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July 25, 1991

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Re: Application of Ohio Edison Company to Suspend Antitrust
License Conditions (Perry Nuclear Power Plant, Unit 1),
NRC Docket No. 50-440A

Gentlemen:

On May 31, 1991, Ohio Edison submitted its Request for a Hearing, which proposed five issues for resolution in this proceeding. To further clarify the matters to be considered in this proceeding and to differentiate the legal issues from the factual issues, we have refined the proposed issues as set out in the enclosure hereto. These are submitted for your consideration at the prehearing conference.

Sincerely yours,


Gerald Charnoff

Enclosure
cc: Service List

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Letter to Licensing Board

July 25, 1991

Enclosure

Ohio Edison's Proposed Issues

A. LEGAL ISSUES

1. Assuming arguendo that Perry's actual costs are higher than the costs of non-nuclear power, can the Perry Nuclear Power Plant, as a matter of law, afford OE a competitive advantage?
2. If the answer to Issue (1) is no, can OE's ownership share of Perry, as a matter of law, "create or maintain a situation inconsistent with the antitrust laws" (Section 103c(5) of the Atomic Energy Act, as amended) such that NRC is authorized to impose or retain antitrust license conditions?
3. Assuming arguendo that Perry's actual costs are higher than the costs of non-nuclear power, does imposition or retention of the license conditions under Section 103c of the Atomic Energy Act, as amended, as a matter of law, deny OE equal protection and due process under the Fifth Amendment of the United States Constitution?
4. For the purposes of Issues (1) and (3), as a matter of law, should Perry's actual 30-year levelized costs be compared to the costs of any non-nuclear plant OE might have built in lieu of the Perry plant? See 10 C.F.R. Part 50, App. L, §§ 11.11, 11.12. If not, what is the appropriate cost comparison for purposes of Issues (1) and (3)?

B. FACT ISSUES

5. Are Perry's actual costs higher than the costs to which they are to be compared?
6. Did the 1988 legislative proposal by Senator Howard M. Metzenbaum providing that "[t]he Nuclear Regulatory Commission shall not suspend or modify the application of any antitrust provision contained in the Perry operating license No. NPF-58, as such provision applies to any licensee of the Perry Nuclear Powerplant, Unit 1," the debate thereon in the Senate on March 29, 1988, as reflected in the Congressional Record of that date, pp. S 3257-59, and any related communications between the NRC staff and the legislative branch, compromise the actual or apparent impartiality of the staffs of the NRC and the DOJ in connection with their consideration of OE's application and, if so, should the Licensing Board and the Nuclear Regulatory Commissioners give no weight to the recommendations of the NRC and DOJ staffs?
7. Were the NRC or DOJ staffs predisposed to deny OE's application, as suggested by Senator J. Bennett Johnston's statements in the Congressional Record, 134 Cong. Rec. S 3258, 3259 (March 29, 1988), regarding "a strong rumor" that "the NRC has indicated that they have no intention of approving this application," and, if so, should the Licensing Board and the Nuclear Regulatory Commissioners give no weight to the recommendations of the NRC and DOJ staffs?

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