

12876

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 MAY -5 A9:30

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges:

Marshall E. Miller, Chairman
Charles Bechhoefer
G. Paul Bollwerk, III

SERVED MAY - 5 1992

In the Matter of

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

OHIO EDISON COMPANY
(Perry Nuclear Power Plant,
Unit 1, Facility Operating
License No. NPF-58)

(Suspension of
Antitrust Conditions)

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY
THE TOLEDO EDISON COMPANY
(Perry Nuclear Power Plant,
Unit 1, Facility Operating
License No. NPF-58)
(Davis-Besse Nuclear Power
Station, Unit 1, Facility
Operating License No. NPF-3)

ASLBP No. 91-644-01-A

May 4, 1992

NOTICE OF HEARING
(Oral Argument on Parties'
Summary Disposition Filings)

On May 1, 1991, the NRC Staff issued an order,
published in the Federal Register, stating that it had
denied the September 1987 and May 1988 applications of Ohio
Edison Company, Cleveland Electric Illuminating Company, and
Toledo Edison Company (hereinafter referred to as
"licensees") to amend the operating licenses for the Perry
Nuclear Power Plant, Unit 1, and the Davis-Besse Nuclear

9205110019 920504
PDR ADOCK 05000346
M PDR

DS02

Power Station, Unit 1, by suspending the antitrust conditions in those licenses as applied, respectively, to them. (56 Fed. Reg. 20,057 (1991)). This adjudicatory proceeding was convened to consider the licensees' challenges to the Staff's order.


In accordance with our Prehearing Conference Order of October 7, 1991, LBP-91-38, 34 NRC 229 (1991), now pending before the Board are motions and cross-motions for summary disposition filed by licensees, the NRC Staff, and intervenors City of Cleveland, Ohio, (Cleveland), American Municipal Power-Ohio, Inc., Alabama Electric Cooperative, and the United States Department of Justice. In these summary disposition pleadings, the parties address the following "bedrock" legal issue:

Is the Commission without authority as a matter of law under section 105 of the Atomic Energy Act of 1954, 42 U.S.C. § 2135, to retain antitrust license conditions if it finds that the actual cost of electricity from the licensed nuclear power plant is higher than the cost of electricity from alternative sources, all as appropriately measured and compared.

In addition, the parties address the issue, raised by Cleveland, as to whether the licensees' amendment requests are barred by res judicata, collateral estoppel, laches, or law of the case.

Please take notice that a hearing will be conducted in this proceeding to permit the parties' to present oral argument regarding their summary disposition filings. This oral argument will be held on Wednesday, June 10, 1992, beginning at 9:30 a.m. in the NRC Public Hearing Room, Fifth Floor, West Tower, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. The allocation of time for argument and the order of presentation are as set forth in the Board's Order of March 19, 1992.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
May 4, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

OHIO EDISON CO., CLEVELAND ELECTRIC
ILLUMINATING CO. & TOLEDO EDISON CO
(Perry Nuclear Power Plant and
Davis-Besse Nuclear Power Station)

Docket No.(s) 50-440/346-A

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF HEARING - 5/4/92 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles Bechhofer
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
G. Paul Bollwerk, III
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Marshall E. Miller, Chairman
ASLBP
1920 South Creek Blvd.
Spruce Creek Fly-In
Datona Beach, FL 32124

Sherwin E. Turk, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David R. Straus, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W., Suite 1100
Washington, DC 20005

Gregg D. Ottinger, Esq.
Duncan & Allen
1575 Eye Street, N.W., Suite 300
Washington, DC 20005

Gerald Charnoff, Esq.
Shaw, Pittman, Potts and Trowbridge
2300 N Street, NW
Washington, DC 20037

Docket No.(s)50-440/346-A
LB NOTICE OF HEARING - 5/4/92

James P. Murphy, Esq.
Squire, Sanders & Lempsey
1201 Pennsylvania Ave, NW, P.O. Box 407
Washington, DC 20044

Jane W. Wiener, Esq.
Chief Assistant Director of Law
City Hall, Room 106
601 Lakeside Avenue
Cleveland, OH 44114

Reuben Goldberg, Esq.
Goldberg, Fieldman & Letham, P.C.
1100 Fifteenth Street, NW
Washington, DC 20005

Philip N. Overholt
Office of Nuclear Plant Performance
Office of Nuclear Energy
U.S. Department of Energy, NE-44
Washington, DC 20585

Janet R. Urban, Esq.
Antitrust Division
Department of Justice
555 4th St. N.W.
Washington, DC 20001

D. Biard MacGuineas, Esq.
Volpe, Boskey and Lyons
918 16th Street, NW, Suite 602
Washington, DC 20006

Kenneth L. Hegemann, P.E.
President
American Municipal Power-Ohio, Inc.
601 Dempsey Road, P.O. Box 549
Westerville, OH 43081

Dated at Rockville, Md. this
5 day of May 1992

Kris Carter
Office of the Secretary of the Commission