

October 8, 1982

John Lansdale, Esq.  
Squire, Saunders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Cleveland Electric Illuminating  
Company, et al., Operating License  
Antitrust Review, Perry/Davis Base  
Nuclear Units, Docket Nos. 50-44  
50-441A

Dear Mr. Lansdale:

This will confirm our telephone conversation of October 7, 1982, concerning the captioned matter. Pursuant to your request I have enclosed copies of the NRC's letter of August 9, 1982 to the City of Cleveland's Division of Light and Power and the City's responses thereto, dated September 8 and 10, 1982.

Please call me if you have any further questions concerning this matter.

Sincerely,

Benjamin H. Vogler  
Deputy Antitrust Counsel

Enclosures: As stated

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

AUG 9 1982

Mr. B. L. Mikessell  
Cleveland Division of Light & Power  
1201 Lakeside Avenue  
Cleveland, Ohio 44114

Dear Mr. Mikessell:

OPERATING LICENSE ANTITRUST REVIEW OF THE PERRY/DAVIS-BESSE NUCLEAR PLANTS

The NRC staff is presently reviewing the application of the Cleveland Electric Illuminating Company, hereinafter, CEI, (as one of the co-applicant CAPCO pool members) for an operating license for Unit 1 of the Perry Nuclear Plant. The purpose of this review is to establish whether any significant changes, which have antitrust implications, have occurred as a consequence of CEI's (or other CAPCO members') activities since the construction permit antitrust review was completed in 1977.

As a means of assisting in our analysis of significant changes, we would appreciate your response to the following questions:

1. Has CEI completed the second 138 kv transmission line to the Cleveland (City) electric system? If not, what effect is the absence of this line having on the City's planning or operation? If so, how is the new transmission line being used by the City?
2. What effect (or anticipated effect), have the changes resulting from the September 1, 1980 amendment of the Basic CAPCO Operating Agreement had on the City's planning and system operation?
3. What effect (or anticipated effect) has the discontinuation of joint CAPCO generating units, effective January 1, 1980, had on the City's planning and system operation?
4. Has the City decided not to participate in the Perry or Davis-Besse nuclear plants, if so, why?
5. If the City has decided against nuclear participation in Perry and/or Davis-Besse, how has this decision affected the City's power supply plans? and,

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6. What is your judgment of the viability of the City's electric system?

To assure a timely review of the captioned operating license application, we would appreciate your response to this inquiry within thirty days.

Thank you for your cooperation in this matter.

Sincerely,

*Argil Toalston*

Argil Toalston, Chief  
Antitrust and Economic  
Analysis Branch  
Division of Engineering  
Office of Nuclear Reactor  
Regulation



# City of Cleveland

GEORGE V. VOINOVICH, MAYOR

DEPARTMENT OF PUBLIC UTILITIES  
EDWARD H. RICHARD  
DIRECTOR

1201 LAKESIDE AVENUE  
CLEVELAND, OHIO 44114

September 8, 1982

The United States  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Attn: Mr. Arail Toalston, Chief  
Antitrust and Economic Analysis Branch  
Division of Engineering  
Office of Nuclear Reactor Regulation

RE: Operating License -- Antitrust Review of  
Perry and Davis-Besse Nuclear Plants

Dear Mr. Toalston:

This is in response to your letter of August 9, 1982, to the Cleveland Division of Light and Power.

The City continues to be very concerned about the activities of CEI and the other CAPCO Companies relative to public power systems generally and to Cleveland in particular.

In direct response to the specific questions which you raised:

- 1) The 2nd 138KV transmission line and substation has been completed, by the City. All of the expense (over \$3,671,000) of this facility was borne by the City, including equipment furnished and controlled by CEI. CEI refused to incur any expense whatsoever, even though they had agreed to absorb a portion of the expenses associated with interconnection to the City of Painesville, Ohio. Cleveland simply asked for equal treatment, which CEI denied.

The 2nd interconnection is presently being operated in parallel with our original interconnection; they jointly supply our system. Now that the second interconnection is in place and in operation we are able to and we plan to extend the Division of Light and Power's service to our municipally owned and operated Hopkins Airport, southwest of the 2nd interconnection. We do not know whether CEI will attempt to block our efforts to serve this load, which is the City's natural customer but which is now on their system.

- 2) We are not in possession of a copy of the September 1, 1980, amendment of the Basic CAPCO Operating Agreement. If you would forward a copy, we will be pleased to comment.
- 3) To the extent that the output of the four abandoned joint CAPCO generating units could have been a more economical source of power for the City, the viability of the City's operations could have been improved. As matters stand, however, instead of economies, the City, as a wholesale customer of CEI, is saddled with increased costs of power, resulting from CEI's passing on, in excess of \$55 million, its planning costs from which the City derives no benefit at all.
- 4) The matter of the City's participation in the nuclear plants has not yet been resolved. CEI's position that participants must "pay as they go" has precluded our participation in the nuclear plants due to the City's present financial condition.
- 5) The City's power supply contracts for PASNY and Buckeye power expire by their terms in 1985. New allocations of PASNY power begin in 1985 and will be decided pursuant to proceedings now in progress at PASNY. Participation in nuclear capacity, or the right to contract for same, may be the only viable economic power supply available at that time. Therefore, the City's future right to participation should be protected.
- 6) The viability of the City's electric system depends mainly on access to more economic bulk power supply alternatives and the City's ability to gain access thereto despite CEI's activities. CEI's rates for wholesale power to the City approach or exceed their retail rates to large industrial users. As a result the City is confronted with a price squeeze situation which affects the City's competitive position vis-a-vis CEI for markets.

Presently, we have before the Federal Energy Regulatory Commission (FERC Docket No. ER-81-672) the issue of the 70% ratchet provision in their wholesale rate. This provision effectively forces us to schedule some CEI power, when more economical alternatives are available to us.

In further response to this last question, I would like to outline other problems which remain unresolved with CEI, as follows:

- a) - Inadvertent flows of Buckeye power scheduled for the City have been taken on the CEI system. CEI refuses to "pool", return-in-kind, or in any way credit the City for this

energy, for which the City has paid Buckeye. To date, these inadvertent flows total nearly two million KWH at a value of over \$50,000.

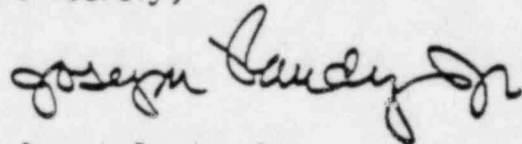
- (b) Buckeye and other economical power supply alternatives have been available to the City in excess of our present loads. Accordingly, we offered to coordinate the availability of this power with CEI on a power pooling basis. In May, 1981, we proposed to CEI a "Coordination of Generating Facilities" schedule; CEI refused this.
- (c) The City is not permitted by CEI to make spot purchases of economy power on an hourly basis. CEI requires that all of our scheduling be done at least one month in advance. This blocks the City from money saving opportunities which occur on the interconnected grid.
- (d) CEI has not made Limited Term Power available to the City. Instead, Class I, II, or III emergency power rates are assessed on our limited term needs.
- (e) The City is investigating other power supply options and extensions of its system; in this regard, it is crucial that the City have the right to:
  - 1. supply points remote from our existing system;
  - 2. wheeling to City's customers from City's supply sources, including new generating capacity or self-generation; and
  - 3. lower voltage (33/69KV) interconnection points.
- (f) Cooperation from CEI in regard to joint use of facilities has been non-existent. They have refused to allow us to place street lighting equipment on their poles, although we have been willing to pay a rental fee. Their position in this regard causes unnecessary duplication; as the City presently contemplates a municipal cable television operation, future problems relative to make-ready costs and attachments may be expected.
- (g) The investor owned companies generally have not agreed to supply power to the City. For example, in 1979, the City approached Ohio Power - AEP; and was refused. We wish to secure limited term power contracts with the CAPCO members and others.

Argil Toalston  
September 8, 1982  
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In summary, CEI has not abandoned its objective of eliminating the City as a competitor for the electric utility business in Cleveland.<sup>1</sup> We strongly urge that a complete review of CEI's application for an operating license for Unit No. 1 at the Perry Nuclear Plant be made, including a review of the antitrust implications of their actions outlined above, in order to protect the future viability of the City's public power system.

We would be pleased to supply additional information or answer any questions you may have in this regard.

Sincerely,



Joseph Pandy, Jr.,  
Commissioner  
Division of Light and Power

Enclosures

cc: George V. Voinovich, Mayor  
Edward H. Richard, Director of Public Utilities  
James E. Young, Director of Law  
June W. Wiener, Chief Assistant Director of Law  
George S. Pofok, Deputy Commissioner of Light and Power  
Jerry Salko, Manager of Electric System Operations  
Reuben Goldberg, Esq.

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<sup>1</sup>See enclosed statement of policy by the President.



# City of Cleveland

GEORGE V. VOINOVIČH, MAYOR

DEPARTMENT OF LAW  
City Hall, Room 106  
601 Lakeside Avenue  
Cleveland, Ohio 44114  
(216) 664-2800

September 10, 1982

JAMES E. YOUNG  
DIRECTOR OF LAW

JOHN MADDOX  
CHIEF COUNSEL

The United States  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Attn: Mr. Argil Toalston, Chief  
Antitrust and Economic Analysis Branch  
Division of Engineering  
Office of Nuclear Reactor Regulation

RE: Operating License -- Antitrust Review of  
Perry and Davis-Besse Nuclear Plants

Dear Mr. Toalston:

Under date of September 8, 1982, the Cleveland Division of Light and Power responded to your inquiry of August 9, 1982, with respect to your anti-trust review of the Cleveland Electric Illuminating Company's (CEI) application for an operating license for Unit 1 of the Perry Nuclear Plant.

Ironically, on September 9, 1982, the City of Cleveland was served with the enclosed Petition of CEI to Intervene Before the Power Authority of the State of New York (PASNY) in the Matter of the 1985 Neighboring State Hydroelectric Allocation Plan. This unwarranted interference with the PASNY proceedings can only result in jeopardizing the Ohio public power systems' opportunity to share in this low cost hydroelectric power. Of particular interest to the NRC, however, is paragraph 4 of CEI's Petition wherein CEI implies that it may refuse to wheel any additional allocation of hydropower which the Ohio public power systems may receive in 1985. Such refusal would be a blatant violation of the license conditions attached to the construction permits issued for Perry Plant Unit 1.

As you are well aware, a Notice of Violation was filed by the NRC against CEI on June 28, 1978, citing CEI for failure to comply with the license conditions in that the transmission service schedule filed by CEI on January 27, 1978, contained anticompetitive restrictions. In its accompanying Order of June 28, 1978 (in NRC Docket No. 50-346A, et al.), the Commission found that these provisions demonstrated "CEI's intent not to comply with the licensing condition" (Order, p. 4). It was not until December 15, 1981, that CEI finally made a filing complying with the FERC's Opinion No. 84 issued May 5, 1980, in FERC Docket No. ER78-194 after FERC had rejected earlier filings by CEI as not in compliance with FERC's Opinion. The Department of Justice has requested the NRC to impose sanctions on CEI for its failure to comply with the license, which request is still pending before the NRC.

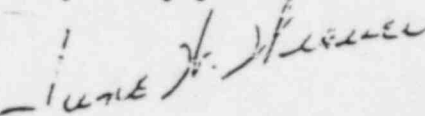
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Argil Toalston  
September 10, 1982  
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One of the provisions of CEI's filed Wheeling Schedule, which was imposed upon CEI by License Condition No. 3 and specifically interpreted by the FERC, requires CEI to "make reasonable provisions for disclosed transmission requirements" in planning future transmission. It is evident from CEI's Petition to Intervene in the PASNY proceedings, that CEI anticipates that the PASNY 1985 allocations may require additional wheeling capacity on the part of CEI. In its Petition, CEI implies that they may refuse to make such capacity available. Such refusal would violate the terms of their filed wheeling schedule, FERC Order No. 84, NRC Orders in Docket No. 50-346A, and the license condition attached to the construction license for the nuclear plant now under consideration for an operating license.

Very truly yours,



June W. Wiener  
Chief Assistant Director of Law

JWW:sjp

Enclosure

cc: Janet Urban, Esq., U.S. Department of Justice  
George V. Voinovich, Mayor  
James E. Young, Director of Law  
Edward H. Richard, Director of Public Utilities  
Joseph Pandey, Jr., Commissioner of Light and Power  
George S. Pofok, Deputy Commissioner of Light and Power  
Jerry Salko, Manager of Electric System Operations  
Reuben Goldberg, Esq.