

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)

OHIO EDISON CO.; THE CLEVELAND)
ELECTRIC ILLUMINATING CO.; THE)
TOLEDO EDISON CO. (NOTICE OF)
DENIAL OF APPLICATIONS FOR)
AMENDMENTS TO FACILITY OPERATING)
LICENSES AND OPPORTUNITY FOR)
HEARING))

(Perry Nuclear Power Plant Unit 1,)
and Davis-Besse Nuclear Power)
Station, Unit 1))

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

91 MAY 30 AND 37

PETITION OF ALABAMA ELECTRIC COOPERATIVE, INC.
FOR LEAVE TO INTERVENE

Pursuant to the Director's Notice of the denial of the above-identified licensees' applications for amendments to their operating licenses (56 Fed.Reg. 20057, May 1, 1991), Alabama Electric Cooperative, Inc. (AEC) petitions to intervene and participate, as described below, in any hearing demanded by licensees, Ohio Edison, et al.

The person designated to receive service of papers on behalf of AEC in this proceeding is:

D. Biard MacGuineas, Esq.
Volpe, Boskey and Lyons
918 16th Street, N.W., Suite 602
Washington, DC 20006
Telephone: (202) 737-6580

AEC's interest in this proceeding is direct and substantial. As a result of Alabama Power Company's anti-trust review, AEC is the explicit beneficiary of antitrust license conditions very similar and identical in remedial purpose to those conditions which are the subject of this proceeding. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-646, 13 NRC 1027 (1981), aff'd sub nom. Alabama Power Co. v. NRC, 692 F.2d 1362 (11th Cir. 1982), cert. denied, 464 U.S. 816 (1983). The Alabama Power Co. antitrust license conditions are set forth at ALAB-646, 13 NRC at 1112-1114.

It is evident that the efforts of licensees, Ohio Edison, et al in this proceeding, if they were to be successful, might be used as arguable precedent to attempt to alter or vitiate the Alabama Power conditions, which have been and are significant in maintaining AEC's viability in the regional electric power market in which it functions. AEC clearly has a direct and substantial interest in protecting itself from any such contingency.

The NRC Staff Evaluation in Ohio Edison relies in part upon a reading of the Appeal Board's and Court of Appeals' determinations in the Alabama Power antitrust and appellate reviews. NRC Staff Evaluation at 4, 5, 7-9, 10, 11-12. The Evaluation, in rejecting the novel proposed legal

interpretations of the Atomic Energy Act by Ohio Edison and the other applicants, accepted and elaborated upon the analysis of the Antitrust Division of the Department of Justice, which in turn referenced the Alabama Power litigation. Department of Justice Letter to the NRC dated June 3, 1990. Thus, the determination to date in the Ohio Edison amendment application is dependent in significant part upon readings of the Alabama Power decisions which directly grant AEC important rights of vital significance to its wellbeing as a competitive power supplier. AEC's interest in maintaining the integrity of the interpretations of the Alabama Power decisions is unquestionable and substantial.

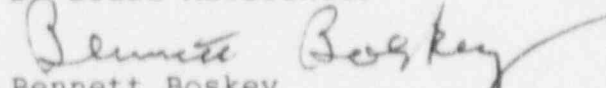
Even beyond that, AEC has a substantial interest in this proceeding the outcome of which might be cited precedent in the future. For instance, it would be manifestly unfair to preclude AEC from articulating its views here on the legal and policy matters raised by the applicants and then later have AEC faced with the possible contention that it should have sought participation in this proceeding to present its views on issues litigated here which issues might be raised in the future in conjunction with any effort to have the Alabama Power antitrust license conditions amended in any way.

Finally, as a very active participant in the Alabama Power antitrust review, AEC is particularly qualified to meaningfully contribute to the discussion of the elimination of NRC antitrust conditions as proposed by the licensees here. AEC's participation will not prejudice any of the parties, nor would it delay or encumber the proceeding.

On these bases, AEC requests intervention in any hearing or other further proceedings on the applications of Ohio Edison and the other applicants to eliminate or amend their antitrust license conditions.

Respectfully submitted,


Blair MacGuineas


Bennett Boskey
Volpe, Boskey and Lyons
918 16th Street, N.W., #602
Washington, DC 20006
Tele.: (202) 737-6580

On behalf of Alabama Electric
Cooperative, Inc.

May 30, 1991

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CERTIFICATE OF SERVICE

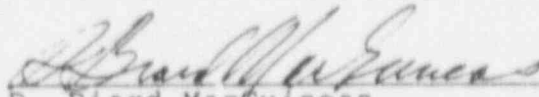
I hereby certify that copies of the Petition Of
Alabama Electric Cooperative, Inc. For Leave To Intervene
in the above-captioned proceeding have been served on the
following by deposit in the United States mail, first
class, or, as indicated by an asterisk, through deposit in
the Nuclear Regulatory Commission's internal mail system,
this 30th day of May 1991.

*Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(Attention: Docketing and Service
Branch)

*Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Michael T. Mishkin, Esq.
Squire, Sanders and Dempsey
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044


D. Biard MacGuineas
Volpe, Boskey and Lyons
918 16th Street, N.W., #502
Washington, DC 20006
Tele.: (202) 737-6580

On behalf of Alabama Electric
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May 30, 1991