



City of Cleveland

GEORGE V. VOINOVICH, MAYOR

DEPARTMENT OF LAW
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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

50-346

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.

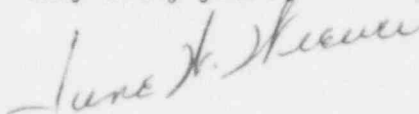
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September 10, 1982
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One of the provisions of CEI's filed Wheeling Schedule, which was imposed upon CEI by License Condition No. 3 and specifically interpreted by the FERC, requires CEI to "make reasonable 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.

Rec'd 8/19/82

BEFORE THE
POWER AUTHORITY OF THE
STATE OF NEW YORK

In the Matter of the)
)
1985 Neighboring State)
Hydroelectric Allocation Plan)

PETITION OF THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY
TO INTERVENE OUT OF TIME
AND
ALTERNATIVE MOTION FOR LEAVE
TO PARTICIPATE AS AMICUS CURIAE

The Cleveland Electric Illuminating Company (CEI), pursuant to Section III of the Procedures adopted by the Trustees on December 22, 1981 for the captioned proceeding, hereby petitions to intervene and alternatively moves to participate as amicus curiae in this proceeding. In support of this petition and alternative motion, CEI states as follows:

1. All communications relating to this proceeding should be directed to:

Alan D. Wright, General Counsel
Donald H. Hauser, General Attorney
The Cleveland Electric
Illuminating Company
P.O. Box 5000
Cleveland, Ohio 44101
(216) 622-9800

John Lansdale
Philip R. Ehrenkranz
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 626-6600

2. By letter dated October 23, 1981, the Governor of Ohio designated the City of Cleveland (Cleveland) as the

bargaining agent for the State of Ohio in this proceeding; and Cleveland has applied for an allocation of power generated by the St. Lawrence and Niagara Hydroelectric Projects. Through its Municipal Electric Light and Power division (MELP), Cleveland has submitted prepared testimony (a) contending that Ohio's share of all power allocated to neighboring states should be between 32 and 43 percent, and (b) stating that Cleveland intends to restrict distribution of PASNY power to residential and rural customers served by Ohio municipal and non-profit cooperative electric distribution systems, i.e., to the exclusion of rural and residential customers of investor-owned utilities.

3. CEI sells electric power to MELP, transports for MELP the latter's current allocation of PASNY power from the Ohio/Pennsylvania border to the Cleveland area, and competes with MELP for customers in that area. Because of such activities, CEI has a direct and substantial interest in this proceeding which cannot be represented adequately by any existing party. Indeed, no other Ohio utility is a party to the case; and to CEI's knowledge, no existing party has yet taken the position CEI intends to advocate.

4. Further, the PASNY Trustees' resolution of December 22, 1981 indicates that based on the number of residential customers in all neighboring States, Ohio stands to receive 37 MW, representing 27.3 percent of half the power to be allocated. In addition to the possibility that MELP will be successful in its attempt to secure much more PASNY power (ranging from a total of 87 to 117 MW), 37 MW alone

is a substantial increase over the 23 MW now allocated to MELP. Inevitably, whether MELP eventually obtains an allocation as low as 37 MW, or as high as 117 MW, it will attempt to negotiate with CEI revised arrangements for transportation of additional power over CEI's transmission system. While CEI's transmission capacity presently is sufficient for the projected load increases, the system commencing at the border consists of only a single circuit, and thus the amount of power ultimately allocated to MELP for the State of Ohio obviously could have a direct impact on the operation of CEI's transmission system.

5. In connection with such direct effects on CEI of PASNY's disposition of the allocation applications, (a) CEI considers MELP's restrictive distribution plan to be fundamentally unfair; (b) CEI believes that Cleveland, as a municipality, has neither the resources nor the objectivity to determine the amounts and nature of distribution of PASNY power within Ohio; and (c) CEI believes, because of the provisions and operation of MELP's tariff, that those of MELP's customers whom the Niagara Redevelopment Act and PASNY's FERC licenses require to be benefitted by PASNY power savings, for the most part are not realizing and will not realize those savings.

6. Accordingly, if permitted to intervene or participate in this case as amicus, CEI intends to submit argument on the evidence presented in order to advocate that the PASNY Trustees should refrain from executing a sales contract

with Cleveland or MELP unless (a) MELP's plan for distribution of PASNY power is revised to permit all domestic and rural electric customers in Ohio (whether served by municipal, cooperative, or investor-owned systems) the opportunity to purchase PASNY power; (b) as is contemplated in other states such as Vermont, New Jersey, Rhode Island and New Hampshire, an objective public body (such as the Public Utilities Commission of Ohio), with State-wide responsibilities and not identified with the parochial interests of any particular type of electric distribution system, agrees to administer or at least oversee the allocation and distribution of PASNY power within the State; and (c) MELP revises its tariff and rate practices to conform with the intent of the PASNY licenses and applicable statutes, so that on MELP's own system savings afforded by PASNY power purchases are flowed through to residential customers only.

7. In these respects, CEI believes that its participation will enhance the "full examination of the issues involved in the proceeding," within the contemplation of Section III B of the Procedures established December 22, 1981. As CEI is willing to abide by the existing procedural schedule, its participation cannot result in delay or procedural prejudice to any party.

8. CEI recognizes that this petition is being filed beyond the intervention deadline. Nevertheless, in CEI's view good cause exists to allow it to intervene, or at minimum, to permit it to advance its position through

amicus curiae participation.

9. While CEI has known of the existence of this proceeding for several months, information concerning the procedures adopted by PASNY was and is not the subject of notice published in Ohio. In any case, mere awareness of the proceeding's existence was not in itself cause for great concern because for some time CEI thought, incorrectly it turns out, that MELP simply would be seeking from PASNY a continuation of the existing arrangement under which MELP is allocated 23 MW of power. Moreover, under the September 22, 1981 PASNY Trustees' resolution, the PASNY Staff was directed to formulate a comprehensive reallocation plan by June 30, 1982; and CEI did not know until mid-July, 1982 that the Staff did not wait until June 30, but prepared a plan sufficiently in advance of that date to permit its adoption by the Trustees on December 22, 1981. Once CEI obtained that information, it proceeded immediately to request from PASNY copies of pertinent documents in this proceeding, including Cleveland's application and prepared testimony and exhibits. Thus, CEI only quite recently (within the past few weeks) became aware of the details of Cleveland's plans and proposals specified in its evidence and application (as amended in July); and preliminary analysis of Cleveland's papers required additional time before the position stated in this petition could be formulated.

For the reasons stated, CEI urges PASNY to grant it leave to intervene in this proceeding. If PASNY deems it

inappropriate to allow intervention, however, CEI requests
to be allowed opportunity to present its contentions as
amicus curiae.

Respectfully submitted,

Alan D. Wright, General Counsel
Donald H. Hauser, General Attorney
The Cleveland Electric
Illuminating Company
P.O. Box 5000
Cleveland, Ohio 44101

John Lansdale
Philip R. Ehrenkranz
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

/s/ John Lansdale

John Lansdale

/s/ Philip R. Ehrenkranz

Philip R. Ehrenkranz

Counsel for
The Cleveland Electric
Illuminating Company

VERIFICATION

CITY OF WASHINGTON)
 : ss
DISTRICT OF COLUMBIA)

Philip R. Ehrenkranz hereby verifies that he is attorney for the Cleveland Electric Illuminating Company; that he has read the foregoing "Petition of the Cleveland Electric Illuminating Company to Intervene Out of Time and Alternative Motion for Leave to Participate as Amicus Curiae"; that he has authority to file such petition; and that the facts stated therein are true to the best of his knowledge, information and belief.

/s/ Philip R. Ehrenkranz

Philip R. Ehrenkranz

Subscribed and sworn to before me, a Notary Public of the District of Columbia, September 7, 1982.

(SEAL)

/s/ Andria Jackson

Notary Public

My Commission expires:

July 14, 1987

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary for this proceeding.

Dated at Washington, D.C., September 7, 1982.

/s/ Philip R. Ehrenkranz

Philip R. Ehrenkranz

Of Counsel for

The Cleveland Electric
Illuminating Company