

UNITED STATES OF AMERICA
BEFORE THE
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))	

MOTION OF AMERICAN MUNICIPAL POWER-OHIO, INC.
FOR LEAVE TO WITHDRAW PETITION TO INTERVENE

COMES NOW American Municipal Power-Ohio, Inc. (hereinafter AMP-Ohio), by and through counsel Wallace L. Duncan and Duncan, Brown, Weinberg & Palmer, 1700 Pennsylvania Avenue, N.W., Washington, D.C. and respectfully moves for leave to withdraw its Petition to Intervene filed on February 15, 1974, and to withdraw from further participation in the above-styled proceedings.

In support of its Motion, AMP-Ohio alleges and shows the Atomic Safety and Licensing Board as follows:

1. On February 15, 1974, AMP-Ohio timely filed its Petition to Intervene in these proceedings, alleging, inter alia, that the Cleveland Electric Illuminating Company (CEI) had consistently refused to wheel some thirty (30) megawatts of power from the

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Power Authority of the State of New York (hereinafter PASNY) to AMP-Ohio's member, the City of Cleveland. AMP-Ohio further alleged that CEI's refusal to wheel power for AMP-Ohio was part of an attempt by CEI to perpetrate and maintain its existing monopoly and destroy Cleveland's ability to compete through the introduction of an alternative bulk power supply source. AMP-Ohio further alleged that CEI's refusal to wheel power to the City of Cleveland on behalf of AMP-Ohio created and/or maintained a situation which is inconsistent with the antitrust laws and therefore cognizable under Section 105 of the Atomic Energy Act of 1954 as amended (42 U.S.C. Sec. 2135). AMP-Ohio requested that the Commission scrutinize CEI's activities and examine such evidence as may be presented during the pendency of the license application.

2. On April 15, 1974, the Board issued its "Final Memorandum and Order on Petitions to Intervene and Request for Hearing", admitting AMP-Ohio as an intervenor in these proceedings. Shortly thereafter, in order to accommodate the applicant in its desire to present written argument concerning the alleged "lack of nexus" of AMP-Ohio, the Board stayed its April 15, 1974, Order until April 23, 1974. In the interim, the applicant presented a lengthy brief to the Board. On April 23, 1974, the Board dissolved its stay order and reinstated its earlier order admitting AMP-Ohio as an Intervenor.

3. On August 15, 1974, the Applicant, CEI, filed a motion for summary disposition with the Board seeking the dismissal of AMP-Ohio from further participation in these proceedings.

AMP-Ohio filed a response to said motion on October 9, 1974. In addition, the applicants filed a reply to the earlier memorandum filed by the other parties in opposition to applicants' motion for summary dismissal on October 21, 1974. The Licensing Board denied the applicants' motion on November 4, 1974, concluding that, at that stage of the proceedings, AMP-Ohio had demonstrated sufficient nexus to condition its intervention in these proceedings. The Board's denial was "without prejudice to the Applicants to renew their motion after the close of discovery".

4. On August 18, 1975, the Applicants renewed their Motion for summary disposition and that matter is now pending before the Board.

5. Throughout these proceedings, the position of the City of Cleveland and AMP-Ohio have been identical with respect to CEI's refusal to wheel PASNY power for AMP-Ohio to the City of Cleveland. AMP-Ohio, in the interest of eliminating duplication of effort and pleadings, and to avoid burdening the record, has adopted the position and pleadings of the City of Cleveland on numerous occasions, the most recent of which was September 5, 1975, when AMP-Ohio adopted and concurred in the "Statement of the City of Cleveland Informing Applicants of the Nature of the Case to be Presented".

6. On September 5, 1975, the Nuclear Regulatory Commission Staff also filed a Statement of the Nature of the Case to be Presented by NRC Staff. The Statement of NRC Staff, received by the undersigned on September 9, 1975, also includes in its delineation of issues the past and present refusals of CEI to wheel 30 mws of PASNY power for the benefit of Cleveland and/or

AMP-Ohio and by (a) denying other electric utilities access to power supply sources and operations beyond the control of CEI and (b) thereby denying other such entities the ability to wheel with any excess capacity. The position of the Nuclear Regulatory Commission Staff is consistent with the delineation of issues on this point with the statement of the City of Cleveland.

7. The Antitrust Division of the Department of Justice has also consistently maintained that CEI's refusal to wheel PASNY power to the City of Cleveland for the account of AMP-Ohio is a relevant issue cognizable under Section 105(c)(5) of the Atomic Energy Act of 1975, (42 U.S.C. Sec. 2135(c)(5)).

8. Inasmuch as the representatives of the City of Cleveland and AMP-Ohio have worked closely in the development of this issue and the evidence pertaining thereto, it was unnecessary and would have been a duplication of effort for representatives of AMP-Ohio to have participated in the discovery proceedings, depositions and other aspects of this case. Representatives of AMP-Ohio have had full access to the files of the City of Cleveland and its representatives in these proceedings, and have been informed of all developments which might affect the mutual interests of AMP-Ohio and the City of Cleveland in these proceedings.

The City of Cleveland, Nuclear Regulatory Commission Staff and the Department of Justice have delineated issues beyond those which concern AMP-Ohio while, at the same time, each of these parties has carefully and adequately preserved the AMP-Ohio/Cleveland bulk power supply transaction as an issue in these proceedings. Thus, AMP-Ohio's further participation in these proceedings is superfluous other than to provide access to its files and make available its witnesses to the City of Cleveland,

the Nuclear Regulatory Commission Staff or the Department of Justice. AMP-Ohio has agreed to provide such support and access during the pendency of these proceedings.

9. The activities of CEI complained of by AMP-Ohio in its initial Petition to Intervene and throughout these proceedings have effectively prevented AMP-Ohio from developing a bulk power supply source for its members and deriving the income which might have been developed thereby. The economic strangulation perpetrated by CEI on the City of Cleveland has also extended to AMP-Ohio and has had the effect of limiting the economic resources needed by AMP-Ohio to continue its active participation in these proceedings. As the parties have noted throughout these proceedings, the costs thereof have become exorbitant, particularly to those systems which are denied competitive and economic advantage because of the anticompetitive conduct of the Applicant. In light of the prohibitive costs and the fact that AMP-Ohio's interests in these proceedings are already fully presented by and through the City of Cleveland, with the concurrence of the Department of Justice and the Nuclear Regulatory Commission Staff, AMP-Ohio elects, by leave of the Board, to withdraw its Petition to Intervene and to withdraw from further participation in these proceedings.

WHEREFORE, AMP-Ohio respectfully requests leave to withdraw from the above-captioned proceedings.

Respectfully submitted,



Wallace L. Duncan
Duncan, Brown, Weinberg & Palmer
1700 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing Motion of American Municipal Power-Ohio, Inc. upon all parties of record to this proceeding via first class, postage prepaid and correctly addressed mail.


Wallace L. Duncan

September 11, 1975