December 2, 1974

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

THE TOLEDO EDISON COMPANY and
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY
(Davis-Besse Nuclear Power Station,
Unit 1)

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

Docket Nos. 50-346A
50-440A
50-441A

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S ANSWERS TO THE INTERROGATORIES AND DOCUMENT REQUESTS SERVED UPON IT BY THE OTHER PARTIES

Pursuant to Section 2.740 of the Commission's Restructured Rules of Practice, The Cleveland Electric Illuminating Company ("CEI") submits the following responses (a) to Interrogatories 1 through 9, as jointly propounded by the AEC Regulatory Staff and the Department of Justice, and as adopted by reference by the City of Cleveland, and (b) to the requests of other parties hereto for production of CEI documents.

A. Interrogatories

Interrogatory No. 1:

1. Designate and identify by electric utility on a large scale geographic map:

a. Each of Company's delivery points for wholesale power;

b. The location of each generating plant of Company and a designation of each plant's MW capacity;

c. Each interconnection point between Company and other electric utilities.

Answer:

A large scale geographic map showing the information requested in Interrogatory No. 1 is attached hereto.

Interrogatory No. 2:

2. Define the geographic and product markets and submarkets upon which Company intends to rely as the relevant markets in this proceeding:

a. As to each product market and submarket listed in response to this question, identify and describe each factor considered in determining that it is an appropriate product market or submarket for antitrust analysis in this proceeding.

b. Define the geographic boundaries which are relevant for each such product market and indicate such boundaries on a large scale map.

c. State specifically the factors used in defining the boundaries in each area described and delineated in 2.b., and describe each factor considered in determining that it is an appropriate geographic market or submarket for antitrust analysis in the proceeding.

Answer:

CEI is unable at this time to define the geographic and product markets and submarkets upon which it intends to rely as the relevant markets in this proceeding. As soon as CEI has formulated the position that it intends to take herein regarding the matter of relevant markets and submarkets, it will so advise the AEC Regulatory Staff, the Department of Justice and the City of Cleveland, providing at that time the information requested in Interrogatory No. 2.

Interrogatory No. 3:

> 3. Since September 1, 1965 has Company ever transmitted electric power through its system for any electric utility engaged in the utilization, sale or further transmission of that power? If so, describe each situation stating (a) the parties involved, (b) the time period involved, (c) the amount of energy in MWHRS involved annually, (d) the reasons for the transmission, and (e) the date of and signatories to any agreements relating to each such situation.

Answer:

Since September 1, 1965, CEI has not transmitted electric power through its system from any electric utility located outside its system to any electric utility. CEI has no tariff or rate schedule for providing such service other than the Cleveland Electric Illuminating Company Rate Schedule FPC No. 4, Supplement No. 2, a copy of which has been made available in response to

Joint Document Request No. 3. This Rate Schedule relates to transmission by CEI of Fuel Conservation Energy from others to the PJM Group and ultimately to the East Coast utilities; said arrangement was entered into by CEI at the request of the Federal Power Commission in its Dockets RM-74-22, E-8589, and E-8550, et al., to forestall imminent threats to the reliability of service in the East Coast area of the nation as a consequence of the Arab oil embargo. CEI has made no transactions under this schedule. In answering Interrogatory No. 3, CEI has assumed that the interrogatory does not relate to CEI's transmission of power which originates at plants located on the CEI system.

Interrogatory No. 4:

> 4. Since September 1, 1965, has Company refused any request to transmit electric power in the manner described above in interrogatory three? If so, describe each such request by (a) the date of the request, (b) the party making the request, (c) the supplying and receiving parties, (d) the requested transmission route, (e) the amount of power involved, (f) the time period involved, (g) the reasons for Company's decision with regard to this request, and (h) the identity by date, author(s) and subject matter of any documents relating thereto.

Answer:

Since September 1, 1965, CEI has not refused to transmit electric power through its system from any electric utility located outside its system to any electric utility, other than as follows:

(a) Date of Request: May 1, 1973.

(b) Party Making the Request: American Municipal Power-Ohio, Inc.

(c) Supplying and Receiving Parties: Power Authority of the State of New York (Supplier); City of Cleveland, Ohio (Receiver).

(d) Requested Transmission Route: Power Authority of the State of New York (over lines of its New York wheeling agent) to a point of interconnection with Pennsylvania Electric Company, and over Pennsylvania Electric Company lines to a point of interconnection with CEI, and over CEI lines to a point of interconnection with the City of Cleveland, Ohio.

(e) Amount of Power Involved: Thirty (30) megawatts.

(f) Time Period Involved: Not specified.

(g) Reasons for Company's Decision with Regard to Request: CEI competes with the Cleveland Municipal Light Plant on a customer-to-customer and street-to-street basis in a sizeable portion of the City of Cleveland. This competitive situation is clearly unique. CEI by law is precluded from access to PASNY low-cost power. As a matter of sound business judgement, CEI determined, based on the facts existing at the time CEI was called

upon to make a decision, that use of its facilities to transmit PASNY power to the City of Cleveland would provide the Cleveland Municipal system with electric energy at a cost which would unfairly increase the competitive advantage in the City of Cleveland already enjoyed by the Cleveland Municipal system.

(h) Documents Relating to Said Request: Relevant documents have been made available in response to Joint Document Request No. 19.

Interrogatory No. 5:

5. Since September 1, 1965, has Company used the transmission facilities of any other electric utility to transmit electric power? If so, describe each situation, stating (a) the parties involved, (b) the time period involved, (c) the amount of energy in MWHRS involved annually, (d) the reasons for the transmission, and (e) the date of and signatories to any agreements relating to each such situation.

Answer:

Since September 1, 1965, CEI has not used the transmission facilities of any other electric utility to transmit electric power, except in the following instance: CEI does use the transmission facilities of Pennsylvania Electric Company, but only to deliver CEI power generated at CEI's Seneca Plant located

near Warren, Pennsylvania, to the CEI load centers in Ohio. This latter arrangement is incorporated in Pennsylvania Electric Company Rate Schedule FPC No. 61, a copy of which has been made available in response to Joint Document Request No. 3. In answering Interrogatory No. 5, CEI has assumed that the interrogatory does not relate to CEI's use of transmission facilities of a Company with which CEI is directly interconnected and from which CEI may purchase power.

Interrogatory No. 6:

> 6. State each request since September 1, 1965, made by an electric utility to Company for a new or altered interconnection arrangement, giving (a) the name of the entity, (b) the date of the request, (c) the date of any agreement to interconnect, (d) the reason for any refusal to interconnect, and (e) the date and author(s) of any document relating to any such refusal.

Answer:

The following requests by an electric utility for new or altered interconnection arrangements with CEI were made since September 1, 1965, all of which were implemented:

(a) Request of the Pennsylvania Electric Company for conversion of the CEI-Pennsylvania Electric Company interconnection from 230 kv to 345 kv, including the establishment of the Erie West Substation. This conversion was planned in the facilities' original agreement establishing the interconnection, dated July 23, 1965.

The conversion took place in October, 1969 (see CEI Rate Schedule FPC No. 5, made available in response to Joint Document Request No. 3).

(b) Request of the Ohio Edison Company for the addition of the Ohio Edison 345 kv - 138 kv transmission substation (Hanna Substation) on CEI's 345 kv line between the Juniper Substation and CEI's interconnection point with the Ohio Power Company, east of Ohio Power's Canton Central Substation located near East Canton, Ohio. The decision to implement this request is documented in the CAPCO Memorandum of Agreement dated September 14, 1967, made available in response to Joint Document Request No. 15. The Hanna Substation was put into service in April, 1972. Facilities' agreements between CEI and each of the other two companies (Ohio Edison and Ohio Power) were appropriately modified to reflect this interconnection change by documents dated March 21, 1972, made available in response to Joint Document Request No. 15.

(c) Request of the Ohio Edison Company for the addition of a second 138 kv circuit between CEI's Lorain Substation in Avon, Ohio, and Ohio Edison's Johnson Substation in Elyria, Ohio. This addition was originally planned for the Spring of 1970, but due to a delay in acquiring the right-of-way, completion of the new interconnection did not take place until the Spring of 1974. The agreement covering the new facility was signed on April 2, 1974, and is made available in response to Joint Document Request No. 15.

(d) The Request of the Pennsylvania Electric Company for the addition of a 345 kv - 135 kv transformer at the Pennsylvania Electric Company's Erie-West Substation; this addition involved metering rearrangements at the Erie-West end of the interconnection. The new transformer was discussed initially in April, 1972; CEI's letter concurring with the installation of the transformer is dated November 17, 1973, and is made available in response to Joint Document Request No. 15. The transformer was energized on February 27, 1974.

(e) Ohio Edison Company also made requests for two additional interconnections between CEI and Ohio Edison. Both requests were made prior to September 1, 1965, and the agreements to install the requested facilities were signed prior to said date; however, actual installation occurred subsequent to September 1, 1965. These additional interconnections were the 345 kv Juniper Star line (put into service in June, 1968), and the 345 kv Avon-Beaver (West Lorain) line (put into service in May, 1970).

Interrogatory No. 7:

> 7. State each request since September 1, 1965, made by an electric utility with generating facilities for an arrangement to share reserve capacity giving (a) the name of the entity, (b) the date of the request, (c) the date of any agreement to share reserve capacity, (d) the reason for any refusal, and (e) the date and author(s) of any document relating to any such refusal.

Answer:

The following requests were made since September 1, 1965 by an electric utility with generating facilities for an arrangement to share reserve capacity with CEI:

(a) Request of the Pennsylvania Electric Company to share with CEI an 80% tenant-in-common ownership interest in the Seneca Plant located near Warren, Pennsylvania. While the "request" leading up to this arrangement was submitted prior to September 1, 1965, the license from the Federal Power Commission for construction and operation of this hydroelectric plant was issued December 28, 1965. (See FPC Part 1 Filings, and CEI Rate Schedule FPC No. 6, made available in response to Joint Document Request No. 3.) The Seneca Plant went into commercial operation in January 1970.

(b) Requests leading to CEI's membership in the power pool known as CAPCO, which has resulted in tenant-in-common ownership interests of varying percentages in 10 base load generating units, constructed, being constructed or planned for construction. The CAPCO arrangement also provides for mutual back-up of the systems of the CAPCO members, which, in addition to CEI, are: Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company. All documents relating to CAPCO arrangements have been made available in response to the Joint Document Requests and the Document Requests of the City of Cleveland.

(c) Request of the City of Cleveland, made on August 3, 1973, for an arrangement for reserve capacity sharing through participation in the Perry Nos. 1 and 2, Beaver Valley No. 2, and Davis-Besse No. 1 generating units. (A request by the City of Cleveland for participation in the CAPCO pool was made on April 4, 1973; a request by the City of Cleveland for participation in the Perry Plant was made on April 13, 1973.) CEI has not refused access to these units to the City of Cleveland; CEI, on December 13, 1973, offered participation in the units to the City of Cleveland, reaffirmed that offer on February 7, 1974, and submitted a detailed contract for participation in the units to the City on February 27, 1974. The City of Cleveland has failed to meet with CEI for negotiation of this offer by CEI, despite requests by CEI on April 10, 1974, August 6, 1974, and November 11, 1974 that the City of Cleveland do so. Similarly, a proposal for an interconnection agreement between CEI and the City of Cleveland was submitted by CEI to the City in 1973 and, despite the Order of the Federal Power Commission (Opinion No. 644, dated January 11, 1973) that a permanent 138 kv interconnection be completed by January 11, 1975, the City of Cleveland has failed to meet with CEI for negotiation of this interconnection agreement notwithstanding CEI's requests of the City to do so.

(d) Request of the City of Painesville, made on April 11, 1973, for participation in the Perry Plant. That request has not

been renewed; however, CEI and the City of Painesville have been engaged in negotiations for an interconnection agreement since the fall of 1973. These negotiations are continuing, and there has been no refusal on the part of CEI to enter into the requested arrangement for interconnection. While CEI cannot speak for the City of Painesville, CEI assumes that the City of Painesville's request for participation in the Perry Plant is no longer a viable request.

Interrogatory No. 8:

> 8. Do you contend that there is any legal impediment for a municipally owned electric utility, an electric cooperative or a lawful association of any of the foregoing to own a portion of or purchase unit power from the Davis-Besse Unit 1 or Perry Units 1 & 2? If so, describe your reasons for such a contention and furnish copies of any applicable state statutes and court decisions upon which you rely.

Answer:

(a) CEI does contend that there exists a legal impediment in the State of Ohio for a municipally-owned electric utility to own a portion of Davis-Besse Unit 1 or Perry Units 1 and 2 for the following reasons:

1. That the Constitution of Ohio prohibits such joint ownership by a municipality with private parties has long been established in Ohio.

Article VIII, Section 6, of the Ohio Constitution provides in part as follows:

> "No laws shall be passed authorizing any county, city, town or township, by vote of

> its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association * * *"

This provision was inserted in the 1851 Constitution and with insignificant changes included in the revisions of 1912. It has been the subject of numerous decisions by the Supreme Court of Ohio, which has uniformly held that it not only prohibits the lending of credit by a municipal corporation to a private company but also prohibits joint ownership by a municipality and a private company of any property. One of the earliest cases interpreting the constitutional provision was Walker v. Cincinnati, 21 Ohio St. 15 (1871), in which the court said:

> "* * * The mischief which this section interdicts is a business partnership between a municipality or subdivision of the state, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever. In no project originated by individuals, whether associated or otherwise with a view to gain, are the municipal bodies named permitted to participate in such manner as to incur pecuniary expense or liability.* * *"
>
> (21 Ohio St. at 27)

The same position was taken by the court in Alter v. Cincinnati, 56 Ohio St. 47 (1897), where the court said:

> "This section of the constitution not only prohibits a 'business partnership,' which carries the idea of a joint or undivided interest, but it goes further and prohibits a municipality from being the owner of part of a property which is owned and controlled in part by a corporation or individual. The municipality must be the sole owner and controller of the property in which it invests its public funds. A union of public and private funds or credit, each in aid of the

> other, is forbidden by the constitution. There can be no union of public and private funds or credit, nor of that which is produced by such funds or credit."
>
> (56 Ohio St. at 64)

As said in State, ex rel v. Cincinnati Street Ry. Co., 97 Ohio St. 283 (1918), in speaking of the arrangement involved in the Alter case:

> "It really provided that the city and the private company might become joint owners of indivisible interests in a single and entire property."

This is the precise ownership demanded by the City of Cleveland in the present proceedings.

These cases have been approved and followed as recently as State, ex rel v. Hance, 169 Ohio St. 457 (1959), in which the court held:

> "Under Section 6, Article VIII of the Constitution of Ohio, a municipality is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and a municipality is thereby prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property."
>
> (169 Ohio St. 457, syllabus 3)

The fact that the money used to finance this joint ownership may be derived from revenue bonds not involving the general obligation of the municipality does not change the legal situation. In State, ex rel Saxbe v. Brand, 176 Ohio St. 44 (1964), the Ohio Supreme Court held that the like prohibition of Article VIII, Section 4 applicable to state debt could not be avoided by use of revenue bond money.

2. It may be contended that this rule is inapplicable with respect to public utility property because of Article XVIII, Section 4, adopted as part of the constitutional revision of 1912 and which confers authority on municipalities to "acquire, construct, own, lease and operate * * * any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants." However, as pointed out in State, ex rel v. Cincinnati Street Railway Company, supra, the public utility section must be construed together with Section 6 of Article VIII and full effect given to all of the provisions:

> "There is now no doubt as to the authority of a municipality to go forward with the enterprises, and for the purposes referred to in that section. By the provisions of Sections 4 and 5 of Article XVIII plenary power is given to the municipality to deal with the subject. However, these sections of Article XVIII must be construed with Section 6 of Article VIII, which, as already stated, was readopted at the same time. They are entirely consistent and full effect must be given to all of them."
>
> (97 Ohio St. at 304)

As also pointed out in that decision, the readoption of Section 6, Article VIII, as part of the 1912 amendments served as a confirmation of the previous interpretations of the section by the court:

> "In September, 1912, Section 6, Article VIII of the Constitution, was amended, but the provisions of the section which are involved here were substantially readopted. The adjudications of this court, in which the purpose and effect of the section have been stated and construed, have the added force and authority which accompanies the presumption that the constitutional convention and the people in readopting the provision had in mind its judicial construction and gave it as so construed their sanction and approval. * * *"
>
> (97 Ohio St. at 303)

This statement was immediately followed by quotation of the above quoted passage from the Walker case.

Likewise, State, ex rel v. Hance, supra, also involved the public utility operations of a municipality and Article VIII, Section 6, was applied without reference to the public utility provisions of Article XVIII, although the court applied those provisions to other matters decided in the case.

The conclusions of the decisions cited above also find support in the very language of the public utility sections of Article XVIII. Section 4 provides that a municipality may "acquire", etc., "any public utility", that the acquisition may be by condemnation or otherwise, "and that the municipality may acquire thereby the use of, or full title to, the property and franchises of any company or person supplying" the municipality or its inhabitants. Section 5 provides that any municipality proceeding to acquire, etc., "a public utility" shall act by ordinance. Section 6 provides that any municipality "owning or operating a public utility" may make limited sales outside. Likewise, Section 12 provides that "any municipality which acquires, constructs or extends any public utility" may issue revenue bonds.

Thus in every section the reference is to a complete public utility and not to acquisition of an undivided interest in what would be only a part of a complete utility system. It follows that Article XVIII gives no authority to do what the City of Cleveland proposes in the present proceeding, independently of the prohibitions of Article VIII, Section 6.

3. Mention should also be made of Article VIII, Section 13, of the Ohio Constitution, which authorizes political subdivisions to issue revenue bonds which do not obligate moneys raised by taxation for a variety of purposes and provides that such bonds or other lending of credit shall not be subject to the limitations of other sections of Article VIII. However, this section provides that the matters authorized by it shall not extend to "facilities to be constructed for the purpose of providing electric or gas utility service to the public." Accordingly, Section 13 does not affect the conclusions reached above.

4. Also to be noted, because of the amounts of capacity the City of Cleveland already has and is seeking from the CAPCO Units, as compared with its sales, is the limitation in Article XVIII, Section 6 on the amount of energy which may be sold outside of a municipality:

> "Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty percent of the total service or product supplied by such utility within the municipality, provided that such fifty percent limitation shall not apply to the sale of water or sewage services."

This limitation was applied in State, ex rel v. Hance, supra, on the basis of kilowatt hour sales within a given period of time, such as a month.

5. It must be recognized that the power of AEC under Section 105(c)(6) to impose conditions or take other action is dependent on its finding under Section 105(c)(5) of "a situation inconsistent with the antitrust laws." It is well established that compliance with requirements of state law does not constitute a violation of the antitrust laws. Parker v. Brown, 317 U.S. 341, 350-1 (1941). Since, as demonstrated above, joint ownership with a municipality is prohibited by the law of Ohio, a refusal of investor-owned companies to share ownership of a unit with a municipality cannot be regarded as action "inconsistent with the antitrust laws." Nor, in such circumstances, does the AEC have the power under Section 105(c)(6) to require the investor-owned companies to grant a municipality ownership participation.

(b) CEI is not at this time in a position to state whether or not it contends that there exists any legal impediment in the State of Ohio for a municipally-owned electric utility to purchase unit power from Davis-Besse Unit 1 or Perry Units 1 and 2. When CEI has formulated its views on this aspect of the question with sufficient clarity to give an opinion, it will so advise the AEC Regulatory Staff, the Department of Justice and the City of Cleveland, setting forth the reason therefor.

The applicable state laws and court decisions which are cited above in response to Interrogatory No. 8 are available for examination and copying with the other documents that are being produced by CEI in response to the Joint Document Requests and the Document Requests of the City of Cleveland.

Interrogatory No. 9:

> 9. Do you contend that there is any legal impediment in the State of Ohio for a municipally-owned cooperative electric utility to sell electric power within the franchised areas of any other electric utility? If so, describe your reasons for such a contention and furnish copies of any applicable state statutes and court decisions upon which you rely.

Answer:

No.

B. Document Requests

CEI has made available for inspection and copying all documents requested to be produced by the AEC Regulatory Staff, the Department of Justice and the City of Cleveland, except for those documents which the Licensing Board has ruled need not be produced, and those documents which CEI intends to withhold from production because they contain privileged and/or confidential matter entitled to special protection. The documents produced are located in Room 624 of CEI's offices, 55 Public Square, Cleveland, Ohio. Access to this material can be arranged through Victor F. Greenslade, Esquire, of CEI.

December , 1974

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(Davis-Besse Nuclear Power Station, Unit 1)	)	Docket Nos. 50-346A 50-440A 50-441A
	)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.,	)	
(Perry Nuclear Power Plant, Units 1 and 2)	)	

AFFIRMATIONS

I, Dalwyn R. Davidson, am Vice President-Engineering of The Cleveland Electric Illuminating Company and hereby affirm that the Responses of the Company to Joint Interrogatories No. 1 and Nos. 3-7 of the AEC Regulatory Staff and the U.S. Department of Justice are true and correct to the best of my knowledge and belief.

Dalwyn R. Davidson

WITNESS my hand and notorial seal.

I, Wm. Bradford Reynolds, am counsel for The Cleveland Electric Illuminating Company and hereby affirm that the Responses of the Company to Joint Interrogatories Nos. 2, 8 and 9 of the AEC Regulatory Staff and the U.S. Department of Justice are true and correct to the best of my knowledge and belief.

Wm. Bradford Reynolds

WITNESS my hand and notorial seal.

My Commission Expires June 30, 1975

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "The Cleveland Electric Illuminating Company's Answers to the Interrogatories and Document Requests Served Upon It by the Other Parties" were served upon each of the persons listed on the attached Service List by U. S. Mail, postage prepaid, on this 16th day of December, 1974.

SHAW, PITTMAN, POTTS & TROWBRIDGE

By _____
Wm. Bradford Reynolds
Counsel for Applicants

Dated: December 16, 1974.

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(Perry Nuclear Power Plant, Units 1 and 2)	)	

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