

February 1, 1977

Docket No. 50-346A

POOR ORIGINAL

Mrs. James Benya
3922 Drummond Road
Toledo, Ohio 43613

Dear Mrs. Benya:

DAVIS-BESSE NUCLEAR POWER PLANT

This is in answer to your January 9, 1977 inquiry regarding a requirement that Toledo Edison allow competitors to join CAPCO and to buy into nuclear power projects.

This requirement is one of ten requirements based on an initial decision of a three member Atomic Safety and Licensing Board. The Board concluded that The Toledo Edison Company along with the other applicants for licenses (Cleveland Electric Illuminating, Duquesne Light and Ohio Edison) for the Davis-Besse and Perry nuclear power plants have a prolonged history, both individually and collectively, of misuse of their dominant position within the CCCT (CAPCO pool area) and their respective service areas to achieve anticompetitive results. The Board therefore ordered certain license conditions to be applied to the licenses for the nuclear plants.

The Board based its decision on an evidentiary hearing which commenced in December of 1975 and ran until July of 1976. The Board's initial decision can be appealed to an Atomic Safety and Licensing Appeal Board. The appeal board's decision can then in turn be appealed to the courts.

We have no specific knowledge whether any competitors that may choose to buy into the Davis-Besse nuclear plant were at the EPA and PUCO hearings, but presumably they were not asked or otherwise given the opportunity to participate in those hearings. As early as July 6, 1971 the City of Cleveland petitioned the then Atomic Energy Commission stating "It (the City of Cleveland) is, therefore, vitally interested in the matter of allocation of power from Davis-Besse and it is willing and able to pay its proportionate share for construction, operation, maintenance and all other capital and operating cost should it obtain an allocation of power from Davis-Besse. "On April 4, 1973, American Municipal Power - Ohio,

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Mrs. James Benya

-2-

February 1, 1977

Inc. (AMP-0) petitioned the then Atomic Energy Commission stating "AMP-0 is desirous of obtaining a participating interest in the Davis-Besse Nuclear Power Station, or in the alternative, purchasing a block of power from such station by making a prepayment on power." Further, the Licensing Board concluded that although requested to do so by some of its competitors, the Toledo Edison Company refused to permit them to participate in large scale generating facilities such as Davis-Besse 1. Thus, these groups might be reasonably expected to differ with your view that they waited until the last minute to express their interest in the nuclear plant.

With regard to your concern that other companies may obtain the benefits from the Davis-Besse proceedings toward which the customers of Toledo Edison have paid, it is our understanding and our position that any competitors that may want to buy into the nuclear plant will likewise be required to pay their proportionate share of the costs attributable to the nuclear plant.

Sincerely,

Argil L. Toalston

Argil L. Toalston, Chief
 Power Supply Analysis Section
 Antitrust & Indemnity Group
 Nuclear Reactor Regulation

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DATE →	1/31/77	1/31/77	2/1/77		