



UNITED STATES DEPARTMENT OF JUSTICE

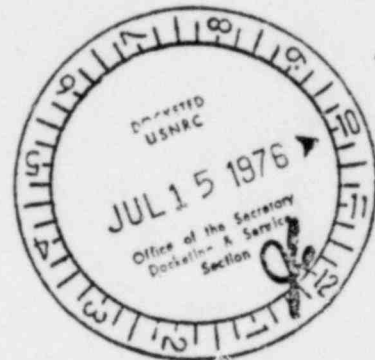
WASHINGTON, D.C. 20530

July 13, 1976

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

TEK:JJS:SMC  
60-415-73

Douglas V. Rigler, Esquire  
Chairman  
Atomic Safety and Licensing Board  
Foley, Lardner, Hollabaugh & Jacobs  
815 Connecticut Avenue, N.W.  
Washington, D.C. 20006



Re: The Toledo Edison Company  
The Cleveland Electric Illuminating Company  
Davis-Besse Nuclear Power Station, Units 1, 2 and 3  
NRC Docket Nos. 50-346A, 50-500A and 50-501A;  
The Cleveland Electric Illuminating Company, et al.  
Perry Nuclear Power Plant, Units 1 and 2  
NRC Docket Nos. 50-440A and 50-441A

Dear Chairman Rigler:

On July 8, 1976, Mr. Reynolds, by letter, offered Applicants' Exhibits 278-283 (CEI) for identification and admission into evidence. The Department objects to the receipt of these exhibits in the record.

The eleventh hour charge by The Cleveland Electric Illuminating Company ("CEI") that the City of Cleveland has not acted in good faith was not raised in the evidentiary portion of this proceeding until June 17, 1976 (Tr. 11811-12). Although a similar allegation was raised by an affidavit (which was not based upon personal knowledge of the affiant) prior to the commencement of hearing, neither the "List of Proposed Exhibits of The Cleveland Electric Illuminating Company" nor the "List of Proposed Witnesses of The Cleveland Electric Illuminating Company," both filed December 1, 1975, contained any intimation that this charge would be pursued by Applicants. The existence of a CEI recording of a March 5, 1974 meeting related to this charge was not disclosed to the Department until the testimony of Francis E. Gaul on July 1, 1976 (Tr. 12438), the next to the last day of hearings in this proceeding.

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Within "a day or two" after the March 5, 1974 meeting, Mr. Gaul made the tape recording of the meeting available to CEI (Tr. 12440). The recording was copied by a company representative. There is no reason to believe that this copy of the original recording has not been in the possession of CEI from that date until the present time.

The "Joint Request of the AEC Regulatory Staff and U.S. Department of Justice for Interrogatories and for Production of Documents by Applicants", filed August 23, 1974, defined "documents" to include "electrical recordings . . . and all other records written, electrical, mechanical, or otherwise . . . [d]ocuments shall also mean copies of documents . . . ." The Joint Request required production of the following:

20. All documents relating or referring to requests, inquiries as expressions of interest in coordination or integration from any other electric utility, and Company's consideration thereof and response thereto . . . .

\* \* \*

21. All documents which show or relate to the exclusion of or any unsuccessful efforts by any electric utility or group of utilities to participate in any bulk power supply coordinating group of which Company [CEI] is a member.

Applicant's Exhibits for identification 278-283 (CEI) relate to a March 5, 1974 meeting, which concerned various options facing the City in obtaining the benefits of coordinated operation and development from CEI. The subject matter of the meeting was plainly within the scope of the above-quoted portions of the Joint Request. The tape recording in question, and any transcripts thereof, should have been turned over to the Department by December 2, 1974.

The Department has been severely prejudiced by the surprise caused by Applicants' willful and knowing refusal to produce documents in their possession pursuant to the discovery order of this Board. The Department therefore asks that Applicant's Exhibits for identification 278-283 (CEI) be rejected.

Sincerely yours,

*Steven M. Charno*

Steven M. Charno

Attorney

Antitrust Division

cc: All parties