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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'91 JUL 23 P4:00

|                              |   |                       |
|------------------------------|---|-----------------------|
| In the Matter of             | ) | Docket Nos. 50-440-A  |
|                              | ) | 50-346-A              |
| OHIO EDISON COMPANY          | ) |                       |
| (Perry Nuclear Power Plant,  | ) |                       |
| Unit 1, Facility Operating   | ) | (Suspension of        |
| License No. NPF-58))         | ) | Antitrust Conditions) |
|                              | ) |                       |
| THE CLEVELAND ELECTRIC       | ) |                       |
| ILLUMINATING COMPANY         | ) |                       |
| THE TOLEDO EDISON COMPANY    | ) |                       |
| (Perry Nuclear Power Plant,  | ) | ASLPB No. 91-644-01-A |
| Unit 1, Facility Operating   | ) |                       |
| License No. NPF-58)          | ) |                       |
| (Davis-Besse Nuclear Power   | ) |                       |
| Station, Unit 1, Facility    | ) |                       |
| Operating License No. NPF-3) | ) |                       |

NOTICE OF INTENT TO PARTICIPATE

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July 22, 1991

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NOTICE OF INTENT TO PARTICIPATE

Pursuant to Section 105(c)(5) of the Atomic Energy Act, as amended, 42 U.S.C. §2135(c)(5) the United States Department of Justice ("Department") files this Notice of Intention to Participate in the above captioned proceeding. The Department urges this Licensing Board to hold a non-evidentiary hearing solely on the issue of whether increases in the costs of operating a nuclear plant as a matter of law negate a finding that construction and operation of the plant "creates or maintains a situation inconsistent with the antitrust laws".

Communications concerning this matter should be sent to:

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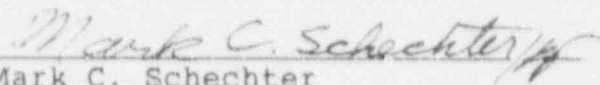
Applicants Cleveland Electric Illuminating ("CEI"), Toledo Edison Company ("TE") and Ohio Edison Company ("OE") have requested a hearing with respect to the denial of their Application to amend the subject nuclear plant licenses to suspend the antitrust license conditions. Licensees contend that generating nuclear power has become so expensive that ownership of a nuclear plant can no longer, as a matter of law, contribute to or exacerbate an anticompetitive situation, and therefore the Commission no longer has jurisdiction to impose or retain antitrust license conditions. For the reasons the Department stated in its advice letter of June 13, 1990 in this matter, such contentions are without merit.

Because the matter can be resolved on purely legal grounds, the Department urges this Licensing Board to hold a non-evidentiary hearing. A formal evidentiary hearing is not required in every matter arising under Section 189(a) of the Atomic Energy Act, In the Matter of Kerr McGee, 15 N.R.C. 232 (1982), and this matter is ideally suited for a non-evidentiary hearing.


The Department also urges this Licensing Board to reject any hearing on OE's issues 4 and 5, which hypothesize that the impartiality of the Department of Justice might have been influenced by legislative events. The advice letter of the Department was based solely on its analysis of the relevant law, and was not influenced by any Congressional activity.

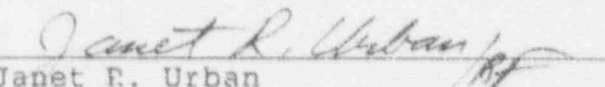
Respectfully submitted,

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'91 JUL 23 P4:01

CERTIFICATE OF SERVICE

hereby certify that on this 22nd day of July, 1991, a copy of the foregoing Notice Of Intent To Participate was served upon each of the following by first-class mail:

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