



6200 Oak Tree Boulevard  
Independence OH  
216-447-3100

Mail Address  
P.O. Box 94661  
Cleveland OH 44101-4661

Donald C. Shelton  
Senior Vice President  
Nuclear

Docket Number 50-346

License Number NPF-3

Serial Number 2219

June 6, 1994

United States Nuclear Regulatory Commission  
Document Control Desk  
Washington, D. C. 20555

Subject: License Amendment Application to Revise the Facility  
Operating License to Reflect the Proposed Merger of  
Operating Companies

Gentlemen:

Enclosed is an application for an amendment to the Davis-Besse Nuclear Power Station (DBNPS) Unit Number 1 Operating License Number NPF-3. The proposed changes would reflect the proposed merger of the Toledo Edison Company into the Cleveland Electric Illuminating Company. The Toledo Edison Company and the Cleveland Electric Illuminating Company are operating companies of the Centerior Energy Corporation. The Toledo Edison Company, the Cleveland Electric Illuminating Company, and the Centerior Service Company are wholly-owned subsidiaries of the Centerior Energy Corporation.

The company formed from the merger is intended to be renamed, however the name of the combined operating company is yet to be determined. Therefore, the enclosure utilizes the nomenclature "NEWCO" as a temporary substitute for the name of the combined operating company. The name of the combined operating company will be provided later by supplemental letter.

This license amendment application proposes that License Number NPF-3 be amended to replace the Toledo Edison Company and the Cleveland Electric Illuminating Company with NEWCO as a licensee, to designate NEWCO as the owner of the DBNPS, and to make other associated changes to the license, as described in the enclosure. Centerior Service Company will remain a licensee and is not affected by these proposed changes.

100025

Operating Companies  
Cleveland Electric Illuminating  
Toledo Edison

9406130053 940606  
PDR ADDCK 05000346  
P PDR

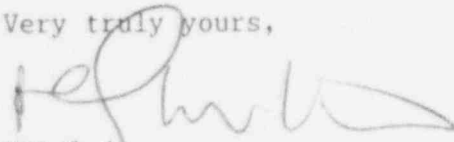
ADD 1/1

Docket Number 50-346  
License Number NPF-3  
Serial Number 2219  
Page 2

The proposed merger requires approval of other regulatory agencies in addition to the Nuclear Regulatory Commission (NRC). Toledo Edison will keep the NRC Project Manager for the DBNPS informed of the progress of the other regulatory agencies and will provide written notice to the NRC proposing an effective date for the amendment and proposing a required implementation date. The merger is planned to be completed by the end of 1994, so that NEWCO can come into corporate existence on January 1, 1995. Accordingly, Toledo Edison requests that the NRC approve this amendment by November 30, 1994, conditioning its effectiveness upon receipt of the other necessary regulatory approvals and upon consummation of the merger.

Should you have any questions or require additional information, please contact Mr. William T. O'Connor, Manager - Regulatory Affairs, at (419) 249-2366.

Very truly yours,



MKL/laj

Enclosure

cc: J. B. Martin, Regional Administrator, NRC Region III  
S. Stasek, DB-1 NRC Senior Resident Inspector  
G. West, Jr., DB-1 NRC/NRR Project Manager  
J. R. Williams, Chief of Staff, Ohio Emergency Management Agency,  
State of Ohio (NRC Liaison)  
Utility Radiological Safety Board

Docket Number 50-346  
License Number NPF-3  
Serial Number 2219  
Enclosure  
Page 1

APPLICATION FOR AMENDMENT  
TO  
FACILITY OPERATING LICENSE NUMBER NPF-3  
DAVIS-BESSE NUCLEAR POWER STATION  
UNIT NUMBER 1

Attached are the requested changes to the Davis-Besse Nuclear Power Station, Unit Number 1 Facility Operating License Number NPF-3. Also included is the Safety Assessment and Significant Hazards Consideration and the Environmental Consideration.

The proposed changes (submitted under cover letter Serial Number 2219) concern:

Facility Operating License Number NPF-3, Paragraphs 1.A, 1.E, 2, 2.A, 2.B, 2.C, 2.D, 2.F, and Attachment 2.

The following information is provided to support issuance of the requested changes to Davis-Besse Nuclear Power Station (DBNPS), Unit Number 1, Facility Operating License Number NPF-3.

I. INTRODUCTION

In March, 1994, the Boards of Directors of Centerior Energy Corporation, the Cleveland Electric Illuminating Company (CEI), and the Toledo Edison Company (TE) approved the filing of the necessary applications to merge the operating company subsidiaries, CEI and TE. TE will be merged into CEI. The name of the combined operating company is yet to be determined. The nomenclature "NEWCO" is used herein as a temporary substitute for the name of the combined operating company. The Agreement of Merger is provided for reference as Attachment 1.

The Toledo Edison Company, the Centerior Service Company, and the Cleveland Electric Illuminating Company are the present licensees for the Davis-Besse Nuclear Power Station, Unit Number 1, Facility Operating License NPF-3. Centerior Service Company (CSC) is the existing service company subsidiary of Centerior Energy Corporation. CSC presently has senior management responsibility for nuclear activities at the DBNPS. The DBNPS is presently owned by the Toledo Edison Company and the Cleveland Electric Illuminating Company.

II. REQUESTED REGULATORY ACTION

This application requests the Nuclear Regulatory Commission (NRC) amend the DBNPS Operating License NPF-3 to authorize:

- (1) NEWCO, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR Part 50 "Domestic Licensing of Production and Utilization Facilities," to possess, use, and operate the DBNPS;
- (2) NEWCO and CSC, as the licensees, to possess the facility at the designated location in Ottawa County, Ohio, in accordance with the procedures and limitations set forth in the operating license;
- (3) NEWCO, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
- (4) NEWCO, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor



instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;

- (5) NEWCO, pursuant to the Act and 10 CFR Parts 30, 40, and 70 to receive, possess and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
- (6) NEWCO, pursuant to the Act and 10 CFR Parts 30 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

This application also requests the NRC amend the DBNPS Operating License to designate NEWCO as the owner of DBNPS, and make other associated administrative changes to the license. Each of these changes is described in detail in Attachment 2.

As described in Attachment 2, TE has reviewed the proposed changes pursuant to the standards provided in 10 CFR 50.92(c), and has determined that the proposed changes do not involve a significant hazards consideration.

An Environmental Assessment has been prepared and is included as Attachment 3. As described in Attachment 3, TE has reviewed the proposed license amendment against the criteria of 10 CFR 51.30 for an environmental assessment. The proposed amendment does not involve a significant hazards consideration, does not increase the types or amounts of effluents that may be released offsite, and does not increase individual or cumulative occupational radiation exposures. Accordingly, TE finds that the proposed license amendment, if approved by the Nuclear Regulatory Commission, will have no significant impact on the environment and that no Environmental Impact Statement is required.

### III. GENERAL INFORMATION

- A. Name: As noted above, the name of the combined operating company from the merger is yet to be determined. The nomenclature "NEWCO" is used herein as a temporary substitute for the name of the combined operating company.
- B. Address: 6200 Oak Tree Boulevard  
Independence, Ohio 44131
- C. Description of Business or Occupation

NEWCO will be a wholly-owned subsidiary of the Centerior Energy Corporation. NEWCO will provide electrical service on a retail and wholesale basis. Upon receipt of necessary

regulatory approvals, NEWCO and CSC, as licensees, will have exclusive responsibility and control over the physical construction, operation, and maintenance of the DBNPS.

NEWCO will become similarly responsible for another licensed and operating nuclear plant, the Perry Nuclear Power Plant, however, this action will be dealt with in a separate license amendment application.

D. Organization and Management of the Operating Company

NEWCO will be a corporation to be organized and existing under the laws of the State of Ohio. CSC will continue to provide senior management responsibility for nuclear activities at the DBNPS. Centerior Energy Corporation, CSC, and NEWCO are neither owned, controlled nor dominated by an alien, a foreign corporation nor a foreign government.

All prospective directors and principal officers of NEWCO are citizens of the United States. Their names and addresses are as follows:

Directors

Robert J. Farling  
Chairman of the Board  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Murray R. Edelman, President  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Fred J. Lange, Jr., Vice President  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Principal Officers

Robert J. Farling  
Chief Executive Officer  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Murray R. Edelman, President  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Gary R. Leidich,  
Vice President and Chief Financial Officer  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Fred J. Lange, Jr., Vice President  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Terrence G. Linnert, Vice President  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Paul G. Busby, Controller  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Gary M. Hawkinson, Treasurer  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

E. Lyle Pepin, Secretary  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Janis T. Percio, Assistant Secretary  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Barbara A. Frastaci, Assistant Treasurer  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

Delores Hargrove, Assistant Treasurer  
Centerior Energy Corporation  
6200 Oak Tree Boulevard  
Independence, Ohio 44131

The present DBNPS nuclear organization consists of four departments staffed by TE personnel: Operations, Engineering, Nuclear Assurance, and Nuclear Services. These four departments report to the CSC Vice President, Nuclear - Davis-Besse, who reports to the CSC Senior Vice President, Nuclear. As noted above, when the necessary regulatory

approvals are obtained and the merger is consummated, the present TE personnel will be transferred intact to NEWCO, and will continue to report to CSC, as shown in Attachment 4. The reporting relationships will remain unchanged, and the nuclear organization will continue to have clear and direct lines of responsibility and authority.

E. Technical Qualifications

The technical qualifications of NEWCO to fulfill its responsibilities under the proposed amended Operating License are consistent with the present technical qualifications of TE because the proposed merger will involve no change in personnel responsibilities. When the necessary regulatory approvals are obtained and the merger is consummated, the present TE personnel in the DBNPS nuclear organization will be transferred intact to NEWCO. The nuclear organization will continue to report to CSC. All key personnel at the DBNPS would remain the same under the change.

When the merger is consummated, NEWCO and CSC will continue to operate, manage, and maintain the DBNPS in accordance with the conditions and requirements established by the NRC, with the same regard for public and personal safety heretofore exemplified by TE and CSC. The existing and continued organizational structure provides clear lines of authority and responsibility while ensuring that essential nuclear support functions provided by NEWCO and CSC are dedicated to the DBNPS.

The effectiveness of the organization will not be degraded by the merger. Plant-specific needs will continue to be addressed. Existing priorities and ongoing plant improvement projects will be maintained.

In summary, the technical qualifications will remain equivalent to those currently existing.

F. Benefits of Proposed License Amendment

In April, 1986, TE and CEI became affiliated through the creation of a parent holding company, Centerior Energy Corporation, and the subsequent mergers of CEI and TE into wholly-owned subsidiaries of Centerior Energy Corporation. Shortly after the consummation of this affiliation, a systematic process for integration of the two companies was begun. CSC was established, into which substantially all of the administrative and management functions of CEI and TE were transferred.

Although significant cost savings have already been realized due to this affiliation, it is anticipated that additional incremental savings will be obtained through the actual merger of the two operating utilities. Currently, it remains necessary to prepare two separate sets of audited financial statements on a yearly basis. Following the merger, only a single set of audited statements will be required. Furthermore, separate rate cases and fuel cases will no longer be necessary, and additional savings will be realized in the areas of external financing, advertising, and marketing.

G. Financial Aspects

TE and CEI are both Ohio corporations operating as public utilities providing electrical service on a retail and wholesale basis. The common stock of both utilities is wholly-owned by Centerior Energy Corporation, a public utility holding company. Both utilities have preferred stock issued and outstanding, which is held publicly by individual and institutional shareholders. At the time of the merger, all of the shares of common stock of TE, wholly-owned by Centerior Energy Corporation, would be converted into newly issued shares of common stock of CEI, and the outstanding preferred shares of TE would also be exchanged for newly issued preferred shares of CEI. The CEI common and preferred stock would, in turn, be converted into shares of NEWCO. All of the CEI and TE generating, transmission, distribution and other facilities and assets, tangible and intangible, will by operation of law be combined in the merger process. The general use of all such facilities will remain unchanged after the merger. The facilities will continue to be used for the provision of wholesale and retail electric service. The resulting corporation, NEWCO, would assume all contractual obligations of TE and CEI. Accordingly, the merger would not have any effect on any contract for the purchase, sale or interchange of electric energy.

TE and CEI are subject to the jurisdiction of the Public Utilities Commission of Ohio (PUCO), and are seeking that agency's approval of the merger. In addition, both utilities are subject to the jurisdictional authority of the Pennsylvania Public Utilities Commission by virtue of their undivided ownership interests in property located in the State of Pennsylvania. Accordingly, an application for approval of the merger is also being filed with that Commission. The companies will also file with the U.S. Securities and Exchange Commission (SEC) a joint proxy statement with respect to the required meetings of their preferred stockholders, a registration statement with regard to the preferred shares to be issued by the resulting company, as well as any reports as may be required under the

securities laws and regulation. In accordance with the requirements set forth in 10 CFR 50.91(b)(1), notice will also served on the State of Ohio by virtue of transmittal of this application, which includes the justification for reaching a conclusion that the license amendment would not involve a significant hazards consideration. Finally, the companies are submitting a filing with the U. S. Federal Energy Regulatory Commission (FERC), establishing that the merger will be consistent with the public interest and that there are no antitrust nor other considerations that are adversely impacted by the proposed action. Copies of the filings with the various regulatory agencies will be provided to the NRC staff upon request.

NEWCO will be an "electric utility" as that term is defined by 10 CFR 50.2. Therefore, under 10 CFR 50.33(f), a full financial qualifications review of this application to amend the Operating License is not necessary. Moreover, the merging of CEI and TE, both of which were subjected to financial qualification review during initial licensing of the Perry Nuclear Power Plant and the DBNPS, respectively, will not affect the financial qualification as previously determined. The proposed business combination would not alter the status quo with respect to the ability to obtain the funds necessary to cover all costs for the operation, maintenance, repair, decontamination, and decommissioning of the DBNPS. Just as TE and CEI currently have joint responsibility for assuring the source of funds necessary to support the operation of the DBNPS, their combined responsibility under the merger would remain the same, as would that of Centerior Energy Company, the parent company of both.

Any financial responsibilities previously held by TE and CEI, including required insurance and the applicable indemnity arrangements, will be assumed by NEWCO.

The merger will not affect the corporate financial resources currently available in support of DBNPS operations.

#### H. Antitrust Conditions

This merger is subject to separate reviews of antitrust considerations by the FERC, the PUCO, the Pennsylvania Public Utilities Commission, and the SEC. Based on the reviews of the FERC and the SEC, the proposed merger may also potentially be subject to review by the U. S. Department of Justice and the Federal Trade Commission.

The DBNPS Operating License contains conditions relating to antitrust issues applicable to the current owners of the facility (see Operating License NPF-3, Conditions 2.C(6) and 2.E). NEWCO would assume the responsibilities of TE and CEI



under those antitrust conditions. Those conditions would not otherwise change, and would continue to apply to the DBNPS.

There is currently pending an appeal before the U. S. Court of Appeals for the District of Columbia Circuit. That action seeks reversal of decisions taken by the NRC and the Atomic Safety and Licensing Board pertaining to the antitrust conditions in the referenced license. The amended license would be subject to the final resolution of that matter, just as it is currently.

Given that the existing antitrust conditions incorporated into the DBNPS Operating License would not be substantively altered by this amendment, and would otherwise be effective as against the new owner of the facility, there is no "significant change" in the licensed activities. Accordingly, the NRC need not conduct an extensive antitrust review of the application, given the limited authority of the NRC to review license amendment as they pertain to antitrust considerations under Section 105c of the Atomic Energy Act. (See, Houston Lighting & Power Co. (South Texas Project, Units Nos. 1 and 2), CLI-77-13, 5 NRC 1303 (1977) and Florida Power & Light Co. (St. Lucie Plant, Unit 1, and Turkey Point Plant, Units 3 and 4), ALAB-428, 6 NRC 221 (1977)). Moreover, the NRC's deferral to the Federal and State agencies having primary jurisdiction over antitrust proceedings is entirely consistent with Regulatory Guide 9.3, Regulatory Staff Position Statement on Antitrust Matters. That document states, in part, as follows:

In general, reliance would be placed on the exercise of [FERC] and State agency jurisdiction regarding the specific terms and conditions of the sale of power, rates for transmission services, and such other matters as may be within the scope of their jurisdiction.

These issues will be among those addressed by the other agencies from which approval of or consent to the merger is being sought, and the NRC's reliance on these proceedings is reasonable and proper. In conclusion, the proposed merger of TE and CEI would not result in a significant change in the competitive environment in which the DBNPS operates.

#### I. Restricted Data

This application does not contain any Restricted Data or other classified defense information, and it is not expected that any such information will become involved in the licensed activities. However, in the event that such information does become involved, NEWCO agrees that it will appropriately safeguard such information and it will not



permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the NRC on the character, associations, and loyalty of such individual, and the NRC shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security of the United States.

IV. SPECIFIC INFORMATION REGARDING ADDITIONAL ISSUES

A. Emergency Planning

Upon consummation of the merger, NEWCO will assume authority and responsibility for functions necessary to fulfill the emergency planning requirements specified in 10 CFR 50.47 and Appendix E to 10 CFR 50. No substantive changes will be made to the existing DBNPS Emergency Plan presently implemented by TE. In addition, there will be no significant changes to the existing Emergency Planning organization.

With respect to existing agreements for support from offsite organizations and agencies, TE will take the necessary actions to ensure that such agreements will remain in force continuously during the transition in responsibility from TE to NEWCO.

Because the effectiveness of the Emergency Plan will not be decreased, specific Emergency Plan and procedure changes will be submitted to the NRC within 30 days after the changes are made, in accordance with 10 CFR 50.54(q) and 10 CFR 50 Appendix E, Section V, as appropriate.

B. Offsite Power

Appendix A to 10 CFR 50, General Design Criterion 17, requires that there be an assured source of off-site power to the DBNPS. The proposed merger involves no change in the design, operation, maintenance, or testing of the off-site power system. Upon consummation of the merger, NEWCO will assume and fulfill the responsibilities for control, operation, maintenance, repair, and other activities with respect to the transmission lines and the switchyard, such that adequate independent sources of off-site power will continue to be provided.

C. Exclusion Area

The limits of the DBNPS Exclusion Area are described in the DBNPS Updated Safety Analysis Report (USAR). Ownership of this area presently resides in TE and CEI as tenants in common. TE presently has authority to exercise complete control over the Exclusion Area, to the extent required by 10 CFR 100, including the authority to control ingress and

gress and to order evacuation if necessary. Upon consummation of the merger, ownership of this area will reside in NEWCO, and NEWCO will have the authority to exercise complete control over the Exclusion Area.

D. Security

The proposed license amendment will not impact compliance with the physical security requirements of 10 CFR 73 as set forth in the DBNPS Nuclear Security Plan, DBNPS Nuclear Security Contingency Plan, and DBNPS Nuclear Security Training and Qualification Plan. Upon consummation of the merger, NEWCO will assume responsibility for implementation of all aspects of the present security program.

With respect to existing agreements for support from offsite organizations and agencies, TE will take the necessary actions to ensure that such agreements will remain in force continuously during the transition in responsibility from TE to NEWCO.

Because the effectiveness of the security plans will not be decreased, specific security plan and procedure changes will be submitted to the NRC within two months after the changes are made, in accordance with 10 CFR 50.54(p)(2).

E. Quality Assurance Program

Upon consummation of the merger, NEWCO will assume responsibility for present functions associated with the DBNPS Quality Assurance (QA) program. The function and structure of the QA organization will not be affected. The QA organization will continue to have the same direct access to the Chairman, President, and Chief Executive Officer of the Centerior Energy Corporation on matters related to quality.

Changes to the QA program description included in the USAR will not reduce the program commitments, and will be handled in accordance with 10 CFR 50.54(a)(3).

F. Training

Upon consummation of the merger, NEWCO will assume responsibility for implementation of the operator requalification program requirements of 10 CFR 50.54 and related sections. Changes to the program will not decrease the scope of the approved operator requalification program without the specific authorization of the NRC in accordance with 10 CFR 50.54(i-1).

The merger is not expected to affect maintenance of the Institute of Nuclear Power Operation's accreditation for licensed and non-licensed training.

G. Engineering Support

Currently, engineering support for the DBNPS is provided by a dedicated engineering organization. Upon consummation of the merger, the engineering functions which are currently part of TE would transfer intact to NEWCO. Accordingly, there would be no changes in engineering support provided, and no changes in the interfaces between organizations responsible for engineering support for operations and maintenance of the DBNPS. Thus, there would be no degradation of engineering support function and its integration with operations and maintenance.

V. CORRESPONDENCE

After the implementation date of this requested license amendment, all NRC correspondence related to Docket No. 50-346, including any NRC response to previously submitted license amendment requests, should be directed to NEWCO, and should refer to NEWCO in lieu of TE. All licensee correspondence related to the DBNPS will be transmitted by NEWCO. NEWCO will notify the NRC in writing of any exceptions to this policy.

VI. EFFECTIVE DATE

As indicated above, the proposed merger requires approval of other regulatory agencies in addition to the NRC. Toledo Edison will keep the NRC Project Manager for the DBNPS informed of the progress of the other regulatory agencies and will provide written notice to the NRC proposing an effective date for the amendment and proposing a required implementation date. The merger is planned to be completed by the end of 1994, so that NEWCO can come into corporate existence on January 1, 1995. Accordingly, Toledo Edison requests that the NRC approve this amendment by November 30, 1994, conditioning its effectiveness upon receipt of the other necessary regulatory approvals and upon consummation of the merger.

VII. ACCEPTANCE OF AUTHORITY

Attachment 5 provides an affidavit that NEWCO will accept the assumption of ownership and operating license responsibilities for the DBNPS as a result of the merger of TE and CEI.

ATTACHMENTS

1. Agreement of Merger
2. Safety Assessment and Significant Hazards Consideration
3. Environmental Assessment
4. Proposed Organization
5. Acceptance of Authority

Docket Number 50-346  
License Number NPF-3  
Serial Number 2219  
Attachment 1

AGREEMENT OF MERGER  
(23 pages follow)

AGREEMENT OF MERGER

By and Between

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

and

THE TOLEDO EDISON COMPANY

Dated as of April 12, 1994

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	THE MERGER . . . . . 1
Section 1.1	The Merger . . . . . 1
Section 1.2	Effective Time of the Merger . . . . . 2
Section 1.3	Amended Articles of Incorporation . . . . . 2
Section 1.4	Regulations . . . . . 2
ARTICLE II	CONVERSION OF SHARES . . . . . 2
Section 2.1	Effect of Merger on CEI Shares . . . . . 2
Section 2.2	Conversion of TE Shares in the Merger . . . . . 3
Section 2.3	Surviving Corporation to Make Certificates Available . . . . . 5
Section 2.4	Dividends . . . . . 6
Section 2.5	Closing of TE Transfer Books . . . . . 6
Section 2.6	Dissenting Shares . . . . . 7
ARTICLE III	THE CLOSING . . . . . 8
Section 3.1	Closing . . . . . 8
ARTICLE IV	ADDITIONAL AGREEMENTS . . . . . 8
Section 4.1	Joint Proxy Statement and Registration Statement . . . . . 8
Section 4.2	Approvals and Consents . . . . . 11
Section 4.3	Approval of TE Preferred Stockholders; Approval of CEI Preferred Stockholders . . . . . 11
Section 4.4	Public Announcements . . . . . 12
Section 4.5	Employee Benefits and Related Matters; Certain Employee Agreements . . . . . 12
Section 4.6	Expenses . . . . . 12
ARTICLE V	CONDITIONS . . . . . 13
Section 5.1	Conditions to Each Party's Obligation to Effect the Merger . . . . . 13
Section 5.2	Conditions to Obligation of TE to Effect the Merger . . . . . 14
Section 5.3	Conditions to Obligations of CEI to Effect the Merger . . . . . 15
ARTICLE VI	TERMINATION, AMENDMENT AND WAIVER . . . . . 16
Section 6.1	Termination . . . . . 16
Section 6.2	Effect of Termination . . . . . 17
Section 6.3	Amendment . . . . . 17
Section 6.4	Waiver . . . . . 18
ARTICLE VII	GENERAL PROVISIONS . . . . . 18
Section 7.1	Non-Survival of Agreements . . . . . 18
Section 7.2	Brokers . . . . . 18
Section 7.3	Notices . . . . . 18

Section 7.4	Miscellaneous .....	19
Section 7.5	Interpretation .....	20
Section 7.6	Counterparts; Effect .....	20
Section 7.7	Parties in Interest .....	20

Appendix I -- Glossary of Defined Terms

Exhibit A -- Form of Certificate of Merger

Exhibit B -- Amended Articles of  
Incorporation of the Surviving Corporation



## AGREEMENT OF MERGER

AGREEMENT OF MERGER, dated as of April 12, 1994, (this "Agreement"), by and between The Cleveland Electric Illuminating Company, an Ohio corporation ("CEI"), and The Toledo Edison Company, an Ohio corporation ("TE"). CEI and TE are each wholly owned subsidiaries of Centerior Energy Corporation, an Ohio corporation ("CEC").

## RECITALS

The parties desire that TE be merged with and into CEI upon the terms and conditions contained herein. The boards of directors of each of CEI, TE and CEC deem the merger advisable and in the best interests of each of CEI, TE and CEC, the boards of directors of each of CEI, TE and CEC have adopted resolutions approving this Agreement and the transactions contemplated hereby, the board of directors of TE has directed that this Agreement be submitted for consideration at a meeting of the preferred shareholders of TE, and the board of directors of CEI has directed that the Amended Articles of Incorporation of Surviving Corporation, as set forth in Exhibit B hereto, be submitted for consideration at a meeting of the preferred shareholders of CEI.

Unless the context shall otherwise require, capitalized terms used herein shall have the meanings assigned thereto in Appendix I hereto.

In consideration of the mutual premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

### ARTICLE I

#### THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions of this Agreement, at the Effective Time, TE shall be merged with and into CEI (the

"Merger"). The separate existence and corporate organization of TE shall thereupon cease and CEI and TE shall thereupon be a single corporation. CEI shall be the surviving corporation in the Merger (the "Surviving Corporation") and shall continue its existence under the provisions of the Ohio General Corporation Law (the "OGCL").

Section 1.2 Effective Time of the Merger. On the Closing Date (as defined in Section 3.1 hereof), a certificate of merger substantially in the form of Exhibit A (the "Certificate of Merger") shall be executed by CEI and TE and shall be filed with the Secretary of State of the State of Ohio. The Merger shall become effective at such time as the Certificate of Merger is filed with the Secretary of State of the State of Ohio, such time being herein called the "Effective Time."

Section 1.3 Amended Articles of Incorporation. The Amended Articles of Incorporation of CEI as in effect immediately prior to the Effective Time shall be replaced by the proposed Amended Articles of Incorporation of the Surviving Corporation, as set forth in Exhibit B hereto, from and after the Effective Time until amended as provided by law.

Section 1.4 Regulations. Regulations of CEI as in effect immediately prior to the Effective Time shall be and remain the Regulations of the Surviving Corporation from and after the Effective Time until amended as provided by law.

## ARTICLE II

### CONVERSION OF SHARES

Section 2.1 Effect of Merger on CEI Shares. At the Effective Time, each share of CEI Common Stock without par value (the "CEI Common Stock"), issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding as one share of common stock, without par value (the "Surviving Corporation Common Stock"), of the Surviving Corporation.

At the Effective Time, each share of CEI Serial Preferred Stock without par value (the "CEI Preferred Stock") issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding as one share of preferred stock without par value (the "Surviving Corporation Preferred Stock") of the Surviving Corporation, with the same express terms as were applicable to each such share prior to the Effective Time.

Section 2.2 Conversion of TE Shares in the Merger. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any share of capital stock of TE:

(a) each share of Common Stock, \$5.00 par value (the "TE Common Stock") of TE, issued and outstanding shall be converted into one one-hundredth of one share (.01) of Surviving Corporation Common Stock;

(b) each share of Cumulative Preferred Stock with par value of one hundred dollars (\$100) per share (the "TE \$100 Preferred Stock") of TE, of each of the respective series indicated below, issued and outstanding shall be converted into one share of Surviving Corporation Preferred Stock of the respective series indicated below (series references to the series of Surviving Corporation Preferred Stock refer to the series set forth in Exhibit B heretc):

(i) 4-1/4% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$4.25 Series U;

(ii) 4.56% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$4.56 Series V;

(iii) 4.25% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$4.25 Series W;

(iv) 8.32% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$8.32 Series X;

(v) 7.76% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$7.76 Series Y;

(vi) 7.80% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$7.80 Series Z;

(vii) 10% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$10.00 Series AA;

(viii) 9-3/8% Cumulative Preferred Stock (\$100 par value) series into Serial Preferred Stock, \$9.375 Series BB;

(c) each share of Cumulative Preferred Stock of the par value of twenty-five dollars (\$25) per share (the "TE \$25 Preferred Stock") of TE, of each of the respective series indicated below, issued and outstanding shall be converted into one-fourth of a share of Surviving Corporation Preferred Stock of the respective series indicated below (series references to the series of Surviving Corporation Preferred Stock refer to the series set forth in Exhibit B hereto):

(i) 8.84% Cumulative Preferred Stock (\$25 par value) series into Serial Preferred Stock, \$8.84 Series CC;

(ii) \$2.365 Cumulative Preferred Stock (\$25 par value) series into Serial Preferred Stock, \$9.46 Series DD;

(iii) Adjustable Rate Preferred Stock, Series A (\$25 par value) into Serial Preferred Stock, Adjustable Rate Series EE;

(iv) Adjustable Rate Preferred Stock, Series B (\$25 par value) into Serial Preferred Stock, Adjustable Rate Series FF; and

(v) \$2.81 Cumulative Preferred Stock (\$25 par value) series into Serial Preferred Stock, \$11.24 Series GG.

(d) The TE \$100 Preferred Stock and the TE \$25 Preferred Stock are sometimes collectively referred to herein as the "TE Preferred Stock."

Section 2.3 Surviving Corporation to Make Certificates Available. (a) As soon as practicable after the Effective Time, each holder of shares of TE Preferred Stock converted into shares of Surviving Corporation Preferred Stock pursuant to Section 2.2(b) or 2.2(c), upon surrender to the Exchange Agent of one or more certificates for such shares of TE Preferred Stock will be entitled to receive a certificate representing that number of shares of Surviving Corporation Preferred Stock of the series as set forth in Section 2.2(b) or 2.2(c) to be issued in respect of the aggregate number of such shares of TE Preferred Stock previously represented by the stock certificates surrendered. Notwithstanding any other provision hereof, no fractional shares of Surviving Corporation Preferred Stock and no certificates or scrip therefor, or other evidence of ownership thereof, will be issued, and no right to receive cash in lieu thereof shall entitle the holder thereof to any voting or other rights of a holder of fractional share interests. If a stockholder would otherwise be entitled to a fractional share, such stockholder shall be entitled, after the later of the Effective Time and the surrender of such stockholder's Certificate or Certificates which represent such shares of TE Preferred Stock, to receive from the Surviving Corporation an amount in cash in lieu of such fractional share, based on the fair market value thereof as of the Effective Time. The Surviving Corporation will make available to the Exchange Agent, as required, cash necessary for this purpose. Notwithstanding the foregoing, neither the Exchange Agent nor any party hereto shall be liable to a holder of shares of TE Preferred Stock for any Surviving Corporation Preferred Stock or dividends thereon delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(b) As soon as practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of a Certificate or Certificates that immediately prior to the Effective Time represented outstanding shares of TE Preferred

Stock (the "Certificates") (i) a form letter of transmittal (which shall specify that delivery shall be effective, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent) and (ii) instructions for use in effecting the surrender of the Certificates.

(c) The cash paid and shares of Surviving Corporation Preferred Stock issued upon the surrender of Certificates in accordance with the terms hereof shall be deemed to have been paid and issued in full satisfaction of all rights pertaining to such shares of TE Preferred Stock.

(d) Any Surviving Corporation Preferred Stock certificates delivered or made available to the Exchange Agent pursuant to this Section 2.3 and not exchanged for Certificates within one year after the Effective Time pursuant to this Section 2.3 shall be returned by the Exchange Agent to the Surviving Corporation which shall thereafter act as Exchange Agent subject to the rights of holders of unsurrendered Certificates under this Article II. Notwithstanding the foregoing, neither CEI, TE, the Surviving Corporation, the Exchange Agent nor any other party hereto shall be liable to a holder of TE Preferred Stock for any Surviving Corporation Preferred Stock, or dividends or distributions thereon, delivered to a public official pursuant to any applicable abandoned property, escheat, or similar law.

Section 2.4 Dividends. After the Effective Time and pending the surrender and exchange of shares of TE Preferred Stock for shares of Surviving Corporation Preferred Stock pursuant to Section 2.3, each Certificate or Certificates shall be deemed for all corporate purposes, including the payment of dividends, to evidence the number of whole shares of Surviving Corporation Preferred Stock into which such shares of TE Preferred Stock shall have been converted by the Merger.

Section 2.5. Closing of TE Transfer Books. At the Effective Time the Preferred Stock transfer books of TE shall be closed and no transfer of TE Preferred Stock shall



thereafter be made. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for certificates representing whole shares of Surviving Corporation Preferred Stock and cash as provided in this Article II.

Section 2.6 Dissenting Shares. Notwithstanding anything to the contrary contained in this Agreement, in the event appraisal rights are available to holders of TE Preferred Stock or to holders of CEI Preferred Stock pursuant to the OGCL, any Shares held by a person who objects to the proposal to adopt this Agreement (in the case of TE) or who objects to the proposal to adopt the Amended Articles of Incorporation of the Surviving Corporation (in the case of CEI), whose Shares either were not entitled to vote or were not voted in favor of the proposal to adopt this Agreement (in the case of TE) or the proposal to adopt the Amended Articles of Incorporation of the Surviving Corporation (in the case of CEI) and who complies with all of the provisions of the OGCL concerning the rights of such person to dissent from such proposals and to require appraisal of such person's Shares ("Dissenting Shares") shall not be converted pursuant to Section 2.2, or remain outstanding pursuant to Section 2.1, but shall become the right to receive such consideration as may be determined to be due to the holder of such Dissenting Shares pursuant to the OGCL, including, if applicable, any costs determined to be payable by the Surviving Corporation to the holders of Dissenting Shares in accordance with the OGCL; provided, however, that each Dissenting Share held by a person at the Effective Time who shall, after the Effective Time, withdraw the demand for appraisal or lose the right of appraisal, in either case pursuant to the OGCL, shall be deemed to be converted (or to remain outstanding, as the case may be) as of the Effective Time, as set forth in Section 2.2 or Section 2.1, for whole shares of the same class and series and cash for any fractional share, without any interest thereon.



### ARTICLE III

#### THE CLOSING

Section 3.1 Closing. The closing (the "Closing") of the Merger shall take place at the offices of CEC, 6200 Oak Tree Boulevard, Independence, Ohio 44131 at 10:00 A.M., local time, on the second business day immediately following the date on which the last of the conditions set forth in Article V hereof is fulfilled or waived, or at such other time and date and place as TE, CEC and CEI shall mutually agree (the "Closing Date").

### ARTICLE IV

#### ADDITIONAL AGREEMENTS

Section 4.1 Joint Proxy Statement and Registration Statement. (a) CEI and TE will prepare and file with the SEC as soon as reasonably practicable after the date hereof (i) a Registration Statement on Form S-4 to be filed under the Securities Act by CEI in connection with the Merger for purposes of registering the shares of Surviving Corporation Preferred Stock to be issued in the Merger pursuant to Article II hereof (the "Registration Statement") and (ii) a joint proxy statement to be filed under the Exchange Act by CEI and TE and to be distributed by CEI and TE, respectively, in connection with the CEI Stockholders' Approval and the TE Stockholders' Approval (the "Joint Proxy Statement" and, together with the Registration Statement, the "Joint Proxy Statement and Registration Statement"). CEI and TE shall use reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as practicable after such filing. CEI and TE shall also take such action as may be reasonably required to cause the shares of Surviving Corporation Preferred Stock issuable pursuant to the Merger to be registered or to obtain an exemption from registration under applicable state "blue sky" or securities laws; provided, however, that neither CEI nor TE shall be required to register

or qualify as a foreign corporation or to take other action which would subject it to service of process in any jurisdiction where it is not presently so subject. CEI will furnish to TE and TE shall furnish to CEI all information concerning itself as each such other party or its counsel may reasonably request and which is required or customary for inclusion in the Joint Proxy Statement and Registration Statement. CEI shall use reasonable efforts to cause the shares of Surviving Corporation Preferred Stock issuable in the Merger upon conversion of TE Preferred Stock to be listed on the New York Stock Exchange, with respect to those series of Surviving Corporation Preferred Stock issued upon conversion of a series of TE Preferred Stock that was listed on a stock exchange.

(b) CEI covenants to TE that the Joint Proxy Statement and Registration Statement (i) will comply in all material respects with the applicable provisions of the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder and (ii) will not at the respective times such documents are filed with the SEC, and, in the case of the Joint Proxy Statement or any amendments thereof or supplements thereto, at the time of the mailing of the Joint Proxy Statement and any amendments thereof or supplements thereto, and at the time of the meetings of stockholders of CEI and TE to be held in connection with the transactions contemplated by this Agreement, and, in the case of the Registration Statement and any amendment thereof or any supplement thereto, at all times after it becomes effective under the Securities Act and until the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or necessary to correct any statement in any earlier filing with the SEC of such Joint Proxy Statement and Registration Statement or any amendment thereof or any supplement thereto or any

earlier communication (including the Joint Proxy Statement and Registration Statement) to stockholders of CEI or TE with respect to the transactions contemplated by this Agreement; provided, that no covenant or agreement is made by CEI with respect to information supplied by TE for inclusion in the Joint Proxy Statement and Registration Statement.

(c) TE covenants to CEI that the Joint Proxy Statement and Registration Statement (i) will comply in all material respects with the applicable provisions of the Exchange Act and the Securities Act and the rules and regulations of the SEC thereunder and (ii) will not at the respective times such documents are filed with the SEC, and, in the case of the Joint Proxy Statement or any amendments thereof or supplements thereto, at the time of the mailing of the Joint Proxy Statement and any amendments thereof or supplements thereto, and at the time of the meetings of stockholders of CEI and TE to be held in connection with the transactions contemplated by this Agreement, and, in the case of the Registration Statement and any amendment thereof or any supplement thereto, at all times after it becomes effective under the Securities Act and until the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or necessary to correct any statement in any earlier filing with the SEC of such Joint Proxy Statement and Registration Statement or any amendment thereof or any supplement thereto or any earlier communication (including the Joint Proxy Statement and Registration Statement) to stockholders of CEI or TE with respect to the transactions contemplated by this Agreement; provided, that no covenant or agreement is made by TE with respect to information supplied by CEI for inclusion in the Joint Proxy Statement and Registration Statement.

Section 4.2 Approvals and Consents. CEI and TE each shall cooperate with each other and use their reasonable efforts to promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to use commercially reasonable efforts to obtain all necessary permits, consents, approvals and authorizations of all third parties and governmental bodies necessary or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, the CEI Required Statutory Approvals and the TE Required Statutory Approvals.

Section 4.3 Approval of TE Preferred Stockholders; Approval of CEI Preferred Stockholders. (a) TE shall as soon as reasonably practicable (i) take all steps necessary duly to call, give notice of, convene and hold a special meeting of holders of TE Preferred Stock (the "TE Special Meeting") (A) for the purpose of adopting this Agreement (the "TE Stockholders' Approval") and (B) for such other purposes as may be necessary or desirable, (ii) distribute to holders of TE Preferred Stock the Joint Proxy Statement in accordance with applicable Federal and state law and with its Amended Articles of Incorporation and Code of Regulations, (iii) recommend to holders of TE Preferred Stock the adoption of this Agreement and such other matters as may be submitted to such stockholders in connection with this Agreement and (iv) cooperate and consult with CEI with respect to each of the foregoing matters.

(b) CEI shall as soon as reasonably practicable (i) take all steps necessary to call, give notice of, convene and hold a special meeting of holders of CEI Preferred Stock (the "CEI Special Meeting") (A) for the purpose of adopting the Amended Articles of Incorporation of the Surviving Corporation in the form set forth in Exhibit B hereto (the "CEI Stockholders' Approval"), and (B) for such other purposes as may be necessary or desirable, (ii) distribute to holders of CEI Preferred Stock the Joint Proxy Statement in accordance with applicable Federal and state law and its

Amended Articles of Incorporation and Regulations, (iii) recommend to holders of CEI Preferred Stock the adoption of the Amended Articles of Incorporation of the Surviving Corporation and such other matters as may be submitted to such stockholders in connection with this Agreement, (iv) cooperate and consult with TE with respect to each of the foregoing matters and (v) in the event such Amended Articles of Incorporation are adopted by the requisite vote of holders of CEI Preferred Stock, file such Amended Articles of Incorporation in order to permit it to consummate the transactions contemplated hereby.

Section 4.4 Public Announcements. Subject to each party's disclosure obligations imposed by law, CEI and TE will cooperate with each other and with CEC in the development and distribution of all news releases and other public information disclosures with respect to this Agreement or any of the transactions contemplated hereby and shall not issue any public announcement or statement prior to consultation with the other party and with CEC.

Section 4.5 Employee Benefits and Related Matters; Certain Employee Agreements. CEI hereby unconditionally agrees to honor, without modification, offset or counterclaim, all contracts, agreements, collective bargaining agreements and commitments of TE authorized by TE prior to the Effective Time which apply to any current or former employee or current or former director of TE; provided, however, that this undertaking is not intended to prevent the Surviving Corporation from enforcing such contracts, agreements, collective bargaining agreements and commitments in accordance with their terms.

Section 4.6 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be shared equally by CEI and TE.

## ARTICLE V

### CONDITIONS

Section 5.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the following conditions, except, to the extent permitted by applicable law, as such conditions may be waived in writing pursuant to Section 6.4 by the joint action of the parties hereto:

(a) this Agreement having been adopted by the requisite vote of the holders of the TE Preferred Stock required under the OGCL and TE's Amended Articles of Incorporation;

(b) the Amended Articles of Incorporation of the Surviving Corporation in the form set forth in Exhibit B hereto (the "Articles Amendment") having been adopted by the requisite vote of the holders of shares of CEI Preferred Stock under the OGCL and CEI's Amended Articles of Incorporation;

(c) a Certificate of Amended Articles of Incorporation of the Surviving Corporation, effectuating the Articles Amendment under the applicable requirements of the OGCL, having been filed with the Secretary of State of the State of Ohio;

(d) no preliminary or permanent injunction or other order by any Federal or state court preventing consummation of the Merger having been issued and continuing in effect, and the Merger and the other transactions contemplated hereby not being prohibited under any applicable Federal or state law or regulation;

(e) the Registration Statement having become effective in accordance with the provisions of the Securities Act, and no stop order suspending such effectiveness having been issued and remaining in effect; and



(f) the shares of Surviving Corporation Preferred Stock issuable pursuant to Article II hereof in the Merger having been approved for listing on the New York Stock Exchange to the extent contemplated by the terms of this Agreement.

The parties mutually recognize and acknowledge that at the time of execution of this Agreement, this Agreement and all transactions contemplated hereby, including approval of the Articles Amendment, have been adopted by CEC as the sole holder of CEI Common Stock and TE Common Stock.

Section 5.2 Conditions to Obligation of TE to Effect the Merger. The obligation of TE to effect the Merger shall be further subject to the fulfillment at or prior to the Effective Time of the following conditions, except, to the extent permitted by applicable law, as may be waived by TE in writing pursuant to Section 6.4:

(a) CEI having performed in all material respects its agreements and covenants contained in or contemplated by this Agreement required to be performed at or prior to the Effective Time;

(b) all actions required to be taken by, or on the part of, CEI to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby having been duly and validly taken by the board of directors and stockholders of CEI, and TE having received certified copies of the resolutions evidencing such authorizations;

(c) the CEI Required Statutory Approvals having been obtained at or prior to the Effective Time and all filings, registrations, applications, designations and declarations required prior to the Effective Time in connection with the consummation of the Merger and such transactions having been made or effected at or prior to the Effective Time;



(d) the CEI Required Statutory Approvals and the TE Required Statutory Approvals having become Final Orders (as defined below) unless such Final Order shall impose any term or condition on the Surviving Corporation which shall cause a material adverse change to the business, operations or prospects of the Surviving Corporation. A "Final Order" means action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied.

Section 5.3 Conditions to Obligations of CEI to Effect the Merger. The obligation of CEI to effect the Merger shall be further subject to the fulfillment at or prior to the Effective Time of the following conditions, except, to the extent permitted by applicable law, as may be waived by CEI in writing pursuant to Section 6.4:

(a) TE having performed in all material respects its agreements and covenants contained in or contemplated by this Agreement required to be performed at or prior to the Effective Time;

(b) all action required to be taken by, or on the part of, TE to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby having been duly and validly taken by the board of directors and stockholders of TE, and CEI having received certified copies of the resolutions evidencing such authorizations;

(c) the TE Required Statutory Approvals having been obtained at or prior to the Effective Time, and all filings, registrations, applications, designations and declarations required prior to the Effective Time in connection

with the consummation of the Merger and such transactions having been made or effected at or prior to the Effective Time;

(d) the CEI Required Statutory Approvals and the TE Required Statutory Approvals having become Final Orders unless such Final Order shall impose any term or condition on the Surviving Corporation which shall cause a material adverse change to the business, operations or prospects of the Surviving Corporation.

## ARTICLE VI

### TERMINATION, AMENDMENT AND WAIVER

Section 6.1 Termination. This Agreement may be terminated at any time prior to the Closing Date, whether before or after adoption of this Agreement by the holders of TE Preferred Stock and adoption of the Articles Amendment by the holders of CEI Preferred Stock contemplated by this Agreement:

(a) by mutual written consent of the boards of directors of CEI and TE; or

(b) by CEI, by written notice to TE, if:

(i) there shall have been any material breach of any covenant or agreement of TE hereunder and such breach shall not have been remedied within ten days after receipt by TE of notice in writing from CEI, specifying the nature of such breach and requesting that it be remedied; or

(ii) the board of directors of TE shall withdraw or modify in any manner adverse to CEI its approval or recommendation of this Agreement or the Merger; or

(c) by TE, by written notice to CEI, if:

(i) there shall have been any material breach of any covenant or agreement of CEI hereunder and such breach shall not have been remedied within ten days after receipt by CEI of notice in writing from TE, specifying the nature of such breach and requesting that it be remedied; or

(ii) the board of directors of CEI shall withdraw or modify in any manner adverse to TE its approval or recommendation of this Agreement or the Merger.

Section 6.2 Effect of Termination. In the event of termination of this Agreement by either CEI or TE, as provided in Section 6.1, there shall be no liability on the part of either CEI or TE or their respective officers or directors hereunder, except that Section 4.6 shall survive the termination.

Section 6.3 Amendment. This Agreement may be amended by the parties hereto, at any time before or after adoption hereof by the holders of TE Preferred Stock and adoption of the Articles Amendment by the holders of CEI Preferred Stock, but after such approvals, no such amendment shall (i) alter or change the amount or kind of shares, cash or rights or any of the proceedings of the exchange and/or conversion, (ii) alter or change any of the terms and conditions of this Agreement if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the holders of any class or series of Shares, or (iii) alter or change any term of the Amended Articles of Incorporation of the Surviving Corporation, except for alterations or changes that could otherwise be adopted by the directors of the Surviving Corporation, without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

Section 6.4 Waiver. At any time prior to the Effective Time, one party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto and (b) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party.

## ARTICLE VII

### GENERAL PROVISIONS

Section 7.1 Non-Survival of Agreements. All agreements in this Agreement shall not survive the Merger, except as otherwise provided in this Agreement and except for the agreements contained in Article II and Section 4.5 hereof.

Section 7.2 Brokers. CEI represents and warrants that no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the transactions contemplated by this Agreement based upon arrangements made by or on behalf of CEI. TE represents and warrants that no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the transactions contemplated by this Agreement based upon arrangements made by or on behalf of TE.

Section 7.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if (i) delivered personally, or (ii) sent by reputable overnight courier service, or (iii) telecopied (which is confirmed), or (iv) five days after being mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to CEI, to:

6200 Oak Tree Boulevard  
Independence, Ohio 44131

Attention: E. Lyle Pepin  
Telephone: (216) 447-2300  
Telecopy: (216) 447-3240

With a copy to:

Kevin P. Murphy, Senior Counsel  
6200 Oak Tree Boulevard  
Independence, Ohio 44131  
Telephone: (216) 447-3251  
Telecopy: (216) 447-2592

(b) If to TE, to:

6200 Oak Tree Boulevard  
Independence, Ohio 44131

Attention: E. Lyle Pepin  
Telephone: (216) 447-2300  
Telecopy: (216) 447-3240

With a copy to:

Bruce T. Rosenbaum, Counsel  
6200 Oak Tree Boulevard  
Independence, Ohio 44131  
Telephone: (216) 447-3207  
Telecopy: (216) 447-2592

Section 7.4 Miscellaneous. This Agreement (including the documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties or any of them with respect to the subject matter hereof; (b) shall not be assigned by operation of law or otherwise; and (c) shall be governed by and construed in accordance with the laws of the State of Ohio (without giving effect to its rules or principles of conflicts of law).

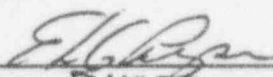
Section 7.5 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

Section 7.6 Counterparts; Effect. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

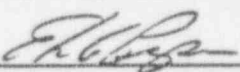
Section 7.7 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and, nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

IN WITNESS WHEREOF, CEI and TE have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY

By:   
Name: E. LYLE PEIN  
Title: Secretary

THE TOLEDO EDISON COMPANY

By:   
Name: E. LYLE PEIN  
Title: Secretary



Docket Number 50-346  
License Number NPF-3  
Serial Number 2219  
Attachment 2

SAFETY ASSESSMENT AND SIGNIFICANT HAZARDS CONSIDERATION  
FOR  
LICENSE AMENDMENT REQUEST 94-0009

(20 pages follow)

SAFETY ASSESSMENT AND SIGNIFICANT HAZARDS CONSIDERATION  
FOR  
LICENSE AMENDMENT REQUEST NUMBER 94-0009

TITLE:

Revision of Facility Operating License Number NPF-3 To Reflect the Proposed Merger of the Toledo Edison Company and the Cleveland Electric Illuminating Company.

DESCRIPTION:

In March, 1994, the Boards of Directors of Centerior Energy Corporation, the Cleveland Electric Illuminating Company (CEI), and the Toledo Edison Company (TE) approved the filing of the necessary applications to merge the operating company subsidiaries, CEI & TE. Centerior Service Company (CSC) is an existing service company subsidiary of Centerior Energy Corporation and will remain as such. The reason for the merger is to maximize the operating efficiencies for these two affiliated companies.

The name of the operating entity formed from the merger of TE and CEI is yet to be determined. Therefore, the nomenclature "NEWCO" is used herein as a temporary substitute for the name of the combined operating company. The final name is an administrative matter, and does not affect the conclusions of this Safety Assessment and Significant Hazards Consideration. The final name will be provided to the Nuclear Regulatory Commission (NRC) by TE under separate letter prior to NRC approval of this License Amendment Request.

This license amendment application proposes that the Davis-Besse Nuclear Power Station (DBNPS) Operating License NPF-3 be amended to replace "TE" and "CEI" with "NEWCO" as a licensee, to designate NEWCO as the owner of DBNPS, and to make other associated administrative changes to the license. Each of these changes is described in further detail below. Centerior Service Company will remain designated as a licensee and is not affected by these proposed changes.

The proposed amendment would modify paragraphs 1.A and 2 of License NPF-3 to name NEWCO as a licensee in place of TE and CEI. The footnote to paragraph 1.A would be revised to read as follows:

The NEWCO and Centerior Service Company (both of which are wholly-owned subsidiaries of Centerior Energy Corporation) have exclusive responsibility and control over the physical construction, operation, and maintenance of the facility. Centerior Service Company was added as a licensee by Amendment No. 152. The NEWCO was formed from the merger of the Toledo Edison Company and the Cleveland Electric Illuminating Company. Accordingly, Amendment No. (to be added by the NRC) replaced the Toledo Edison Company and Cleveland Electric Illuminating Company with NEWCO as a licensee.

Paragraph 2.A would be revised to name NEWCO as the owner of the DBNPS, in place of TE and CEI.

Paragraphs 1.E, 2.B(1), 2.B(3), 2.B(4), 2.B(5), 2.B(6), 2.C(1), 2.C(2), 2.C(3)(a), 2.C(3)(d), 2.C(4), 2.C(5), 2.C(6), and 2.F(1) would be revised to replace references to TE with NEWCO.

Paragraph 2.C(1), "Maximum Power Level", would be revised to delete all but the first sentence, and Attachment 2, "Preoperational Test, Startup Tests, and Other Items Which Must be Completed Prior to Proceeding to Succeeding Operational Modes", to License NPF-3 would be deleted. Paragraph 2.C(1) presently refers to conditions specified in Paragraph 2.C(3)(o) and Attachment 2 which must be met prior to initially attaining the authorized power level. License condition 2.(C)(3)(o) was deleted by License Amendment No. 2. Attachment 2 required the licensee to obtain written authorization prior to initially proceeding to certain specified Operational Modes. Such authorization was granted by NRC letters dated May 10, June 30, July 8, August 9, and August 30, 1977. Therefore, reference to these conditions is no longer applicable.

The first sentence of paragraph 2.C(2), "Technical Specifications", would be revised to read: "The Technical Specifications contained in Appendix A, as revised by Commission - approved Amendments, are hereby incorporated in the license." This change would eliminate the specific amendment number and the administrative burden to revise this paragraph each time a new amendment is approved by the NRC.

Paragraphs 2.C(3)(b),(c),(e),(f),(g),(h),(i),(j),(l),(m),(n),(o),(p), (q),(r), and (t), which have been deleted by Commission-approved License Amendments, would be removed and replaced by a reference to the applicable Amendment.

Paragraph 2.C(3)(k) presently refers to a requirement that the licensee perform tests to verify that faults on non-Class IE circuits would not propagate to the Class IE circuits in the Reactor Protection System and the Engineered Safety Features Actuation System. This license condition was closed by NRC letter dated October 29, 1981, however, a license amendment was not issued to reflect the deletion of the license condition. Paragraph 2.C(3)(k) would be removed and replaced by a reference to the Amendment requested by this License Amendment Request.

Paragraph 2.C(3)(s) presently exempts the licensee from the requirements of Technical Specification 3/4.7.8.1 for the two startup sources to be installed or already installed for use during the first refueling cycle until such time as the sources are replaced. Since these startup sources are no longer installed in the core, this exemption is no longer applicable. Paragraph 2.C(3)(s) would be removed and replaced by a reference to the Amendment requested by this License Amendment Request.

The first sentence of paragraph 2.C(6), "Antitrust Conditions", would be revised to read: "NEWCO and Centerior Service Company shall comply with the antitrust conditions delineated in Condition 2.E of this license as if named herein." This will continue the application of the antitrust conditions to the actions of the licensees.

The first sentence of paragraph 2.D would be revised to read "licensees" instead of "licensee" since there has been and will continue to be more than one licensee.

The list of Attachments would be revised to delete references to Appendix B, "Environmental Technical Specifications", and to Attachment 2, "Preoperational Test, Startup Tests, and Other Items Which Must be Completed Prior to Proceeding to Succeeding Operational Modes." Appendix B was previously deleted by Amendment Number 133, and Attachment 2 is proposed for deletion by this License Amendment Request since it only applied to the initial plant startup.

A notation would be added following the Date of Issuance noting that the Operating License has been revised and providing the date of the revision.

SYSTEMS, COMPONENTS, AND ACTIVITIES AFFECTED:

None

SAFETY FUNCTIONS OF THE AFFECTED SYSTEMS, COMPONENTS AND ACTIVITIES:

None

EFFECTS ON SAFETY:

Since the NEWCO would be the result of merger of two of the existing licensees (TE and CEI) and the third licensee (CSC) would continue to be a licensee, these changes are administrative. Under this restructuring, the Davis-Besse Nuclear Power Station nuclear organization would continue to report to the Centerior Service Company, and all the licensees would continue to be subsidiaries of the Centerior Energy Corporation. There would be no material change in the ownership of the Davis-Besse Nuclear Power Station or entitlement to electric power.

The proposed changes would not involve physical changes to the facility. The proposed changes would not involve significant changes in the manner in which the plant is operated, or the technical qualifications of the personnel who operate the plant. There would be no material change in the responsibility for the conduct of operational activities including security, quality assurance, emergency planning, and training.

The proposed changes are administrative and it is therefore concluded that they would have no adverse effect on plant safety.

## SIGNIFICANT HAZARDS CONSIDERATION:

The Nuclear Regulatory Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazard exists due to a proposed amendment to an Operating License for a facility. A proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed changes would: (1) Not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Not create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Not involve a significant reduction in the margin of safety. Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

- 1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators or assumptions are affected. The proposed changes are administrative and have no direct effect on any plant systems. All Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged.
- 1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected. The proposed changes do not alter the source term, containment isolation, or allowable radiological consequences. The proposed changes are administrative and have no direct effect on any plant systems.
- 2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.
- 2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are created. The proposed changes are administrative and have no direct effect on any plant systems. The changes do not affect the reactor coolant system pressure boundary and do not affect any system functional requirements, plant maintenance, or operability requirements.
3. Not involve a significant reduction in the margin of safety because the proposed changes do not involve new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed changes are administrative and have no direct effect on any plant systems.

CONCLUSION:

On the basis of the above, Toledo Edison has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Facility Operating License that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

ATTACHMENT:

Attached are the proposed marked-up changes to the Operating License. Note that the typed version of the Operating License which is used to show the marked-up changes is not the original Operating License, but is a composite version which has been updated by Toledo Edison to reflect NRC-approved changes.