

June 19, 1997

Mr. John K. Wood  
Vice President - Nuclear, Davis-Besse  
Centerior Service Company  
c/o Toledo Edison Company  
Davis-Besse Nuclear Power Station  
5501 North State Route 2  
Oak Harbor, OH 43449-9760

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SUBJECT: ORDER APPROVING APPLICATION REGARDING MERGER AGREEMENT BETWEEN  
CENTERIOR ENERGY CORPORATION AND OHIO EDISON COMPANY AFFECTING  
LICENSE NPF-3, DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1  
(TAC NO. M97455)

Dear Mr. Wood:

The enclosed Order is in response to a letter dated December 13, 1996, from the Toledo Edison Company (TE) and Centerior Service Company (CSC) requesting approval, pursuant to Section 50.80 of Title 10 of the Code of Federal Regulations, of the indirect transfer of Facility Operating License No. NPF-3, issued to TE, The Cleveland Electric Illuminating Company (CEI), and CSC, the licensees for the Davis-Besse Nuclear Power Station, Unit 1. Supplemental information was submitted by letter dated February 12, 1997.

The proposed indirect transfer is a result of a proposed merger between Centerior Energy Corporation (the parent corporation for TE, CEI, and CSC) and Ohio Edison Company. The merger would result in the formation of a new holding company, FirstEnergy Corporation, of which TE, CEI, and CSC would be subsidiaries. The staff's Safety Evaluation in support of the Order is also enclosed.

The Order is being forwarded to the Office of the Federal Register for publication.

Sincerely,

ORIGINAL SIGNED BY:

Allen G. Hansen, Project Manager  
Project Directorate III-3  
Division of Reactor Projects III/IV  
Office of Nuclear Reactor Regulation

1/1  
DFOI

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Docket No. 50-346  
Enclosures: 1. Order  
2. Safety Evaluation  
cc w/encls: See next page

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 19, 1997

Mr. John K. Wood  
Vice President - Nuclear, Davis-Besse  
Centerior Service Company  
c/o Toledo Edison Company  
Davis-Besse Nuclear Power Station  
5501 North State Route 2  
Oak Harbor, OH 43449-9760

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Sincerely,

A handwritten signature in black ink, appearing to read "A. G. Hansen".

Allen G. Hansen, Project Manager  
Project Directorate III-3  
Division of Reactor Projects III/IV  
Office of Nuclear Reactor Regulation

Docket No. 50-346

Enclosures: 1. Order  
2. Safety Evaluation

cc w/encls: See next page

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Commissioner of Ottawa County  
Port Clinton, Ohio 43252



Corporation and Ohio Edison Company (OE), resulting in the formation of a new holding company, FirstEnergy Corporation, which would replace Centerior Energy Corporation. Supplemental information was submitted by letter dated February 12, 1997.

Under the proposed merger, TE, CEI, CSC, and OE will become wholly owned subsidiaries of FirstEnergy Corporation. The current licensees will continue to hold the license, and no direct transfer of the license will result from the merger. On April 14, 1997, a notice of consideration of approval of application regarding corporate restructuring was published in the FEDERAL REGISTER (62 FR 18156). An Environmental Assessment and Finding of No Significant Impact was published in the FEDERAL REGISTER on May 13, 1997 (62 FR 26330).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the letter of December 13, 1996, and other information before the Commission, the NRC staff has determined that the proposed merger will not affect the qualifications of TE, CEI, and CSC as holders of Facility Operating License No. NPF-3, and that the transfer of control of the license, to the extent effected by the merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated June 19, 1997.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the merger agreement between Centerior Energy Corporation and OE, subject to the following: (1) TE, CEI, and CSC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from such licensee to its parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of such licensee's consolidated net utility plant, as recorded on the licensee's books of account; and (2) should the merger not be completed by June 30, 1998, this Order shall become null and void unless, upon application and for good cause shown, this date is extended.

This Order is effective upon issuance.

IV.

By July 25, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

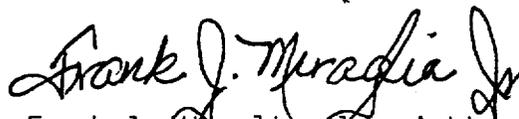
If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Gerald Charnoff, Esquire, of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

For further details with respect to this action, see the application dated December 13, 1996, as supplemented February 12, 1997, and the Safety Evaluation dated June 19, 1997, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION



Frank J. Miraglia, Jr., Acting Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,  
this 19th day of June 1997

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FOR THE U.S. NUCLEAR REGULATORY COMMISSION

ORIGINAL SIGNED BY:

Frank J. Miraglia, Jr., Acting Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,  
this 19th day of June 1997

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
RELATED TO THE INDIRECT TRANSFERS OF CONTROL OF  
LICENSE NO. NPF-3 FOR THE DAVIS-BESSE NUCLEAR POWER STATION  
DOCKET NO. 50-346

I. BACKGROUND

On December 13, 1996, Toledo Edison Company (TE), The Cleveland Electric Illuminating Company (CEI), and Centerior Service Company (CSC) submitted an application for approval under 10 CFR 50.80 in connection with a proposed merger between Centerior Energy Corporation (Centerior) and Ohio Edison (OE). Subsequent to interim organizational changes, the new company resulting from this merger will be named FirstEnergy Corporation (FirstEnergy). TE, CEI, and CSC are now wholly owned subsidiaries of Centerior and will become wholly owned subsidiaries of FirstEnergy as a result of the merger. Centerior will cease to exist as a result of the merger. OE also will become a wholly owned subsidiary of FirstEnergy after the merger. Upon consummation of the merger, current stockholders of Centerior and OE would become stockholders of FirstEnergy pursuant to a formula stipulated in the merger agreement.

CEI owns a 51.38-percent interest in Davis-Besse Nuclear Power Station, and TE owns a 48.62-percent interest. CSC is a service company and holds no ownership interest in the station. TE and CSC are the licensed operators of the station. The NRC staff believes that the proposed merger will effect an indirect transfer of control of the license to FirstEnergy. Accordingly, under the provisions of 10 CFR 50.80, Commission approval is required.

In the application for approval dated December 13, 1996, on page 13 of the enclosure, TE indicated that Centerior and OE believe that the merger offers significant benefits and made the following statement:

The purpose of the merger is to achieve benefits for Ohio Edison's and Centerior's shareholders, customers and communities that would not be achievable if they were to remain separate companies. The expected savings related to the merger are approximately \$1 billion over the first ten years. The savings will come from the elimination of duplicative activities, improved operating efficiencies, lower capital costs, and the combination of the companies' work forces.

II. FINANCIAL AND TECHNICAL QUALIFICATIONS

On the basis of the information provided in the application, the staff finds that there will be no near-term substantive change in the financial ability of the responsible licensees, CEI and TE, to contribute appropriately to the operations and decommissioning of the Davis-Besse facility as a result of the

proposed merger. CEI and TE each is, and would remain after the merger, an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, the cost of which electricity is recovered through the rate regulation of the Public Utilities Commission of Ohio and the Federal Energy Regulatory Commission. Thus, pursuant to 10 CFR 50.33(f), CEI and TE, as electric utilities, are exempt from further financial qualifications review.

However, in view of the NRC's concern that restructuring can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC has sought to obtain commitments from its licensees that initiate restructuring actions not to transfer significant assets from the licensee without notifying the NRC. Each licensee that will be affiliated with FirstEnergy has agreed:

to provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from such licensee to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent of such licensee's consolidated net utility plant, as recorded on the utility's books of account. (See application letter, dated December 13, 1996, pp. 8-9 of the enclosure.)

The staff believes that this commitment, modified to clarify the abbreviations used in this evaluation and as a condition to the NRC's consent in connection with the proposed restructuring, will enable the NRC to ensure that CEI and TE will continue to maintain adequate resources to contribute to the safe operation and decommissioning of the Davis-Besse facility.

With respect to technical qualifications, CSC and TE will continue to be the licensed operators of the facility. The technical qualifications of CSC and TE will be unchanged by the merger.

### III. ANTITRUST

The antitrust provisions of Section 105c of the Atomic Energy Act apply to an application for a license to construct or operate a facility licensed under Section 103 of the Act. Although FirstEnergy may become the holding company of the licensees for the Davis-Besse facility, that is, may indirectly acquire control of the license, it will not be performing activities for which a license is needed.

Since approval of the instant application would not involve the issuance of a license, the procedures under Section 105c do not apply, including the making of any "significant changes" determination. Therefore, there is no need to conduct any antitrust review at this time.

The licensees were subjected to a full antitrust review before the issuance of the current operating license. The licensed owners are subject to existing antitrust license conditions imposed as a result of such review and will remain subject to those conditions following the proposed merger. The instant application does not seek any change to the existing Davis-Besse antitrust license conditions.

#### IV. FOREIGN OWNERSHIP

The application letter states that for TE, CEI, and CSC, following the proposed merger, none "will be owned, controlled or dominated by any alien, foreign corporation or foreign government." Also, it is stated that none is "acting as an agent or representative of any other person in this request for consent to the indirect transfer of control of the licenses." (See application letter, pp. 5-7 of the enclosure.) Also, according to the application, all members of the FirstEnergy board will be U.S. citizens, while currently all of the directors and principal officers of CEI, TE, and CSC are U.S. citizens. The staff does not know or have reason to believe that any of the applicants is owned, controlled, or dominated by any alien, foreign corporation or foreign government.

#### V. CONCLUSIONS

In view of the foregoing, the staff concludes that the proposed restructuring of Centerior and OE through a merger to form a new company, FirstEnergy, will not adversely affect the financial qualifications of CEI and TE with respect to the operation and decommissioning of the Davis-Besse facility, nor will the technical qualifications of CSC and TE to operate the facility be affected. Also, there do not appear to be any problematic antitrust or foreign ownership issues related to the Davis-Besse license that would result from the proposed merger or the transactions to facilitate the merger. Thus, the proposed merger will not affect the financial or technical qualifications of CEI, TE, or CSC as holders of the license, and the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, the NRC approves the application regarding the proposed merger and restructuring.

Principal Contributors: A. McKeigney  
M. Davis

Date: June 19, 1997