

LAW OFFICES

GOLDBERG, FIELDMAN & HJELMFELT, P. C.

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MICHAEL D. OLDAK
GLENN W. LETHAM

January 4, 1978

Mr. Edson G. Case
Director of Nuclear Reactor
Regulation
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Case:

The City of Cleveland, Ohio hereby requests the Nuclear Regulatory Commission to commence proceedings pursuant to 10 C.F.R. §2.202 to require The Cleveland Electric Illuminating Company to comply with the license conditions attached to the operating license for Davis-Besse Nuclear Power Station Unit 1 and the construction permits issued for Davis-Besse Nuclear Power Station Units 2 and 3 and Perry Plant Units 1 and 2.

On January 6, 1977, an Atomic Safety and Licensing Board issued its initial decision in The Toledo Edison Company and The Cleveland Electric Illuminating Company, et al., Docket Nos. 50-346A, 50-500A and 50-501A and The Cleveland Electric Illuminating Company et al., Docket Nos. 50-440A and 50-441A (5 NRC 133). The Licensing Board found that issuance of licenses for the Davis-Besse and Perry units would create or maintain a situation inconsistent with the antitrust laws. Accordingly, the Licensing Board ordered that conditions be attached to those licenses. Among those license conditions was the following:

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

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

2) 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.

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

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

On January 14, 1977, Applicants moved to stay the license conditions pending appeal. The motion for a stay was denied by the Licensing Board by Memorandum and Order dated February 3, 1977 (LBP77- , 5 NRC) and by the Atomic Safety and Licensing Appeal Board on March 23, 1977 (ALAB-385). On April 22, 1977, the operating license for Davis-Besse Unit 1 was issued (NPF-3). The construction permits for Perry Nuclear Power Plant Units 1 and 2 were issued on May 3, 1977 (CPPR-148 and 149).

On May 6, 1977, the City of Cleveland wrote to The Cleveland Electric Illuminating Company (CEI) requesting negotiations for an agreement for wheeling services. Enclosed was a draft service schedule "C", Transmission Services. (Attachment A).

CEI responded to the City's request on June 29, 1977, with its own draft transmission service schedule which differs in several important respects from the schedule proposed by the City. (Attachment B).

On November 18, 1977, the City wrote to CEI pointing out several deficiencies in the transmission services agreement proposed by CEI including areas in which CEI's proposal is contrary to the

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Davis-Besse and Perry license conditions. (Attachment C).

On December 15, 1977 having received no response to its November 13, 1977 letter, City again requested negotiations with respect to a transmission service schedule. (Attachment D).

On December 22, 1977, CEI advised the City that shortly after the first of the year CEI will file with the Federal Energy Regulatory Commission, CEI's proposed transmission schedule. (Attachment E). On December 27, 1977, CEI's counsel orally confirmed CEI's intent to file its proposed transmission services schedule.

CEI's proposed transmission services schedule fails to comply with license condition 3 to the Davis-Besse and Perry licenses in the following respects:

- 1) Section 1.3 provides that the service schedule shall terminate after the date of the final decision of the Commission in the Davis-Besse and Perry proceedings. Thus, immediately upon issuance of a final decision affirming the license conditions which require a wheeling agreement under CEI's proposal the wheeling agreement would terminate.
- 2) Section 2.1 provides that CEI shall be the sole judge as to whether it has capacity available on its transmission system to provide the service requested. If CEI is the sole judge of available capacity, the Commission would have no way to enforce its license conditions.

The section also provides that transmission for the City must not interfere with transmission for other CAPCO members. This proviso is directly contrary to license condition 3 which requires CEI to reduce its transmission for other CAPCO members by as much as 5% if necessary to accommodate City's request for transmission service. In this regard it should be noted that during the antitrust review hearings counsel for CEI stipulated that CEI had capacity to wheel power to the City from the Power Authority of the State of New York. (Tr. 4702-03). CEI filed an affidavit of Dalwyn Davidson with the Commission dated August 14, 1974, attesting to CEI's capacity to accommodate wheeling

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Mr. Edson G. Case
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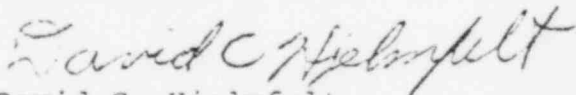
to the City from the Power Authority of the State of New York. (Department of Justice Exhibit 358).

No valid reason exists for requiring a 12-month minimum reservation of transmission service. Certainly nothing in license condition 3 can be construed to permit CEI to require the City to purchase wheeling service for no less than 12 months. Such a requirement would negate seasonal power exchanges. (See 5 NRC 174).

3) Section 3.1 is also unreasonable anticompetitive in requiring a minimum term of 12 months for each wheeling transaction.

To date, CEI has refused to offer the City a transmission service schedule which would comply with license condition 3. Therefore, City requests that the Commission commence proceedings to enforce its license conditions.

Very truly yours,


David C. Hjelmfelt
Attorney for
City of Cleveland

Attachments
cc: Counsel of record
Jack M. Schulman
Robert D. Hart



City of Cleveland

RALPH J. PERK, MAYOR

DEPARTMENT OF PUBLIC UTILITIES
RAYMOND KUDUKIS
DIRECTOR

DIVISION OF UTILITIES ENGINEERING
1201 LAKESIDE AVENUE
CLEVELAND, OHIO 44114

May 6, 1977

Mr. Richard A. Miller
Executive Vice-President
The Cleveland Electric
Illuminating Company
P.O. Box 5000
Cleveland, Ohio 44101

Dear Mr. Miller,

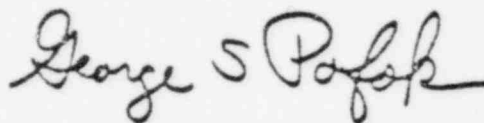
Pursuant to the CEI - Cleveland Agreement for the installation and operation of the 138KV synchronous interconnection, dated April 17, 1975, and the recent decisions by the United States' Nuclear Regulatory Commission concerning the operating license of your Davis-Besse Nuclear Power Plant, in particular, Unit #1, I have been requested to convene a meeting of the Administrative Committee, by Raymond K. Miller, Acting Commissioner of the Division of Light and Power, as described in Section 3.1 of said Agreement.

As described in Section 2.2 of the Agreement, the intention of the City of Cleveland at this time, is to enter into good faith negotiations with CEI for the purpose of reaching an agreement on Service Schedule "C", Transmission Service. Enclosed is a working draft of said Service Schedule "C", dated May 6, 1977, for further discussion. This proposed draft is obviously just a starting point and additional meetings of Committee will be necessary before this schedule can be said to be in final form. Once this Service Schedule "C" is approved by the City of Cleveland and CEI, the City then will avail itself of the power and energy available from the Power Authority of the State of New York thru American Municipal Power-Ohio.

May 6, 1977

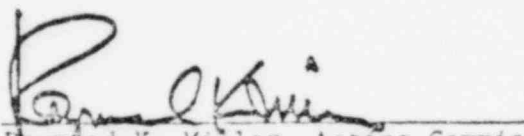
I am available at your convenience for this first meeting in a series of meetings of the Administrative Committee.

Very truly yours,

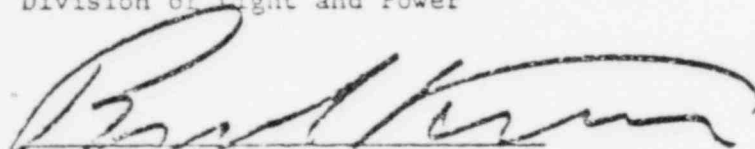


George S. Pofok, P.E.
Systems Engineer
Division of Utilities
Engineering

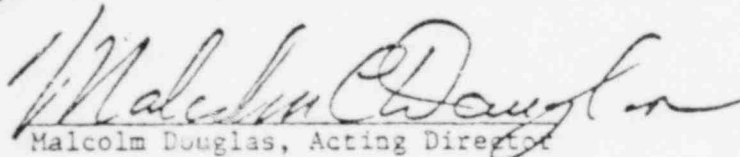
APPROVED BY:



Raymond K. Miller, Acting Commissioner
Division of Light and Power



Raymond Kudukis, Director
Department of Public Utilities



Malcolm Douglas, Acting Director
Department of Law

Enclosure

cc. Ralph J. Perk, Mayor
Richard A. Labas
R. Hart
Seslar Titus
File

GSP:mmm

SERVICE SCHEDULE "C"
TRANSMISSION SERVICE

Under Agreement Dated April 17, 1975

Between

The Cleveland Electric Illuminating Company
and
The City of Cleveland, Department of Public Utilities

SECTION 1 - DURATION

- 1.1 This Service Schedule, a part of an Agreement dated April 17, 1975, (Agreement) between The Cleveland Electric Illuminating Company (CEI) and the City of Cleveland (City) shall become effective on the _____ day of _____, 1977 and shall continue in effect for a period of 25 years commencing upon the original Agreement date as stipulated in Section 8.1 of said Agreement.
- 1.2 This Schedule shall be subject to the jurisdiction of the governmental bodies having regulatory authority over services rendered hereunder. This Schedule, 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 regulatory authority having jurisdiction and both CEI and the City shall have the right at any time to seek unilaterally superseding services, compensation, terms, conditions, and rates from such regulatory authority.

SECTION 2 - SERVICES TO BE RENDERED

- 2.1 CEI shall, upon written request by the City for the reservation of transmission capacity for a period specified by the City (which period shall be not less than the period for which the City intends to take the power and energy to be transmitted) and the execution and delivery of a Supplemental Schedule as provided

below, transmit from an interconnection point (Receiving Point) established pursuant to such Supplemental Schedules, to an interconnection point (Delivery Point) established pursuant to such Supplemental Schedules, power in an amount up to but not exceeding the amount reserved, and the energy associated therewith.

2.2 CEI shall within the limits of the capacity of its bulk transmission facilities, and related facilities, without undue interference with service to its customers (customers shall be deemed to include other interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with CEI, including other members of the CAPCO Group), and to the extent that such transmission does not impose a burden upon the System of CEI (which shall be based upon existing load, normal load growth, contracted new load beyond normal load growth and its other committed transactions), from time to time, upon (i) written request by Cleveland for the reservation of transmission capacity for a specified period co-extensive with the period for which the City intends the power and energy to be transmitted, (ii) concurrence in such request by CEI, (iii) the execution and delivery of a Supplemental Schedule as provided below, (iv) concurrence by CEI in the maximum amount reserved and the specified duration of the service so requested to be reserved, transmit from an interconnection point, with other utilities (Receiving Point) established pursuant to such Supplemental Schedules, to an Interconnection Point with Cleveland (Delivery Point) established pursuant to such Supplemental Schedules, power in an amount up to but not exceeding, the amount reserved, and the energy associated therewith to Cleveland.

2.3 Each reservation of transmission capacity arranged under paragraphs 2.1 and 2.2 above shall be set forth in a Supplemental Schedule which shall record the amount of capacity reserved and the period of the reservation. The Receiving Point from which any such power and energy after adjustment for losses from such Receiving

Point shall be transmitted, and the Delivery Point to which such power and the energy relating thereto shall be transmitted, shall be established by mutual agreement between CEI and the City, and the respective locations of said Receiving Point and said Delivery Point, shall be set forth in said Supplemental Schedule to the Agreement, which Supplemental Schedule shall also contain the arrangements, and the obligations which the City is assuming, in connection with the construction, operation and maintenance of the facilities necessary to provide such Receiving Point and such Delivery Point and the scheduling from time to time of transmission between such points.

- 2.4 In the event CEI must reduce transmission services to Cleveland due to a lack of capacity, such reductions shall not be effected until reduction of at least 5% have been made in transmission capacity allocations to other members of the CAPCO Group. (Toledo Edison Company, Ohio Edison Company, Pennsylvania Company, and the Duquesne Light Company), and thereafter shall be made in proportion to the reduction imposed upon the members of the CAPCO Group.
- 2.5 In the event CEI advises in response to a written request by the City for transmission services that CEI does not have the requisite capacity in its bulk transmission facilities and related facilities to provide the requested transmission service, CEI will, if requested by the City to do so, include in its planning and construction program sufficient transmission capacity to accommodate the requested transmission service under this Schedule, provided City gives CEI sufficient advance written notice to enable CEI reasonably to plan and complete from a functional and technical standpoint the transmission capacity deemed necessary by CEI to provide such service in accordance with CEI's construction and operating standards, and, provide further, City compensated CEI for the carrying charges of such transmission capacity for the period during which the trans-

mission services are furnished and until said transmission capacity is required (should the City cease to require them) by CEI for its own use or the use of another.

SECTION 3 - COMPENSATION

3.1 Cleveland shall, with respect to transmission services which shall be reserved for a specified period (the Reserved Period) under this Schedule, pay to CEI monthly:

3.11 an amount calculated separately for each Receiving Point equal to the product of (i) \$.72, and (ii) the maximum amount of kilowatts which shall have been reserved (the Reserved Quantity) for transmission from such Receiving Point during the Reserved Period.



THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

ILLUMINATING BLDG • PUBLIC SQUARE • CLEVELAND OHIO 44101 • TELEPHONE (216) 623-1250 • MAIL ADDRESS P O BOX 5000

Serving The Best Location in the Nation

June 29, 1977

Mr. George S. Pofok, Systems Engineer
Division of Utilities Engineering
Department of Public Utilities
1201 Lakeside Avenue
Cleveland, Ohio 44114

Dear Mr. Pofok:

Your letter dated May 6, 1977 to Mr. R. A. Miller which we received May 19, 1977, has been referred to me. As you know, I am the alternate representative of The Illuminating Company on the Administrative Committee provided for in the CEI-Cleveland Agreement of April 17, 1975.

Subsequent to receipt of your letter, Council of the City of Cleveland, on May 23, 1977, enacted an ordinance authorizing the sale of the Municipal Electric Light Plant's system to The Illuminating Company. On June 7, 1977, the Executive Committee of the Board of The Cleveland Electric Illuminating Company accepted the proposal of sale authorized in that ordinance and authorized the officers of the Company to carry out the acceptance of the sale of the assets of the Municipal Electric Light System.

This would appear to make the issue of wheeling PASNY power moot. However, in the interim before the actual transfer of the municipal system takes place, if the City is able to actually get any power and energy from the Power Authority of the State of New York (PASNY) delivered to the system of The Illuminating Company, in compliance with the conditions imposed by the Atomic Safety and Licensing Board on the issuance of the Operating License for Davis-Besse No. 1 and the Construction Permits for Perry No. 1 and Perry No. 2, The Illuminating Company will provide transmission services for that PASNY power and energy to a delivery point of the City. We, of course, would also provide transmission services for the City from any source other than the Power Authority of the State of New York to a delivery point of the City. The Illuminating Company would also provide transmission services for power and energy of the City to a delivery point on CEI's system to another entity. The Illuminating Company's agreement to provide such transmission services would terminate upon the date of the final decision of the Nuclear Regulatory Commission in the antitrust review associated with the licenses and permits for the Davis-Besse and Perry nuclear units which is presently pending before an Appeal Board.

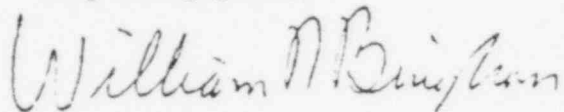
Such transmission services would be provided in accordance with a service schedule such as the draft which accompanies this letter which differs from the draft which you forwarded with your letter.

Mr. George S. Pofok, Systems Engineer
Division of Utilities Engineering
Department of Public Utilities

June 29, 1977
Page 2

If you believe some useful purpose would be served by meeting to discuss this draft, we can get together. I will wait until I hear further from you.

Very truly yours,



William N. Bingham
Principal Rate Engineer

WNB:jc
Enclosure

cc: City of Cleveland, Law Department

SERVICE SCHEDULE C
TRANSMISSION SERVICES

Under Agreement Dated April 17, 1975

Between

The Cleveland Electric Illuminating Company
and
The City of Cleveland, Department of Public Utilities

SECTION 1 - DURATION

- 1.1 This Service Schedule, a part of an Agreement dated April 17, 1975, (Agreement) between The Cleveland Electric Illuminating Company (CEI) and the City of Cleveland (City) shall become effective on the _____ day of _____, 1977 and shall continue in effect for one year, and thereafter for similar periods unless changed, modified, or superseded.
- 1.2 This Schedule shall be subject to the jurisdiction of the governmental bodies having regulatory authority over services rendered hereunder. This Schedule, 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 regulatory authority having jurisdiction and both CEI and the City shall have the right at any time to seek unilaterally superseding services, compensation, terms, conditions, and rates from such regulatory authority.
- 1.3 This Service Schedule shall terminate and be of no force and effect on and after the date of the final decision of the Nuclear Regulatory Commission in the antitrust proceedings associated with the licenses and permits for the Davis-Besse and Perry nuclear units.

SECTION 2 - SERVICES TO BE RENDERED

2.1 CEI shall within the limits of the capacity of its bulk transmission facilities, and related facilities, of which CEI shall be the sole judge, without undue interference with service to its customers (customers shall be deemed to include other interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with CEI, including other members of the CAPCO group), and to the extent that such transmission does not, in the sole judgment of CEI, impose a burden upon the System of CEI, from time to time, upon (i) written request by City for the reservation of transmission capacity for a period of not less than 12 consecutive calendar months, (ii) concurrence in such request by CEI, (iii) the execution and delivery of a Supplemental Schedule, as provided below, (iv) concurrence by CEI from time to time in the maximum amount reserved and the duration (not less than 12 consecutive calendar months for any single transmission service) of the service so requested to be reserved, transmit from an Interconnection Point established pursuant to such Supplemental Schedule, to City, power in an amount up to but not exceeding the amount reserved, and the energy associated therewith; or transmit from City to an Interconnection Point established pursuant to such Supplemental Schedule for the account of City for a patron of City, power in an amount up to but not exceeding the amount reserved, and the energy associated therewith (with the amounts of power and energy appropriately adjusted for losses).

The Interconnection Point from which, or to which, any such power and energy shall be transmitted shall be established by mutual agreement between the

Parties to the Agreement and shall be set forth in a Supplemental Schedule to the Agreement, which shall also contain the arrangements, and the obligations which City is assuming, in connection with the construction, operation and maintenance of the facilities necessary to provide such Interconnection Point and such delivery point and the scheduling from time to time of transmission between such points.

SECTION 3 - COMPENSATION

3.1 City shall, with respect to transmission services which shall be reserved during any period of not less than 12 consecutive calendar months (the Reserved Period) under this Schedule, pay to CEI monthly:

3.11 an amount calculated separately for each Interconnection Point equal to the product of (i) \$.72 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 (a) if at any time during said Reserved Period (i) the amount of power and energy actually delivered at the delivery point, (ii) adjusted for losses thereon from or to the Interconnection Point for which such transmission service shall be so reserved, shall exceed (iii) the actual amount of power and energy received at the receiving point, the excess shall be deemed to be, and, if in excess of Allowable Inadvertent Power, shall be paid for by City as an unscheduled inadvertent power delivery under Section 4.3.2 of the Agreement of which this Schedule is a part.

3.12 there shall be added to any amount calculated pursuant to any of the foregoing provisions of this Section 3.1 an amount in dollars suffi-

cient to reimburse CEI for any amount^s paid or payable by it as sales, excise or similar taxes (other than taxes based upon or measured by net income) in respect of the total amount payable by Cleveland to CEI, after provision for such taxes to realize the net amount payable by City under such provision.

IN WITNESS WHEREOF, the Parties have caused this Agreement to this Service Schedule C, "Transmission Services", to be executed by their duly authorized officers this _____ day of _____, 1977.

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

Attest:

By _____

CITY OF CLEVELAND

Attest:

By _____



City of Cleveland

DIVISION OF UTILITIES ENGINEERING
1201 LAKESIDE AVENUE
CLEVELAND, OHIO 44114

November 18, 1977

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

Attention: Mr. William Bingham,
Principal Rate Engineer

Dear Mr. Bingham,

Subsequent to your letter, dated June 29, 1977, concerning Service Schedule "C" for the Division of Light and Power, Dennis J. Kucinich was elected Mayor of the City of Cleveland. Ordinance #2873-77 was introduced by Mayor Kucinich on November 14, 1977 to the Cleveland City Council called for the repeal of Ordinance #2351-76 which authorized the sale or lease of all assets of the Division of Light and Power to C.E.I. Co.

Mayor Kucinich's position on the Division of Light and Power is quite clear. Therefore, the issue of wheeling PASNY Power is not moot as you have indicated, but very important to financial position of the Division of Light and Power. After consultation with the City's new legal consul, we find that your draft of Service Schedule "C", Transmission Services, dated June 27, 1977, needs a few refinements. Enclosed you will find a new draft of said Service Schedule "C" with the beforementioned refinements.

Section 1.3 has been removed from your 6/27/77 draft. There is no reason for providing for termination upon issuance of a final decision by NRC Appeal Board. This is particularly true if the Appeal Board affirms the decision of the Licensing Board which requires C.E.I. to wheel power for the City. The proposed Service Schedule G, Transmission Services, between C.E.I. and City of Painesville does not contain this stipulation.


Further, Section 2.1 of your draft provides that C.E.I. would be the sole judge of whether capacity is available. This is contrary to the requirements of license conditions for the Perry and Davis units which mandates for wheeling services by C.E.I. upon request of the City and provides for certain reductions in wheeling services priorities due to lack of capacity. New Sections 2.2 and 2.3 solve these problems.

Also, in the Section 2.1 the transmission services are limited to reservation periods of not less than 12 consecutive calendar months. This is an extremely undesirable clause and does not belong in this service schedule. The reservation period should be defined in each supplemental schedule that is developed when the City contracts from time to time with other entities for power.

Finally, Section 3.12 concerning taxes has to be refined, these issues are still unresolved. However, to expediate this service schedule, the phraseology added in the City's 7/27/77 draft should solve this problem.

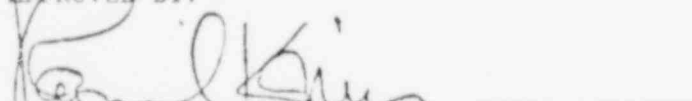
In conclusion, we should pursue with all due dispatch perfection of this Service Schedule "C", Transmission Services.

Very truly yours,

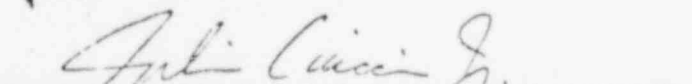


George S. Pofok, P.E.
Systems Engineer
Division of Utilities Engineering

APPROVED BY:



Raymond K. Miller, Acting Commissioner
Division of Light and Power



Julius Ciaccia, Jr., Acting Director
Department of Public Utilities



Jack M. Schulman, Director
Department of Law

Enclosure

cc. Dennis J. Kucinich, Mayor
Richard A. Labas
Robert D. Hart
Seslar Titus
File

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SERVICE SCHEDULE C
TRANSMISSION SERVICES

Under Agreement Dated April 17, 1975

Between

The Cleveland Electric Illuminating Company
and
The City of Cleveland, Department of Public Utilities

SECTION 1 - DURATION

- 1.1 This Service Schedule, a part of an Agreement dated April 17, 1975, (Agreement) between The Cleveland Electric Illuminating Company (CEI) and the City of Cleveland (City) shall become effective on the _____ day of _____, 1977 and shall continue in effect for one year, and thereafter for similar periods unless changed, modified, or superseded.
- 1.2 This Schedule shall be subject to the jurisdiction of the governmental bodies having regulatory authority over services rendered hereunder. This Schedule, 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 regulatory authority having jurisdiction and both CEI and the City shall have the right at any time to seek unilaterally superseding services, compensation, terms, conditions, and rates from such regulatory authority.

SECTION 2 - SERVICES TO BE RENDERED

2.1 CEI shall within the limits of the capacity of its bulk transmission facilities, and related facilities, without undue interference with service to its customers (customers shall be deemed to include other interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with CEI, including other members of the CAPCO group), and to the extent that such transmission does not impose a burden upon the System of CEI, from time to time, upon (i) written request by City for the reservation of transmission capacity, (ii) concurrence in such request by CEI, (iii) the execution and delivery of a Supplemental Schedule, as provided below, (iv) concurrence by CEI from time to time in the maximum amount reserved and the duration of the service so requested to be reserved, transmit from an Interconnection Point established pursuant to such Supplemental Schedule, to City, power in an amount up to but not exceeding the amount reserved, and the energy associated therewith; or transmit from City to an Interconnection Point established pursuant to such Supplemental Schedule for the account of City for a patron of City, power in an amount up to but not exceeding the amount reserved, and the energy associated therewith (with the amounts of power and energy appropriately adjusted for losses).

The Interconnection Point from which, or to which, any such power and energy shall be transmitted shall be established by mutual agreement between the Parties to the Agreement and shall be set forth in a Supplemental Schedule to the Agreement, which shall also contain the arrangements, and the obligations which City is assuming, in connection with the construction, operation and maintenance of the facilities necessary to provide such

Interconnection Point and such delivery point and the scheduling from time to time of transmission between such points. CEI now has sufficient transmission capacity to accommodate transmission of 22.5 mw of power and energy from the Power Authority of the State of New York to Cleveland.

- 2.2 In the event CEI advises in response to a written request by the City for transmission services that CEI does not have the requisite capacity in its bulk transmission facilities and related facilities to provide the requested transmission service, CEI will, if requested by the City to do so, include in its planning and construction program sufficient transmission capacity to accommodate the requested transmission service under this Schedule, provided the City gives CEI sufficient advance written notice to enable CEI reasonably to plan and complete from functional and technical standpoint the transmission capacity deemed necessary by CEI to provide such service in accordance with CEI's construction and operating standards, and, provide further, City compensated CEI for the carrying charges of such transmission capacity for the period during which the transmission services are furnished and said transmission is required (should the City cease to require them) by CEI for its own use or the use of another.
- 2.3 In the event CEI must reduce transmission services to the City due to a lack of capacity, such reductions shall not be effected until reduction of at least 5% have been made in transmission capacity allocations to other members of the CAPCO group. (Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, and the Duquesne Light Company), and thereafter shall be made in proportion to the reduction imposed upon the members of the CAPCO group.

SECTION 3 - COMPENSATION

- 3.1 City shall, with respect to transmission services which shall be reserved for a specified period (the Reserved Period) under this Schedule, pay to CEI monthly:
- 3.11 an amount calculated separately for each Interconnection Point equal to the product of (i) \$.72 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 (a) if at any time during said Reserved Period (i) the amount of power and energy actually delivered at the delivery point, (ii) adjusted for losses thereon from or to the Interconnection Point for which such transmission service shall be so reserved, shall exceed (iii) the actual amount of power and energy received at the receiving point, the excess shall be deemed to be, and, if in excess of Allowable Inadvertent Power, shall be paid for by City as an unscheduled inadvertent power delivery under Section 4.3.2 of the Agreement of which this Schedule is a part.
- 3.12 there shall be added to any amount calculated pursuant to any of the foregoing provisions of this Section 3.1 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) in respect of the total amount payable to Cleveland to CEI, after provision for such taxes to realize the net amount payable by City under such provisions, subject to the provisions of Article 12 of the Original Agreement of which this Service Schedule "C" is a part.

IN WITNESS WHEREOF, the Parties have caused this Agreement to this Service Schedule C, "Transmission Services", to be executed by their duly authorized officers this _____ day of _____, 1977.

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

Attest:

By _____

CITY OF CLEVELAND

Attest:

By _____



City of Cleveland

DENNIS J. KUCINICH, MAYOR

DEPARTMENT OF PUBLIC UTILITIES
JULIUS CIACCIA
DIRECTOR

1201 LAKESIDE AVENUE
CLEVELAND, OHIO 44114

December 15, 1977

Mr. Richard A. Miller
Executive Vice-President
The Cleveland Electric
Illuminating Company
P. O. Box 5000
Cleveland, Ohio 44101

Dear Mr. Miller:

Pursuant to the C.E.I. - Cleveland Agreement for the installation and operation of 138KV Synchronous Interconnection, dated April 17, 1975, I again ask to convene a meeting of the Administrative Committee to pursue with all due dispatch perfection of Service Schedule "C", Transmission Services, commonly referred to as wheeling services.

My letter of November 18, 1977, to Mr. William Bingham, of your company has not extracted any response to date. Mr. Bingham, by letter of November 22, 1977, informed the City that the Illuminating Company will not be able to assist the City in any insulator problems on the 138KV Interconnection line. However, no mention of the Service Schedule "C", Transmission Services, was incorporated in Mr. Bingham's communication.

Also, this appears to be an appropriate time to begin discussions for a second 138KV Synchronous Interconnection. With the withdraw of the City since April 1, 1977, from the generation end of the Energy industry, except for peaking, a second 138KV Synchronous Interconnection is essential to protect the customers of the City.

-Therefore, to accomplish the perfection of Service Schedule "C" and start a second 138KV Synchronous Interconnection, the City is prepared to take any and all necessary legal steps possible.

Very truly yours,

George S. Pofok P.E.

George S. Pofok, P.E.
Systems Engineer
Division of Light and Power

APPROVED:

Raymond R. Cristelli
Raymond R. Cristelli, Commissioner
Division of Light and Power

Julius Ciaccia, Jr.
Julius Ciaccia, Jr., Acting Director
Department of Public Utilities

Jack M. Schulman
Jack M. Schulman, Director
Department of Law
GSP:sm

cc. Dennis J. Kucinich, Mayor
Robert D. Hart, Esq.
Sesler Titus
File



THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

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December 22, 1977

George S. Pofok, P.E.
System Engineer
Division of Light & Power
1201 Lakeside Avenue
Cleveland, Ohio 44114

Dear Mr. Pofok:

Your letter dated December 15 addressed to Mr. R. A. Miller, which we received yesterday, December 21, 1977, has been referred to me.

Last night's unfortunate experience of MELP confirms previous discussions that we had with representatives of the City that it should provide a second interconnection between the two systems. Therefore, please call me to arrange a mutually convenient time to discuss a second 138 kV synchronous interconnection. I will be in town the remainder of the year. It would be helpful if you could provide in advance of such a meeting the preliminary engineering plans of the City for the second 138 kV interconnection.

Shortly after the first of next year The Illuminating Company will file a "Service Schedule C - Transmission Services" with the Federal Energy Regulatory Commission which would become a part of the agreement dated April 17, 1975, between The Cleveland Electric Illuminating Company and the City of Cleveland. That Service Schedule will be essentially the same as the draft of June 27, 1977, which was submitted to you at that time modified to reflect current costs.

Very truly yours,

A handwritten signature in cursive script that reads "William M. Bingham".

William M. Bingham
Principal Rate Engineer

cc: City of Cleveland Law Department