

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-346A, 50-440A, AND 50-441A

THE TOLEDO EDISON COMPANY

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.

ORDER

The Acting Director, Office of Nuclear Reactor Regulation has issued an order dated August 6, 1979. The order reads as follows:

"On June 25, 1979 this office 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' in the captioned matter. That Order amended, effective immediately, Antitrust License Condition No. 3 contained in the above listed license and construction permits. The amendment required the Cleveland Electric Illuminating Company (CEI) to file a specific transmission tariff with the Federal Energy Regulatory Commission (FERC). On July 16, 1979 the times afforded CEI to request a hearing and to file the transmission tariff were extended for a period of fifteen days.

"By letter dated August 2, 1979, CEI requested a modification of the Order insofar as it is intended to become effective immediately. In support of its modification request, CEI, in its letter, states:

'The transmission service tariff in question is currently the subject of an administrative appeal before FERC in Docket No. ER 78-194. If CEI is required to file prematurely with FERC an amended tariff pursuant to the Order here, a number of contested issues being considered in the FERC appeal will be mooted by that filing. As a consequence, CEI will be unfairly deprived of a meaningful opportunity to exercise both its appeal rights at FERC and its hearing rights before the Nuclear Regulatory Commission prior to the filing of a transmission service tariff which it legitimately believes to be objectionable in several important respects.

'In order to avoid such a result -- which would not, in our view, comport with the directive contained in Antitrust License Condition No. 10* -- CEI hereby requests a modification to the "immediate effectiveness" aspect of the June 25 Order. We ask that the effective date of that Order, as extended, be further amended to follow by twenty-five (25) days the effective date of the final opinion and order by the Federal Energy Regulatory Commission in FERC Docket No. ER 73-194.

'The granting of this request will permit the orderly completion of CEI's appeal currently pending at FERC without causing any prejudice to other interested parties.'

"In view of the statements made by CEI in its modification request, the Director of Nuclear Reactor Regulation has determined to suspend until further notice the immediately effectiveness aspect of this amendment pending the receipt and review of comments by the City of Cleveland, Ohio, the Department of Justice and any person whose interest may be affected by the modification.

"Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR §2.204 of the Commissions Rules of Practice, IT IS HEREBY ORDERED THAT: The immediately effectiveness aspect of the Order of June 25, 1979 is suspended until further notice so that the City of Cleveland, the Department of Justice and any person whose interest may be affected by the modification may respond to the statements made by CEI. The parties have thirty (30) days from the receipt of this Order to so respond."

FOR THE NUCLEAR REGULATORY COMMISSION

Argil L. Toalston

Argil L. Toalston, Acting Chief
Antitrust and Indemnity Group
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland
this 6th day of August, 1979

* Antitrust License Condition No. 10 provides in relevant part as follows:

The above [license] conditions are to be implemented in a manner consistent with the provisions of the Federal Power Act and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them. (footnote in letter)