

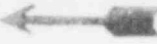


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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JUN 25 1979

Docket Nos. 50-346A
50-440A
50-441A
50-500A
50-501A



Mr. R. A. Miller
Executive Vice President
Cleveland Electric Illuminating Co.
P. O. Box 5000
Cleveland, Ohio 44101

Dear Mr. Miller:

By letter dated January 4, 1978, the City of Cleveland (City) requested that the Nuclear Regulatory Commission (NRC) take enforcement action against the Cleveland Electric Illuminating Company (CEI) in connection with antitrust license conditions applicable to Davis Besse Nuclear Power Station Units 1, 2, 3 and Perry Nuclear Power Plant Units 1 and 2. The conditions at issue are those which require the Licensees to provide wheeling for and at the request of other entities in the combined CAPCO company territories. By letter dated February 28, 1978, the Assistant Attorney General, Antitrust Division advised us of the Department of Justice's support for the City's request.

On June 28, 1978, the Acting Director of the Office of Nuclear Reactor Regulation issued a Notice of Violation to CEI pursuant to 10 CFR §2.201 of the Commission's Rules of Practice. On July 14, 1978, CEI responded to the Notice of Violation and generally denied that it had not complied with Antitrust License Condition No. 3 as set forth in the Notice.

Subsequently, Representatives of CEI, the City, and NRC Staff met on August 10, 1978, and again on November 28, 1978 in an attempt to resolve problems concerning compliance identified in the Notice of Violation.

However, the participants were unable to agree on an acceptable transmission service schedule.

During the same time period that the NRC Staff was attempting to work out a mutually satisfactory transmission schedule with CEI, the Federal Energy Regulatory Commission (FERC) conducted its own inquiry of CEI's

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Mr. R. A. Miller

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January 27, 1978 transmission schedule under FERC Docket No. ER 78-194. Evidentiary hearings were held by the FERC on December 19-20, 1978 and an Initial Decision was rendered by the Administrative Law Judge (ALJ) on April 27, 1979. While the Initial Decision by the ALJ dealt with most of the items cited by the NRC Staff to be in violation of the antitrust license conditions, the ALJ noted that FERC does not have jurisdiction to enforce NRC license conditions. In view of the foregoing, the Director of Nuclear Reactor Regulation has determined that, pursuant to 10 CFR §2.204, License No. NPF-3 and Construction Permit Nos. CPPR-148 and 149 shall be amended to require CEI to file a further amendment to the Transmission Service Schedule ordered by the FERC Administrative Law Judge. The attached Order, including Appendices A through E, orders the amendment of License No. NPF-3 and Construction Permit Nos. CPPR-148 and 149, to become effective immediately, pending further order of the Commission. CEI may, within twenty (20) days after receipt of the Order, request a hearing with respect to any part of the Amendment.

Sincerely,

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
Order

cc: R. Goldberg, Esq.
J. Shenefield, Esq. - Department of Justice
W. B. Reynolds, Esq.
J. Ciaccia - City of Cleveland
J. P. Williamson - The Toledo Edison Company
J. R. White - Ohio Edison Company
R. E. Semmler - Pennsylvania Power Company
S. G. Schaffer - Duquesne Light Company

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