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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

91 JUL 18 P3:44

BEFORE THE NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKET NO. 50-440A  
AND 50-346A

In the Matter of )  
OHIO EDISON COMPANY )  
(Perry Nuclear Power Plant, )  
Unit 1) and THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY, et al. )  
(Perry Nuclear Power Plant, )  
Unit 1 and Davis-Besse Nuclear )  
Power Station, Unit 1) )

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

ANSWER OF THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY AND THE TOLEDO EDISON COMPANY TO PETITION OF  
AMERICAN MUNICIPAL POWER-OHIO, INC. FOR LEAVE TO INTERVENE

On July 3, 1991, American Municipal Power-Ohio, Inc.,  
("AMP-Ohio") filed its petition for leave to intervene in this  
action. The Cleveland Electric Illuminating Company ("CEI") and  
The Toledo Edison Company ("TE") hereby file this Answer as their  
response to the petition. See 10 C.F.R. § 2.714(c) (1991).


CEI and TE do not contest AMP-Ohio's right to intervene  
in this action as the direct beneficiary of the antitrust license  
conditions at issue, notwithstanding AMP-Ohio's failure to file  
its petition on a timely basis. See Notice of Denial and  
Opportunity for Hearing, 56 Fed. Reg. 20057 (May 1, 1991)  
(establishing May 31, 1991, as filing deadline for petitions for  
leave to intervene). Contrary to AMP-Ohio's assertions, the June  
20, 1991 Federal Register notice which established the Atomic

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Safety and Licensing Board did not supersede or extend the May 31, 1991 deadline for filing petitions to intervene. See Petition of AMP-Ohio for Leave to Intervene at 4 n.2 (interpreting 56 Fed. Reg. 28426 (June 20, 1991)). Moreover, the June 20, 1991 notice certainly did not establish an open-ended opportunity for potential intervenors to file their petitions. See 10 C.F.R. 2.105(d) (notice of proposed action must provide that petitions for leave to intervene may be filed within thirty days, "or within such lesser period authorized by law as the Commission may specify") (emphasis added). Rather, the statement in the June 20, 1991 notice that "[a]ny person whose interest may be affected by this proceeding may file a written petition for leave to intervene" is simply part of the description of the actions authorized by the May 1, 1991 Notice of Denial and Opportunity for Hearing.

In conclusion, CEI and TE believe that AMP-Ohio's July 3, 1991 petition for leave to intervene in this action should be granted despite its untimely nature.

Respectfully submitted,

  
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Dated: July 18, 1991

Counsel for The Cleveland  
Electric Illuminating Company  
and The Toledo Edison Company

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

91 JUL 18 P3:44

BEFORE THE NUCLEAR REGULATORY COMMISSION

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DOCKETING & SERVICE  
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In the Matter of )  
OHIO EDISON COMPANY )  
(Perry Nuclear Power Plant, )  
Unit 1) and THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY, et al. )  
(Perry Nuclear Power Plant, )  
Unit 1 and Davis-Besse Nuclear )  
Power Station, Unit 1) )

Docket Nos. 50-410A  
and 50-346A

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 1991, a copy of the foregoing Answer of The Cleveland Electric Illuminating Company and The Toledo Edison Company to Petition of American Municipal Power-Ohio, Inc. for Leave to Intervene was hand delivered to:

Joseph Rutberg, Esq.  
Sherwin E. Tuik, Esq.  
Steven R. Hom, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

and that a copy of the foregoing Answer of The Cleveland Electric Illuminating Company and The Toledo Edison Company to Petition of American Municipal Power-Ohio, Inc. for Leave to Intervene was mailed first class, postage prepaid, to each of the following:

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James P. Murphy