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NOTICE OF VIOLATION

Cleveland Electric Illuminating Company

Davis Besse Unit 1,
License No. NPF-3
Perry Units 1 and 2
CPPR-148, CPPR-149

As a result of (a) an investigation of a request for enforcement action by the City of Cleveland dated February 28, 1978, (b) an analysis of a transmission schedule filed by The Cleveland Electric Illuminating Company (CEI) on January 27, 1978 with the Federal Energy Regulatory Commission, and (c) a review of CEI's answers dated March 27, 1978 to the Nuclear Regulatory Commission (NRC) Staff's questionnaire dated February 21, 1978, it appears that CEI has not complied with antitrust license condition No. 3 of the subject license and construction permits as set forth below.

Antitrust License Condition No. 3 reads as follows:

"(3) Applicants shall engage in wheeling for and at the request of other entities in the CCCT:

a) of electric energy from delivery points of Applicants to the entity(ies); and,

b) of power generated by or available to the other entity, as a result of its ownership or entitlements*/ in generating facilities, to delivery points of Applicants designated by the other entity.

* "Entitlement" includes but is not limited to power made available to an entity pursuant to an exchange agreement.

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"Such wheeling services shall be available with respect to any unused capacity on the transmission lines of Applicants, the use of which will not jeopardize Applicants' system. In the event Applicants must reduce wheeling services to other entities due to lack of capacity, such reduction shall not be effected until reductions of at least 5 percent have been made in transmission capacity allocations to other Applicants in these proceedings and thereafter shall be made in proportion to reductions imposed upon other Applicants to this proceeding.**/

"Applicants shall make reasonable provisions for disclosed transmission requirements of other entities in the CCT in planning future transmission either individually or within the CAPCO grouping. By "disclosed" is meant the giving of reasonable advance notification of future requirements by entities utilizing wheeling services to be made available by Applicants."

Staff has concluded that the Cleveland Electric Illuminating Company (Licensee) has not reasonably complied with this condition since January 27, 1978 in that:

(1) although antitrust license condition No. 3 requires provision of wheeling services on a reasonable basis, the Licensee has proposed such services only until some unknown future date ("the date of the final decision of NRC" on the question of validity of condition No. 3). Conditioning wheeling on such a basis is unreasonable and tantamount to a refusal to wheel.

**/ The objective of this requirement is to prevent the preemption of unused capacity on the lines of one Applicant by other Applicants or by entities the transmitting Applicant deems noncompetitive. Competitive entities are to be allowed opportunity to develop bulk power services options even if this results in reallocation of CAPCO (Central Area Power Coordination Group) transmission channels. This relief is required in order to avoid prolongation of the effects of Applicants' illegally sustained dominance.

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-3-

(2) although antitrust license condition No. 3 requires the availability of wheeling services if there is unused capacity the use of which will not jeopardize applicants' system, the Licensee has proposed such services only if it, the Licensee, would be the "sole judge" of whether the services are available. Conditioning wheeling on such a basis is unreasonable and tantamount to a refusal to wheel.

(3) although antitrust license condition No. 3 establishes procedures to prevent Licensee from preempting available transmission capacity over which the wheeling services are to be provided, the Licensee has proposed such services upon a condition which would permit it to unreasonably preempt unused transmission capacity. Conditioning wheeling on such a basis is unreasonable and tantamount to a refusal to wheel.

(4) although antitrust license condition No. 3 requires the provision of wheeling services without limitation as to the minimum reasonable duration of a specific wheeling transaction, the Licensee has proposed such services only if the minimum wheeling transaction lasts for periods of not less than 12 months. Conditioning wheeling on such a basis is unreasonable and tantamount to a refusal to wheel.

(5) although antitrust license condition No. 3 requires provision of wheeling services "for and at the request of other entities in the

Appendix A

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POOR ORIGINAL

CCCT" with the expectation that upon request such services shall be provided in a timely manner, the Licensee has proposed such services only upon condition that the Licensee file separate supplemental schedules for each transaction. Conditioning wheeling on such a basis is unreasonable and tantamount to a refusal to wheel.

The five Licensee-proposed conditions to wheeling listed above, individually and in concert, constitute unreasonable conditions tantamount to a refusal to wheel in violation of antitrust license condition No. 3.

This Notice of Violation is sent to Cleveland Electric Illuminating Company pursuant to the provisions of 2.201 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Regulations. The Cleveland Electric Company is hereby required to submit to this Office, within twenty (20) days of its receipt of this notice, a written statement or explanation in reply, including for the above item of noncompliance; (1) admission or denial of the alleged item of noncompliance; (2) the reason for the item of noncompliance if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid further noncompliance; and (5) the date when full compliance will be achieved.

OFFICE ➤					Appendix A	
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