

10/30/75

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
The Toledo Edison Company and)	
The Cleveland Electric Illuminating)	Docket Nos. <u>50-246A</u>
Company)	50-500A
(Davis-Besse Nuclear Power Station,)	50-501A
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))	

SUPPLEMENTARY RESPONSE OF THE DEPARTMENT OF JUSTICE
TO APPLICANTS' INITIAL INTERROGATORIES AND
REQUEST FOR DOCUMENTS

Pursuant to correspondence between the Department of Justice (hereinafter "Department") and counsel for the Applicants, dated October 21 and October 28, 1975, the Department submits the following supplemental responses to "Applicants' Initial Interrogatories and Request for Documents for the Department of Justice and the ALC Regulatory Staff," dated August 26, 1974. Answers made herein are complete to the knowledge and belief of the undersigned as of October 31, 1975.

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RESPONSES TO DISCOVERY REQUESTS

Discovery Request Number 12

After discovery and preparation of expert testimony, the Department does adopt the position that unless Painesville "can secure either access or interconnection and coordination, it will be unable to remain a viable competitor." The basis for this position is that Painesville, a relatively small, isolated electric power system, does not have available to it the relatively inexpensive and reliable electric power available through coordinated operation or development with other utilities. Because it is a small system, it cannot afford to construct nor utilize the large generating units which, because of economies of scale, produce the least expensive electric power available. Painesville must use smaller generating units which produce more costly electric power. Furthermore, since Painesville is an isolated system, it cannot engage in coordinated operation. Under the presently existing interconnection agreement between Painesville and CEI, Painesville is denied the benefits of certain elements of coordinated operation, such as wheeling, and has no access to the benefits of coordinated development. Thus, Painesville is at a very severe competitive disadvantage vis-a-vis CEI, which completely surrounds it and which engages in both coordinated operation and development with the other members of CAPCO and has access to large-scale, low-cost generating facilities. If Painesville is to remain a competitor of CEI, it must therefore gain access to the same benefits of coordinated operation and development now enjoyed by CEI.

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Discovery Request Number 13

The Department does adopt the position that "without coordination, including wheeling, reserve sharing, and joint planning of and participation in large-scale generating units, [Cleveland] cannot continue to compete with CEI." The same reasons stated in response to Discovery Request Number 12 are applicable here. The present emergency interconnection between CEI and Cleveland does not provide an adequate basis for coordinated operation between the two systems. CEI has similarly foreclosed access by Cleveland to the benefits of coordinated development.

By virtue of CEI's stipulated dominance and the anticompetitive acts and practice enumerated in Part A, Interrogatory Number 2, of the "Response of Department of Justice to Applicants' Interrogatories and Requests for the Production of Documents," filed September 5, 1975, a situation inconsistent with, indeed, violative of, the antitrust laws exists. The wheeling of power to Cleveland by CEI, as well as the other aspects of coordinated operation, are necessary to remedy this situation.

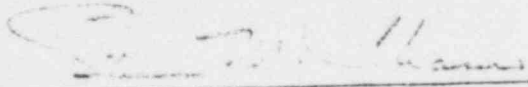
Discovery Request Number 16

To be free of anticompetitive effect, any commitments by CEI to Painesville or Cleveland would have to provide for a degree of coordinated operation and development sufficient to provide the

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benefits enumerated in the "Direct Testimony of Roland A. Kampmeier," at pages 10-12, 14-17, 20-26 and 37-41.

Respectfully submitted,



STEVEN M. CHARNO



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Subscribed and sworn to before me
this 30th day of October, 1978.



NOTARY PUBLIC

My commission expires ~~August 14, 1977~~

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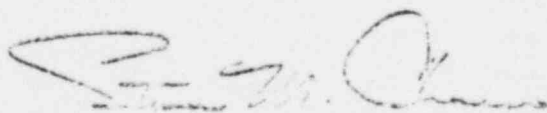
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CERTIFICATE OF SERVICE

I hereby certify that copies of SUPPLEMENTARY RESPONSE OF THE DEPARTMENT OF JUSTICE TO APPLICANTS' INITIAL INTERROGATORIES AND REQUEST FOR DOCUMENTS have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class, airmail or by hand delivery, this 31st day of October 1975.



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