reserves between Applicants and other electric entities.
 - (8) Participation in future generating plants through ownership or purchase of unit power.
 - (9) Specified coordination terms to accomplish the foregoing.
- (B) Should the Applicants in connection with the Matters in Controversy under Broad Issues I and II be required to make available any other relief.

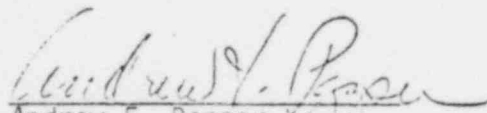
It is the position of the AEC Regulatory Staff, the Department of Justice, and the Intervenors that these issues can be made more specific from a legal and factual standpoint only after discovery has been completed.

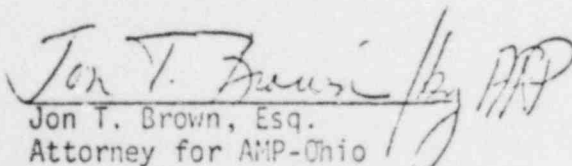
Consequently, we submit these issues to the Board in this form without further commentary.

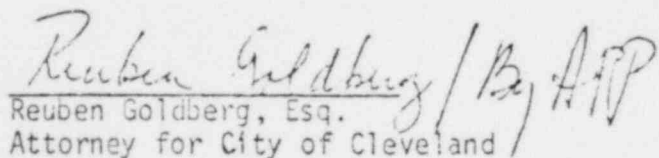
Respectfully submitted,


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Dated at Bethesda, Maryland
this 28th day of May 1974.

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AEC Docket No. 50-346A

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL.
(Perry Nuclear Power Plant,
Units 1 and 2)

Docket Nos. 50-440A
50-441A

DUQUESNE LIGHT COMPANY, ET AL.
(Beaver Valley Power Station,
Unit No. 2)

Docket No. 50-412A

CERTIFICATE OF SERVICE

I hereby certify that copies of JOINT STATEMENT OF AEC REGULATORY STAFF,
DEPARTMENT OF JUSTICE, AND INTERVENORS REGARDING THE CONTENTIONS AND
MATTERS IN CONTROVERSY, dated May 28, 1974, in the captioned matter,
have been served upon the following by deposit in the United States mail,
first class or airmail, this 28th day of May 1974:

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