



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

October 2, 1984

PDR

Reuben Goldberg, Esq.  
Goldberg, Fieldman & Letham, P.C.  
1100 15th Street, NW.  
Washington, DC 20005

Dear Sir:

This responds to your letter of February 22, 1984 on behalf of the City of Cleveland in which you requested that the Nuclear Regulatory Commission reconsider its decision not to impose a civil penalty on the Cleveland Electric Illuminating Company (CEI) for a violation of its antitrust license condition No. 3. In particular, you ask that the Commission consider the showing made in the City's motion attached to your letter.

We have reviewed the City's motion which argues that compliance with the license condition was obtained only after years of costly litigation, and that the City had suffered economic harm as a result of the violation. When we notified the Department of Justice of our decision in January, we were well aware that there had been extensive litigation on the matter. Accordingly, that portion of the City's argument provides no support for the relief requested.

The City's charge that it had suffered economic harm from CEI's violation of the license condition, however, initially gave us some concern, as we previously had been informed otherwise. Our staff had maintained that there had been no economic harm to the City because CEI's filed transmission schedule was available for use by the City prior to the availability of any electrical power to be wheeled.

We have been unable to discover any economic harm to the City which may have flowed from CEI's violation of the license condition. Though the violation could not have taken place prior to the effective date of the license condition -- April 1977 -- the City refers only to power available much earlier than that. Transactions which might have been possible prior to the effective date of the license condition are not in our view relevant to economic harm which might have been suffered during the time when the license condition was violated.

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PDR COMMS NRCC  
CORRESPONDENCE PDR

In light of the above, the Commission declines to reconsider its prior holding.

Commissioner Asselstine originally voted to review the merits of this issue. He still believes the Commission should do so.

Sincerely,

A handwritten signature in cursive script, reading "Nunzio J. Palladino". The signature is written in dark ink and is positioned above the printed name.

Nunzio J. Palladino

cc: Docketing and Service