

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
THE TOLEDO EDISON COMPANY and)	NRC Dkt. No. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY)	
(Davis-Besse Nuclear Power Station,)	
Unit 1))	
THE CLEVELAND ELECTRIC ILLUMINATING)	NRC Dkt. Nos. 50-440A
COMPANY, ET AL.)	50-441A
(Perry Nuclear Power Plant, Units 1 & 2))	

ORDER FURTHER MODIFYING ORDER OF JUNE 25, 1979

I.

The Cleveland Electric Illuminating Company (CEI) is the co-holder of an operating license for the Davis-Besse Unit 1 (License No. NPF-3) and of construction permits for Perry Units 1 and 2 (CPPR-148, CPPR-149) issued by the Nuclear Regulatory Commission (NRC). The Davis-Besse 1 operating license was issued on April 22, 1977. The Perry 1 and 2 construction permits were issued on May 3, 1977. The operating license and construction permits each contain identical antitrust conditions which were ordered in an Initial Decision issued by an Atomic Safety and Licensing Board Toledo Edison Co. & Cleveland Electric Illuminating Co., LBP-77-1, 5 NRC 133 (1977).^{1/}

^{1/} Aff'd., ALAB-560, 10 NRC 265 (1979); Petitions for Comm. Rev. denied, Feb. 29, 1980, _____ NRC _____ (1980).

II.

On June 25, 1979, the Director of Nuclear Reactor Regulation (NRR) issued an "Order Modifying Antitrust License Condition No. 3 of Davis-Besse Unit 1, License No. NPF-3 and Perry Units 1 and 2, CPPR-148, CPPR-149." The Order directed that CEI make certain changes in a transmission service tariff on file with the Federal Energy Regulatory Commission (FERC). The tariff had been ordered by a FERC Administrative Law Judge (ALJ) in an Initial Decision.^{2/} The Initial Decision ordering the transmission service tariff was under appeal to the FERC at the time of the NRC's June 25, 1979 Order.

By letter of August 2, 1979, CEI requested the Director of NRR to postpone the effective date of the June 25, 1979 Order until 25 days after the effective date of the final opinion of FERC. CEI said the ordered changes would deprive CEI of its appeal rights before FERC, and that the filing of the complete transmission schedules in accordance with the NRC Order would moot the appeal that it had filed with FERC with respect to the Initial Decision. CEI also stated that the filing of the complete transmission schedules would also have the effect of indicating to FERC that CEI had voluntarily accepted the provisions with which it had taken an appeal. After consideration of CEI's request, the Director of NRR on

^{2/} Initial Decision on Proposed Transmission Service Tariff, April 27, 1979, FERC Docket ER78-194.

August 6, 1979 suspended the effective date of June 25, 1979 Order until further notice pending the receipt and review of comments of the interested parties.^{3/}

After considering the comments of all the parties, the Director of NRR has decided that at this time CEI need file only modification amendments to the transmission service schedule tariff ordered by the FERC Initial Decision with which it has not appealed to FERC or which were not raised in the FERC proceeding. Further action may be required at a later date depending on the final decision of the FERC. In view of the matters discussed herein, the Director of NRR has determined that the public interest requires that this Order be made effective immediately.

III.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY, Antitrust License Condition No. 3 of License No. NPF-3 and Construction Permit Nos. CPPR-148 and 149 be amended to add the following language as paragraph (3)(c):

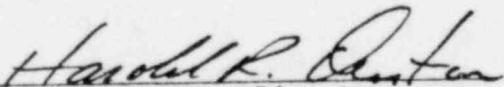
^{3/} August 6, 1979 Order by the Acting Director of NRR.

The Cleveland Electric Illuminating Company shall file with the FERC, within ten (10) days of the Order of the Director of Nuclear Reactor Regulation dated May 13, 1980, an amendment to its January 27, 1978 Transmission Service Schedule, FERC Docket ER78-194, in accordance with Appendix A to that Order and in conformity with the applicable filing requirements of the Federal Energy Regulatory Commission.

IV.

Pending further order of the Commission, CEI or any person who has an interest affected by this Order, may within twenty-five (25) days of the date of this Order, request a hearing with respect to all or any part of this Order. However, any request for a hearing SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER. Any request for a hearing shall be addressed to the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of this request for a hearing should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In the event a hearing is held, the Commission will issue an Order designating the time and place of hearing and the issue to be considered at such hearing shall be: Whether CEI should file the amendment to the transmission service schedule as prescribed in this Order.

FOR THE NUCLEAR REGULATORY COMMISSION


Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure: Appendix A

Dated at Bethesda, Maryland
this 13th day of May, 1980

AMENDMENT TO JANUARY 27, 1978
TRANSMISSION SERVICE TARIFF

Paragraphs A, B, C, and D of the Transmission Service Tariff are amended as follows:

A. Service Provided

The Cleveland Electric Illuminating Company (CEI) shall engage in wheeling ^{1/} for and at the request of other entities ^{2/} in the CCCT: ^{3/}

- (a) of power from delivery points of CEI to the entity(ies);
and,
- (b) of power generated by or available to such entity as a result of its ownership or entitlements ^{4/} in generating facilities to delivery points of CEI designated by the other entity.

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- 1/ "Wheeling", refers to the "transfer by direct transmission or displacement of electric power from one utility to another over the facilities of an intermediate utility." Otter Tail Power Co. vs. United States, 410 U.S. 366, 368 (1973).
 - 2/ "Entity" means any electric generating and/or distribution system or municipality or cooperative with a statutory right or privilege to engage in either of these functions (hereinafter sometimes referred to as "Customer").
 - 3/ CCCT is an acronym for the combined CAPCO (Central Area Power Coordination Group) Company territories.
 - 4/ "Entitlement" includes but is not limited to power made available to an entity pursuant to an exchange agreement.

The service will be 60 Hertz, alternating current and three phase (hereinafter referred to as "Transmission Service").

It is understood that the obligation of CEI to wheel power for Customer's account shall be subject to CEI's ability to wheel and deliver stated power consistent with the operation of its system under normal and emergency conditions for its own purposes. The availability of Transmission Service hereunder shall be determined at the sole discretion of CEI,^{5/} and the obligation of CEI shall be further limited to times during which power is actually received by CEI for delivery. Nothing herein shall be construed as requiring CEI to enlarge its facilities to transmit such power.

When CEI determines that Transmission Service is unavailable, it shall promptly orally notify the requesting party to that effect and the reason(s) therefore. This shall be confirmed in writing as soon as practicable but not later than three (3) days following the oral notification. The written confirmation shall be in sufficient detail to explain clearly the capacity constraints upon the system which makes wheeling service unavailable.

^{5/} A determination by CEI with respect to the availability of Transmission Service, the capacity of its bulk transmission facilities and related facilities, and the extent that such Transmission Service imposes a burden on its system, will not preclude any party requesting such service from petitioning the FERC (or the NRC with respect to CEI's nuclear licenses) for a review of the merits of CEI's determination.

If, after having agreed to wheel power on any particular occasion, CEI is prevented from making or continuing such delivery, it shall use all due diligence to remove the cause of disability and shall resume delivery as promptly as possible.

CEI shall provide Transmission Service within the limits of the capacity of its bulk transmission facilities, and related facilities, of which CEI shall be the sole judge,^{6/} without undue interference with service to those interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with CEI, except as stated below to other members of the CAPCO group, and to the extent that such Transmission Service does not, in the sole judgment of CEI,^{7/} impose a burden upon the system of CEI.

In the event that CEI must reduce wheeling services to other entities under this Service Schedule due to CEI's lack of capacity, such reduction shall not be effected until reductions of at least 5% have been made in CEI's transmission allocations to other CAPCO members, and thereafter shall be made in proportion to reductions imposed upon other CAPCO members.

^{6/} See Footnote 5.
^{7/} See Footnote 5.

The Customer by commencing to take Transmission Service from CEI agrees to take and pay for, and CEI by commencing to furnish such Service agrees to furnish the Service, subject to the terms and conditions of this Service Tariff as they may be in effect from time to time subject to action by the governmental bodies having regulatory jurisdiction over services rendered hereunder.

Transmission Service shall be provided by CEI from time to time, upon (i) written request by a Customer for the reservation of transmission capacity (Transmission Reservation) for a period of one week or longer, (ii) concurrence in such request by CEI in writing, (iii) when necessary, any request or concurrence relating to the availability of Transmission Service may be made orally and shall be confirmed in writing as soon as practicable but not later than the third day following the day such oral request or concurrence is given, (iv) the execution and delivery of a Service Agreement as embodied in the Form of Service Agreement attached to this Tariff, (v) filing of such Service Agreement with the Federal Energy Regulatory Commission (FERC) or any superseding regulatory authority having jurisdiction and (vi) concurrence by CEI from time to time in the maximum amount reserved and the duration (one week or longer for any single Transmission Service) of the service so requested to be reserved.

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B. Duration

This Service Tariff shall become effective 30 days after filing with the FERC and shall continue in effect for one year, and thereafter for similar periods unless changed, modified, or superseded. CEI reserves the right to make a filing with the FERC for termination of service under this tariff.

C. Changes in Charges and Terms and Conditions of Service

This Service Tariff, the services to be rendered, compensation and the terms, conditions, and rates included herein are subject to being superseded, changed, or modified either in whole or in part, made from time to time by a legally effective filing of CEI with or by order of the FERC or any superseding regulatory authority having jurisdiction and both CEI and Customer shall have the right at any time to seek unilaterally superseding services, compensation, terms, conditions, and rates from such regulatory authority.

D. Compensation

Customer shall, with respect to Transmission Services which shall be reserved during any period of one week or longer (the Reserved Period)

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under this Service Tariff, pay to CEI monthly, an amount calculated separately for each Transmission Reservation equal to the product of (i) (terms of compensation as submitted by CEI and approved by FERC) and (ii) the maximum amount of kilowatts which shall have been reserved (the Reserved Quantity) for transmission from or to such interconnection point during the Reserved Period; provided, however, that if at any time during said Reserved Period the amount of power and energy actually delivered at the delivery point, adjusted for losses thereon from or to the interconnection point for which such transmission service shall be so reserved, shall exceed the actual amount of power and energy received at the receiving point, the excess shall be deemed to be and shall be paid for by Customer as an unscheduled inadvertent power delivery. Any such excess delivery shall be settled for either by the return of equivalent power and energy or payment of the out-of-pocket cost incurred by CEI, plus 10% of such cost. Out-of-pocket cost shall compensate CEI for costs incurred that would otherwise not have been incurred and shall be as of the delivery point specified in the appropriate Service Agreement. If equivalent energy is returned, it shall be returned at times when the load conditions of CEI are equivalent to the load conditions of CEI at the time the energy for which it is returned was delivered or, if CEI elects to have equivalent energy returned under different conditions, it

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shall be returned in such amount, to be agreed upon by CEI and the Customer, as will compensate for the difference in conditions. There shall be added to any amount calculated pursuant to any of the foregoing provisions of this Section an amount in dollars sufficient to reimburse CEI for any amounts paid or payable by it as sales, excise or similar taxes (other than taxes based upon or measured by net income).

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