February 5, 1987

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Docket No. 50-440

Mr. Murray R. Edelman, Vice President
Nuclear Operations Group
The Cleveland Electric Illuminating
Company
P. O. Box 5000
Cleveland, Ohio 44101

Dear Mr. Edelman:

SUBJECT: FEDERAL REGISTER NOTICE

RE: Perry Nuclear Power Plant, Unit No. 1

Enclosed is an Individual Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. This amendment was requested by your letter dated January 23, 1987. This Notice was forwarded to the Office of the Federal Register for publication.

Sincerely,

/s/

Paul H. Leech, Project Manager
BWR Project Directorate No. 4
Division of BWR Licensing

Enclosure:
As stated

cc w/enclosure:
See next page

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

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BWR Project Directorate No. 4
Division of BWR Licensing

Enclosure:
As stated

cc w/enclosure:
See next page

Mr. Murray R. Edelman
The Cleveland Electric
Illuminating Company

Perry Nuclear Power Plant
Units 1 and 2

cc:
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D. C. 20037

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The Cleveland Electric
Illuminating Company
P. O. Box 5000
Cleveland, Ohio 44101

Resident Inspector's Office
U. S. Nuclear Regulatory Commission
Parmly at Center Road
Perry, Ohio 44081

Regional Administrator, Region III
U. S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Frank P. Weiss, Esq.
Assistant Prosecuting Attorney
105 Main Street
Lake County Administration Center
Painesville, Ohio 44077

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OCRE Interim Representative
8275 Munson
Mentor, Ohio 44060

Terry J. Lodge, Esq.
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Toledo, Ohio 43624

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Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047

Eileen M. Buzzelli
The Cleveland Electric
Illuminating Company
P. O. Box 97 E-210
Perry, Ohio 44081

Mr. James W. Harris, Director
Division of Power Generation
Ohio Department of Industrial
Relations
Post Office Box 825
Columbus, Ohio 43216

The Honorable Lawrence Logan
Mayor, Village of Perry
4203 Harper Street
Perry, Ohio 44081

The Honorable Robert V. Orosz
Mayor, Village of North Perry
North Perry Village Hall
4778 Lockwood Road
North Perry Village, Ohio 44081

Attorney General
Department of Attorney General
30 East Broad Street
Columbus, Ohio 43216

Ohio Department of Health
Attn: Radiological Health
Program Director
P. O. Box 118
Columbus, Ohio 43216

Ohio Environmental Protection Agency
Division of Planning
Environmental Assessment Section
P. O. Box 1049
Columbus, Ohio 43216

Mr. James R. Secor, Chairman
Perry Township Board of Trustees
Box 65 4171 Main Street
Perry, Ohio 44081

State of Ohio
Public Utilities Commission
180 East Broad Street
Columbus, Ohio 43266-0573

UNITED STATES NUCLEAR REGULATORY COMMISSION

CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET. AL.

DOCKET NO. 50-440

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58 issued to Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The proposed amendment would allow sale and leaseback transactions by Ohio Edison Company (OE) relating to its 30.0% ownership interest in Perry Unit 1 and common facilities, in accordance with the licensee's application for amendment dated January 23, 1987. Specifically, the application requests authorization for OE's transfer of a portion of its interests in Perry Unit 1 to equity investors and for the simultaneous transfer by the equity investors back to OE of a long term (approximately 29 1/2 years) possessory leasehold interest of these shares under the terms described in the application and other identified documents.

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It is contemplated that the equity investors will be third parties not affiliated with OE. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transaction, it is represented that OE will remain in possession of its partial interests in the Perry facilities under leaseholds rather than by virtue of ownership. CEI would continue to be the sole licensed operator of the facility. OE will have the full and exclusive authority and responsibility to exercise and perform all of its rights and duties as a party to the Perry Unit 1 operating agreement. OE will also retain its responsibility to comply with the antitrust license conditions contained in the Perry license and for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for its share of the cost of decommissioning Perry Unit 1.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in Palo Verde Nuclear Generating Station (PVNGS) Unit 1. See 50 FR 45955. By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's Order. See 51 FR 1883.

The Commission has received and approved requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM (see 51 FR 8259, 51 FR 8587, 51 FR 9125 and 51 FR 40275)

and requests for similar transactions related to sale and leaseback of Palo Verde Unit 2 ownership shares by El Paso Electric Company (see 51 FR 20366 and 51 FR 40275) and by Arizona Public Service Company (see 51 FR 20367 and 51 FR 40275). On June 2, August 12 and 15, and December 11, 1986, the PVNGS Units 1 and 2 licenses were amended to allow the requested sale and leaseback transactions.

This application proposes that the Perry Unit 1 license be amended and conditioned in the same manner, by adding the following new paragraph 2.B(7):

(a) Ohio Edison company is authorized to transfer any portion of its 30.0% ownership share in PNPP Unit 1 and a proportionate share of its interest in the PNPP common facilities to certain equity investors identified in its submission of , and at the same time to lease back from such purchasers such interest sold in the PNPP Unit 1 facility. The term of the lease is for approximately 29-1/2 years subject to a right of renewal. Such sale and leaseback transactions are subject to the representations and conditions set forth in the aforementioned application of 1/23/87, as well as the letter of the Director of the Office of Nuclear Reactor Regulation dated , consenting to such transactions. Specifically, a lessor and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the licensees of PNPP, Unit 1. For purposes of this condition the limitations in 10 CFR 50.81, as now in effect and as may be subsequently amended, are fully applicable to the lessor and any

successor in interest to that lessor as long as the license for PNPP Unit 1 remains in effect; these financial transactions shall have no effect on the license for the Perry Nuclear facility throughout the term of the license.

(b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of these transactions, (ii) the PNPP Operating Agreement, (iii) the existing property insurance coverage for PNPP, Unit 1, and (iv) any action by a lessor or others that may have an adverse effect on the safe operation of the facility.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The above determination is based upon the fact that the proposed amendment would not change or affect any aspect of the plant design, criteria or operation. The amendment would maintain OE in possession of its present interests in the Perry Nuclear Power Plant and OE would continue to be obligated to pay its

share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, absent further license amendment, or control over Perry. The Cleveland Electric Illuminating Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the staff concluded that the proposed amendment meets the criteria in 10 CFR 50.92(c). The Commission, therefore, proposes to determine that the requested amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this FEDERAL REGISTER notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 1987 , the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and

who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR §2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result

in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to David R. Lewis, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 23, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 5th day of February 1987.

FOR THE NUCLEAR REGULATORY COMMISSION

Ralph Caruso, Acting Director
BWR Project Directorate No. 4
Division of BWR Licensing