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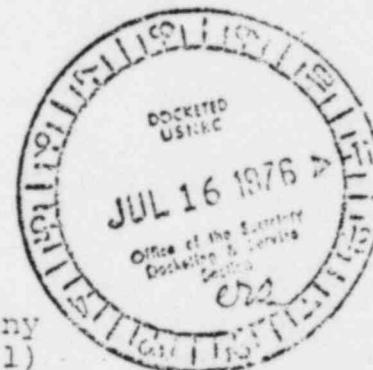
July 15, 1976

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Re: The Toledo Edison Company and
The Cleveland Electric Illuminating Company
(Davis-Besse Nuclear Power Station, Unit 1)
NRC Docket No. 50-346A,
The Cleveland Electric Illuminating Company,
et al.
(Perry Nuclear Power Plant, Units 1 and 2)
NRC Docket Nos. 50-440A and 50-441A;
The Toledo Edison Company, et al.
(Davis-Besse Power Station, Units 2 and 3)
NRC Docket Nos. 50-500A and 50-501A



Gentlemen:

By letter of July 13, 1976, the Department of Justice has objected to the introduction into evidence of Applicants Exhibits 278-283 (CEI). Since the exhibits in question were made available at the specific request of the Licensing Board, and serve to complete the record in this proceeding by including therein the materials explicitly referenced in the testimony given by

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Douglas V. Rigler, Esquire
Ivan W. Smith, Esquire
John M. Frysiak, Esquire
July 15, 1976
Page Two

Messrs. Gaul and Hauser on July 1, 1976, Applicants would question the appropriateness of the Department's position with regard to this matter. In any event, the objections are not well taken.

In the first place, the Department complains that the exhibits relate to an "eleventh hour charge." We would simply observe at the outset that of all the parties in this proceeding, the Department is the last one which should be heard to register such a complaint. It is, after all, the Department who waited until June 23, 1976, virtually at the close of the hearing, to advise Applicants of its reformulated allegations. By contrast, the assertion that "the City of Cleveland has not acted in good faith" with regard to its requests for membership in CAPCO and participation in the designated nuclear plants has been a part of CEI's defense from the beginning. It was specifically referenced in CEI's Prehearing Fact Brief, at p. 8, and was an underlying thesis running throughout the cross-examination of Mr. Robert A. Hart.

The Department, therefore, had ample notice of this particular aspect of CEI's case. Nor is it in any position to claim "surprise" as to the contents of Applicants Exhibits 278-283 (CEI). By its own admission, the Department had much earlier received, and was familiar with (see DOJ Exhibit 633), the affidavit of Lee C. Howley dated March 27, 1974, which was filed with the Licensing Board over two years ago. As the testimony of Mr. Hauser makes clear, the statements in that prior affidavit are substantively no different from the accounts of the March 1974 meetings contained in the exhibits now under discussion (Tr. 12,468-12,469). There is thus no information being disclosed at this time which the Department can honestly represent to this Board it had not been apprised of long before.

As for the Department's accusation that the tape recording, and transcriptions thereof, were improperly withheld from the Department on discovery, this charge is unfounded. Passing for the moment the Department's misguided assumption that the materials in question were in the possession, custody or control of CEI at the time of the Company's document production, it is clear that the recorded conversation between Mr. Gaul and Mr. Kudukis at the Committee meeting of City Council does not come within either of the document requests referenced in the Department's July 13 letter, or, for that matter, any of the other Joint Document Requests.

Douglas V. Rigler, Esquire
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July 15, 1976
Page Three

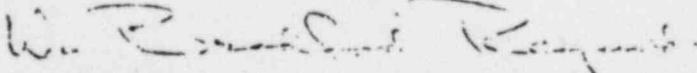
In this regard, it is manifest that the material in question is not concerned in any way with the Company's consideration of, or response to, a request, inquiry "or" expression of interest in coordination or integration from any other electric utility -- which, by use of the conjunctive term "and", is plainly fundamental to the broadly framed document request set forth in numbered paragraph 20. Nor does it have any relationship to the matter referred to in Document Request No. 21, which seeks only materials bearing on the subject of an "exclusion" from or "unsuccessful efforts" to participate in a pooling arrangement such as CAPCO. The Department may now wish that it had framed more carefully its document requests to embrace the Gaul recording, but its inartful draftsmanship should not now be used by the Department as a basis for faulting CEI's legitimate understanding of what was called for under the imprecise language employed.

In light of the foregoing, the Department's objections to Applicants Exhibits 278-283 (CEI) are singularly unpersuasive. The July 1, 1976 testimony of Messrs. Gaul and Hauser is a matter of record. That testimony is wholly consistent with the information regarding the same subject matter that the Department has had in its possession since the filing of the Howley affidavit of March 27, 1974. The additional exhibits being offered by Applicants simply corroborate that testimony and complete the record in connection therewith. They have been furnished at the Board's request.

In such circumstances, the Department's cry of "severe prejudice" has a particularly hollow ring. We would remind the Department that it had ample opportunity to cross-examine Mr. Gaul and Mr. Hauser, on July 1, 1976, but it elected not to. In addition, the Board granted the Department leave to call Mayor Perk in rebuttal to Mr. Gaul's testimony, and the Department chose not to pursue that course. It is therefore unclear how the receipt into evidence of Applicants Exhibits 278-283 (CEI) can cause any prejudice to the Department, let alone severe prejudice.

Applicants, therefore, ask that their motion with respect to the aforesaid exhibits be granted.

Respectfully submitted,



Wm. Bradford Reynolds
Counsel for Applicants

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cc: All parties