

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-440 and 50-346

PERRY NUCLEAR POWER PLANT, UNIT 1

DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1

RECEIPT OF PETITION FOR DIRECTOR'S DECISION UNDER 10 CFR § 2.206

Notice is hereby given that by Petition from the City of Cleveland, Ohio, for the "Expedited Issuance of Notice of Violation, Enforcement of License Conditions, and Imposition of Appropriate Fines" (Petition), dated January 23, 1996, the City of Cleveland (Petitioner) requests, inter alia, that the NRC, pursuant to 10 CFR §§ 2.201, 2.202, 2.205 and 2.206, find that the Cleveland Electric Illuminating Company (CEI) is obligated to provide the wheeling and interconnection services as specified in the Petition and allegedly required by the Antitrust License Conditions that are a part of CEI's license for the Davis-Besse Nuclear Power Plant, Unit 1, and Perry Nuclear Power Plant, Unit 1. In addition, the Petitioner has filed a Motion for Partial Summary Judgment on this issue, and has also requested in the alternative that if partial summary judgment is denied, the Commission sever the matter from the remainder of the Petitioner's other requests contained in the Petition and initiate "an expedited hearing procedure."

More specifically, the Petitioner requests the following NRC actions on an expedited schedule: (1) that the NRC issue a Notice of Violation against CEI for its failure to comply fully with the obligations under the Antitrust License Conditions; (2) that the NRC require CEI to submit a timely reply admitting or denying that CEI is in violation of these obligations, setting forth the steps it is taking to ensure compliance with the Antitrust License Conditions, and providing other compliance information required by the NRC; (3) that the NRC direct CEI to comply immediately with the portions of the

Antitrust License Conditions at issue, including requiring CEI to withdraw immediately from the Federal Energy Regulatory Commission portions of its filings in Docket No. ER93-471-000 that are inconsistent with the Antitrust License Conditions, to withdraw the \$75.00/KW-month "deviation charge" from the rate schedules, and to withdraw that portion of the "Agreement" providing Toledo Edison "highest priority" treatment for its purchases of emergency power from CEI; (4) that the NRC impose the maximum appropriate fines for CEI's repeated violations of the Antitrust License Conditions; and (5) that the NRC direct CEI to provide firm wheeling service during 1996 in the amounts requested by the Petitioner in its August 11, 1995, letter to CEI and in accordance with CEI's obligation under Antitrust License Condition No. 3.

The Petition asserts the following as bases for the requests enumerated above: (1) that CEI violated Antitrust License Condition No. 3 by refusing to provide firm wheeling service to the Petitioner; (2) that CEI violated Antitrust License Condition Nos. 6 and 11 by entering into a contract to provide Toledo Edison Company with emergency power on a preferential basis; (3) that CEI violated Antitrust License Condition No. 2 by failing to offer the Petitioner a fourth interconnection point upon reasonable terms and conditions; and (4) that CEI violated Antitrust License Condition No. 2 by unreasonably burdening use of the existing interconnections through unilateral imposition of a \$75.00/KW-month "deviation charge." The Petitioner asserts that expedited action is by the Commission appropriate and necessary because of the "ongoing, intensive, and unique door-to-door competition" in which the Petitioner and CEI are engaged and that CEI stands to gain enormously, and the Petitioner to lose by equal measure, for each day that CEI refuses to comply

with its license condition obligations. The Petitioner also expresses concern that expedited action by the Commission is required by reason of the Petitioner's 40 MW power purchase from Ohio Power Company to be supplied to the Medical Center Company scheduled to begin by September 1, 1996, which will require wheeling by CEI.

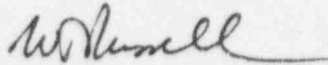
The Petition has been referred to the Office of Nuclear Reactor Regulation for action in accordance with 10 CFR § 2.206. The request for partial summary judgment, the consideration of which is not provided for under 10 CFR § 2.206, is accordingly not being considered, as described in a letter dated March 4, 1996. The request for an expedited Director's Decision that would implement the requested actions was also denied in that letter.

As provided by 10 CFR § 2.206, the NRC will take appropriate action on the Petitioner's requests, other than Motion for Partial Summary Judgment, within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document rooms for: Perry Nuclear Power Plant - Perry Public Library,

3753 Main Street, Perry, Ohio; and Davis-Besse Nuclear Power Station -
Government Documents Collection, William Carlson Library (Depository)
University of Toledo, 2801 West Bancroft Avenue, Toledo, Ohio.

FOR THE NUCLEAR REGULATORY COMMISSION



William T. Russell, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 4th day of March 1996.

3753 Main Street, Perry, Ohio; and Davis-Besse Nuclear Power Station -
Government Documents Collection, William Carlson Library (Depository)
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FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By
WILLIAM T. RUSSELL

William T. Russell, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 4th day of March 1996.

Document Name: G:\PERRY\CLEV2206.1 *See Previous Concurrences

OFC	LA:PD3-3	PM:PD3-3	TechEd*	OGC*	D:PD3-3
NAME	DFoster-Curseen	JHopkins:sw	PKleene	DDambly	GMarcus
DATE	2/27/96	2/27/96	2/16/96	2/27/96	2/27/96
COPY	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO

OFC	BC:PDLR*	ADP	D:NRR
NAME	SNewberry	RZimmerman	WRussell
DATE	2/26/96	2/29/96	2/4/96
COPY	YES/NO	YES/NO	YES/NO

OFFICIAL RECORD COPY

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The Honorable Robert V. Orosz
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ACTION

EDO Principal Correspondence Control

3/1/96 Mar. 1, '96 due date

FROM:

DUE: ~~02/16/96~~

EDO CONTROL: 0000972

DOC DT: 01/23/96

FINAL REPLY:

David R. Straus on behalf of
Sharon Sobol Jordan & William T. Zigli,
City of Cleveland, Ohio

TO:

EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

DESC:

ROUTING:

2.206 PETITION OF THE CITY OF CLEVELAND, OHIO FOR
EXPEDITED ISSUANCE OF NOTICE OF VIOLATION,
ENFORCEMENT OF LICENSE CONDITIONS, AND IMPOSITION
OF APPROPRIATE FINES

Taylor
Milhoan
Thompson
Blaha
Russell, NRR
Lieberman, OE
HMiller, RIII

DATE: 01/23/96

ASSIGNED TO:

CONTACT:

OGC

Cyr

SPECIAL INSTRUCTIONS OR REMARKS:

NRR RECEIVED:

FEBRUARY 8, 1996

NRR ACTION:

DRPW:ROE

NRR ROUTING:

RUSSELL
MIRAGLIA
THADANI
ZIMMERMAN
CRUTCHFIELD
BOHRER

OGC-96- 000331

- (1) find that the Cleveland Electric Illuminating Company ("the Company" or "CEI") is obligated to provide the wheeling and interconnection services specified in this Petition under Antitrust License Conditions which are a part of CEI's license for the Davis-Besse Nuclear Power Plant, Unit 1 and Perry Nuclear Power Plant, Unit 1;
- (2) issue a Notice of Violation against CEI for its failure to comply fully with the obligations under its license conditions;

- (3) require CEI to submit a timely written reply admitting or denying that CEI is in violation of these obligations, setting forth the steps it is taking to ensure compliance with the Antitrust License Conditions, and providing other compliance information required by this Commission;
- (4) direct CEI to comply immediately with the portions of the Antitrust License Conditions at issue here, including requiring CEI to withdraw immediately from the Federal Energy Regulatory Commission portions of its filings in Docket No. ER93-471-000, as specified in this Petition, which are contrary to CEI's obligations under the Antitrust License Conditions; and
- (5) impose appropriate fines for CEI's repeated violations of the license conditions.

CPP asks that the Commission undertake these actions on an expedited schedule. Expedition is appropriate and necessary because of the ongoing, intensive, and unique door-to-door competition in which CPP and CEI are engaged. Each day that CEI refuses to comply with its license condition obligations allows the Company to prolong an unfair competitive advantage. CEI stands to gain enormously — and CPP to lose by equal measure — from the Company's continued refusal to abide by its license condition commitments. In light of CEI's demonstrated unwillingness to comply with its legal obligations, the Commission should act quickly to ensure compliance and to fine CEI, both as a punishment for past misconduct and as an incentive to ensure that CEI changes its ways in the future.

In addition, CPP is filing today its "Motions ... For Partial Summary Judgment Or, In The Alternative, For Severance Of Issue And Expedited Hearing Procedures," in which CPP seeks summary judgment on Count 1 of this Petition. As explained *infra*, Count 1 concerns CEI's failure to comply with its obligation to transmit CPP's 40 MW

power purchase from Ohio Power Company, which is scheduled to commence September 1, 1996. Alternatively, if summary judgment is denied, CPP asks that the Commission sever Count 1 and initiate expedited hearing procedures to resolve promptly this time-sensitive dispute.

COMMUNICATIONS

Communications concerning this matter should be served upon the following persons, who should also be included on the official service list compiled for this proceeding:

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THE PARTIES

CPP provides retail electric service to customers within and outside the corporate boundaries of the City. CPP's 1995 system peak load was 234 MW. CPP is a

transmission dependent utility that has three permanent, synchronous interconnections with CEI: (1) at Lake Shore-Lake Road (established in 1975), (2) at Clinton-West 41st Street (established in 1982), and (3) at Nottingham Water Pumping Station (established in 1991).¹ In 1993, CEI filed with the Federal Energy Regulatory Commission ("FERC") additional amendments to the Interconnection Agreement. Those amendments are pending before FERC in *Cleveland Elec. Illuminating Co.*, FERC Docket No. ER93-471-000.

In recent years, CPP has undertaken an expansion program to extend its transmission and distribution system to be able to provide service throughout the City. A major component of this expansion program is the construction of a fourth, contested interconnection point between CPP and CEI, probably to be located at the Company's Fox Substation. As discussed below, although FERC recently ordered CEI to provide this interconnection, the Company has thus far refused to comply with FERC's directive. Moreover, CEI recently refused to provide requested transmission service to CPP, while admitting that the Company has transmission capacity available to do so.

CEI is an investor-owned utility wholly owned by its parent, Centerior Energy Corporation.² CEI engages in the generation, transmission and distribution of electric

¹ The 1975 Lake Shore-Lake Road interconnection, CPP's first with CEI, was the result of an order issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) in *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 49 FPC 118 (1973), *affirming with modifications*, Initial Decision, 49 FPC 126 (1972), *reh'g denied*, 49 FPC 631 (1973). The FPC's order led to the execution of an April 17, 1975 "Agreement For Installation And Operation Of A 138 kV Synchronous Interconnection." This Agreement was amended in 1982 to add the second (Clinton-West 41st Street) interconnection, and in 1989 to add the third (Nottingham) interconnection.

² Centerior was created in 1986 to acquire the common stock of both CEI and Toledo Edison Company (Toledo Edison is also subject to the license conditions). On April 27, 1994, CEI and Toledo Edison filed an Application for approval to merge those two utilities, with CEI to be the surviving company. The merger

power and energy, and provides retail electric service in northeastern Ohio, including the City of Cleveland and its suburbs. CEI's peak load is approximately 3,700 megawatts. In recent years, CEI has experienced substantial competitive pressures, due in part to the financial burdens of its investments in nuclear generation.³

CPP and CEI compete directly on a door-to-door basis to serve customers within and outside of the City of Cleveland. Indeed, a major purpose of CPP's system expansion program is to improve service to existing customers and to make service available to customers throughout the City. Retail customers change from one supplier to the other, in both directions. Since 1960, 33,191 customers have switched from CEI to CPP, while 12,290 have switched from CPP to CEI. See Attachment 1.

BACKGROUND

In 1979, an Atomic Safety and Licensing Appeal Board, affirming the 1977 findings of an Atomic Safety and Licensing Board, concluded that CEI (and the other license applicants, each of which were members of the Central Area Power Coordination group, or "CAPCO") had engaged in repeated and significant anticompetitive conduct. *The Toledo Edison Co. and The Cleveland Elec. Illuminating Co.*, 10 NRC 265 (1979), *affirming as modified*, 5 NRC 133 (1977). The Licensing Board and the Appeals Board found that CEI and the other license applicants had deliberately acquired monopoly

has been opposed by CPP and others and remains pending at FERC (in a proceeding captioned as *Cleveland Elec. Illuminating Co.*, Docket No. EC94-14-000). On December 20, 1995, the Commission issued an order deferring consideration of the merger unless and until CEI and Toledo address and correct substantial deficiencies in their proposed merger transmission tariffs. *Cleveland Elec. Illuminating Co.*, *et al.*, 73 FERC ¶ 61,349.

³ In 1993, CEI "wrote off" approximately \$1 billion. In addition, CEI has taken several plants out of service, although it is not clear whether CEI has done so permanently.

power in the relevant markets and used that power to force municipal electric systems, including CPP, either to go out of business entirely or to become totally dependent wholesale customers of the license applicants. More specifically, the Boards found that CEI was guilty of multiple violations of the antitrust laws, including improper restrictions upon the resale of electricity (10 NRC at 320-322), refusals to wheel (*id.* at 327-331), refusals to interconnect upon reasonable terms (*id.* at 362-369), and unilateral refusals to deal (*id.* at 341-362).⁴ In summarizing the Licensing Board's findings with respect to the anticompetitive conduct of the CAPCO companies, including CEI, the Appeals Board stated:

[E]ach of the member [CAPCO] companies had participated in actions intended or having the foreseeable effect of reducing the reliability and the economic viability of competing electric generating and distribution entities within their respective service areas Applicants provided bulk power services to each other even as they avoided competition in the retail and wholesale power transaction market. This avoidance was not passive [E]ach Applicant took actions intended or with the foreseeable effect of eliminating competition with non-Applicants in retail power transactions. These restraints took the form of agreements in restraint of trade with municipal generating and distribution systems including territorial or customer allocations, attempts to fix prices for retail power transactions, and refusals to provide bulk power services where the refusals had the known effect of reducing the reliability and the economic competitive potential of these rival systems.

* * *

⁴ These citations are to the separate opinion of Board Member Sharfman. Mr. Sharfman had been a member of the Appeals Board in this proceeding and had drafted an opinion intended to be adopted as that of the Appeals Board but, before the other two Board Members could review the decision, Mr. Sharfman left the NRC for private practice. The remaining Board Members concurred in and relied upon Mr. Sharfman's "ultimate factual and legal conclusions" (including the above-cited findings of antitrust violations) and differed with Mr. Sharfman only with respect to the scope of relief to be ordered in light of those conclusions. 10 NRC at 270. Accordingly, the opinion of Mr. Sharfman was published immediately following the opinion of the remaining Board Members.

These actions have continued over a period of years and their cumulative effect has been to reduce the level of competition ... or to prevent competition from being as vigorous as it otherwise might have been.

10 NRC at 279.

The NRC's findings were recently reviewed by the United States Court of Appeals for the District of Columbia Circuit. In *City of Cleveland, Ohio, et al. v. NRC*, 68 F.3d 1361 (D.C. Cir. 1995), the appeals court considered the findings made in these dockets in the context of an appeal by CEI (and other plant licensees) of the NRC's refusal to grant the companies' request that the license conditions be suspended:

Not only did CAPCO members [including CEI and the other applicants] realize the legitimate benefits of economies of scale and coordinated operation, but more importantly, they used this arrangement to forestall competition from other smaller utilities in the region. CAPCO members avoided competition among themselves, through explicit agreements or failure to solicit customers of fellow CAPCO utilities. [citations omitted]. They denied competing utilities membership in the power pool and refused to make available to competitors any of the benefits of interconnection, including sharing of reserves and exchanges of emergency or economy rate power. [citations omitted]. CAPCO utilities also refused to "wheel" power, or transport it from outside utilities across their transmission lines, to competing utilities inside CAPCO territory [citation omitted].

Id. at 1363-64. The court went on to state that "[a]fter examining these facts," the NRC

concluded that the market structure created by CAPCO members through their formation of an exclusive power pool gave them the ability to prevent competing utilities from gaining the benefits of coordinated operation and economy of scale which they themselves enjoyed, and that this ability had, in fact, been used to create or maintain a situation inconsistent with the antitrust laws.

Id. at 1364 (citations omitted).

As a consequence of its findings, the Appeals Board (again affirming the Licensing Board) concluded that approval of the licenses under which CEI and others sought to operate the Perry and Davis-Besse nuclear units would be conditioned upon, *inter alia*, continuing compliance with a set of stringent antitrust conditions. In reaching this conclusion, the Appeals Board correctly rejected the contention that the conditions were unnecessary in light of the applicants' good faith commitments to change their ways:

We think that the applicants should not be taken at their word. The record is replete with evidence that, in the past, they have either refused or delayed the provision of wholesale power or of the interconnections necessary for it, to the great detriment of the small electric systems in their area.

* * *

A company bears a heavy burden in showing that past conduct will not be repeated We decline to find that the likelihood of similar conduct in the future is so remote that the present case is moot.

Applying this test, we have concluded that the extensive past misconduct of the applicants suggests a real possibility that they may again try to force small electric systems in their area out of business once the heat of this litigation has passed. Therefore, whatever must be done to protect the small systems must be done through the imposition of license conditions. We cannot rely on the good faith of those who have acted in bad faith.

10 NRC at 398 (footnote omitted), 400 (ellipsis in original) (separate opinion of Board Member Sharfman).

In general, the antitrust conditions imposed by the NRC require the five licensees to provide wheeling services and interconnections on reasonable terms, and to refrain from conditioning the sale or exchange of wholesale power or coordination services on anticompetitive terms. 10 NRC at 296-99. In this way, the Antitrust License Condition

obligations mirror the types of competitive conditions that Congress and FERC have sought to create, especially since the enactment of the Energy Policy Act of 1992 ("EPAct"). FERC has actively pursued the objective of a competitive wholesale power market, using the authority granted under the EPAct to require transmitting utilities to provide a full range of services, including "network" transmission service.

Recently, FERC informed CEI that in order to pursue its merger with Toledo Edison, CEI would be required to file a tariff. On May 25, 1995, CEI (along with Toledo Edison) filed (in a proceeding captioned as *Cleveland Elec. Illuminating Co.*, Docket No. ER95-1104-000) what purports to be a non-discriminatory, "open access" tariff in compliance with FERC announced standards but which, in reality, would permit a continuation of CEI's anticompetitive behavior. On June 20, CPP filed an extensive protest challenging much of the CEI transmission tariff as contrary to FERC precedent. On December 20, 1995, the Commission rejected CEI's filed transmission tariffs as deficient, and directed CEI (and Toledo Edison) to file additional information and data to address these deficiencies. The Commission stated that "[f]ailure to respond to this order within ... [30 days] may result in a further order rejecting the Applicants' tariff submission and merger application" 73 FERC ¶ 61,349, slip op. at 10.⁵

In the years prior to and following the imposition of the antitrust conditions, CPP and CEI have been engaged in a head-to-head competitive struggle to provide electric

⁵ Moreover, on September 12, 1995, CPP filed an application under Federal Power Act Section 211 (captioned as *Cleveland Public Power v. Cleveland Electric Illuminating Company and Toledo Edison Company*, Docket No. TX95-7-000) asking that FERC require CEI and Toledo Edison to file immediately a tariff (or service agreement) setting forth rates, terms and conditions of service for point-to-point transmission.

service to customers in and around the City.⁶ During that time, some important facts and circumstances have changed, while others, sadly, have remained the same.

The changes have been significant. In the past sixteen years, the City has grown into a vigorous and viable competitive alternative to CEI. The role which the Antitrust License Conditions — and the ability to obtain enforcement of those conditions — have played in fostering CPP's competitive progress cannot be understated. Prior to the imposition of the conditions, CPP was facing extinction, largely as a result of CEI's anticompetitive activities. See 5 NRC at 165-176.⁷

Since the imposition of the conditions, CPP has obtained access to transmission and coordination services and new wholesale power sources, enabling the City to provide its customers with substantial power cost savings as compared to the costs that would have been incurred had CPP remained a captive customer of CEI. In 1980, CPP made its first purchase from a supplier other than CEI, obtaining an allocation of low-cost "preference"

⁶ As described below, customer-by-customer competition between CPP and CEI has not diminished over time. For example, included in Attachment 2 are two marketing flyers recently distributed by CEI in an effort to thwart CPP efforts to acquire additional load served by CEI. The first flyer, entitled "Some Questions To Consider About The 'Hidden Costs' Of Making A Change," wrongly questions whether a switch of electric supplier from CEI to CPP will have negative consequences for the customer's "home" and "landscaping." The second, a "Dear Friend" letter, tries to convince customers that the switch in streetlighting service from CEI and to CPP will mean the removal of streetlighting from their area. In fact, the conversion of streetlighting service to CPP will result in more streetlights and greater illumination.

⁷ As of the late 1970s, CPP had a single interconnection with CEI, and could buy firm and emergency power only from CEI. As previously determined in this docket, CPP is a transmission dependent utility in that it cannot access power supply sources outside of its own system without the use of CEI's transmission system. 5 NRC at 167; 10 NRC at 328 (separate opinion of Board Member Sharfman). Indeed, the Licensing Board, affirmed by the Appeals Board, found that "it would be impractical for Cleveland to construct transmission lines across CEI territory." Finding 60, 5 NRC at 175; 10 NRC at 328 (separate opinion of Board Member Sharfman). Although American Municipal Power-Ohio, Inc. ("AMP-Ohio"), an organization of which CPP is the largest member, is now evaluating whether to construct a transmission line to which CPP might consider connecting, CEI has obstructed the planning of that line and was recently ordered by FERC, over the Company's objection, to provide data needed for AMP-Ohio's evaluation of the transmission line. *American Municipal Power-Ohio, Inc. v. CEI*, 71 FERC ¶ 61,325 (1995).

power from the Power Authority of the State of New York ("PASNY"). CPP had been allocated a PASNY power share during the 1970s, but could not receive it until CEI was obligated under the terms of the Antitrust License Conditions to provide transmission service. Prior to that time, the Company had refused to wheel the PASNY power to CPP. 10 NRC at 327-329 (separate opinion of Board Member Sharfman). In the ensuing years, CPP has expanded its power supply options, again as the result of the ability to obtain wheeling services pursuant to the Antitrust License Conditions. At present, CPP buys only minimal amounts of power from CEI, as other suppliers offer resources at far more competitive rates.

On the other hand, in the past sixteen years the situation facing CPP has in many significant respects remained the same. As was the case before the Antitrust License Conditions were imposed, CEI has at every turn sought to prevent the City from exercising rights accorded it under law, including rights secured pursuant to the Antitrust License Conditions issued by this Commission.

As CPP's strength as a legitimate competitor has grown, CEI has stepped up efforts to undercut competition by the City, engaging in a near-epidemic of anticompetitive misconduct, some of which has been addressed here, at FERC, before federal courts, and in state court and regulatory agency proceedings. The success of the license conditions is demonstrated by CEI's 1988 request (joined in by Toledo Edison and Ohio Edison) that the NRC amend the operating licenses for the Davis-Besse and Perry Units by suspending the Antitrust License Conditions. In November 1991, the Atomic Safety and Licensing Board rejected the IOUs' contention that suspension of the conditions was warranted because the power produced at the two nuclear plants had become more costly than

alternative resources. The NRC declined to review the Licensing Board's decision, and the Court of Appeals for the District of Columbia Circuit recently affirmed the NRC's determination. *City of Cleveland, et al. v. NRC, supra.*

SPECIFIC VIOLATIONS OF ANTITRUST LICENSE CONDITIONS

The events leading to the filing of this Petition as well as the multiple actions at FERC demonstrate, yet again, that one "cannot rely on the good faith of those who have acted in bad faith." 10 NRC at 400. Absent strong enforcement by this Commission and other federal agencies, CEI has shown repeatedly that it will not voluntarily comply with its legal and contractual obligations. For the reasons detailed below, CPP asks this Commission to take actions to enforce certain of CEI's Antitrust License Condition obligations and to penalize CEI severely for its compliance failures. Specifically, CPP will demonstrate that CEI has:

- (1) violated Antitrust License Condition No. 3 by refusing to provide firm wheeling service to CPP;
- (2) violated Antitrust License Condition Nos. 6 and 11 by entering into a contract to provide Toledo Edison Company with emergency power on a preferential basis;
- (3) violated Antitrust License Condition No. 2 by failing to offer the City a fourth "interconnection [point] upon reasonable terms and conditions" (10 NRC at 296); and
- (4) violated Antitrust License Condition No. 2 by unreasonably burdening use of the existing interconnections through unilateral imposition of a \$75.00/kW-month "deviation charge."

**COUNT 1: CEI'S REFUSAL TO PROVIDE FIRM WHEELING
SERVICE TO CPP IS A VIOLATION OF LICENSE
CONDITION NO. 3**

On August 11, 1995, CPP sent to CEI — pursuant to CEI's Transmission Tariff No. 1 — a request to reserve firm transmission service for use during 1996. See Attachment 3. Tariff No. 1 provides for firm wheeling services to eligible entities, including CPP, stating that "CEI *shall* provide Transmission Service within the limits of the capacity of its bulk transmission facilities ... to the extent that such Transmission Service does not impose a burden upon the system of CEI" (emphasis added). FERC Electric Tariff, Original Volume No. 1, Section A, Original Sheet No. 2, contained in Attachment 4.

CEI Transmission Tariff No. 1 was intended to satisfy the Company's obligations under License Condition No. 3, which states in pertinent part that the

Applicants shall engage in wheeling for or 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 [footnote omitted] 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 the Applicants, the use of which will not jeopardize Applicants' system.

10 NRC at 296.⁸

⁸ The omitted footnote explains that an "Entitlement" is defined broadly to include, but not be limited to, "power made available to an entity pursuant to an exchange agreement." *Id.*

CPP's 1996 wheeling service request includes, *inter alia*, a reservation for 40 MW of firm transmission for a firm power purchase by CPP from Ohio Power Company. After several CPP requests for a response, CEI, in letters dated November 2 and 3, 1995, stated its refusal to provide transmission for the Ohio Power purchase. See Attachment 5. CEI's November 2 response expressly states that its denial of service "is not due to any limitation on the CEI transmission system, and CEI will provide the other transmission services requested by CPP in its letter dated August 11, 1995." Instead, CEI refuses to transmit because, it claims, the transmission service will in fact be used to facilitate a sale by Ohio Power directly to the Medical Center Company ("Medco"), currently a CEI retail customer located in the City of Cleveland.⁹

CEI's refusal to provide the requested wheeling is an outright violation of License Condition No. 3 and should be corrected expeditiously. CEI has made no allegation that the provision of service would somehow "jeopardize" operation of the CEI system. License Condition No. 3 (and CEI Transmission Tariff No. 1) allow *no* other bases for denying transmission service and permit *no* restrictions on the use or resale of power transmitted.

Indeed, imposition of the Antitrust License Conditions that CPP here seeks to enforce was based in part upon NRC findings that the Applicant companies had wrongfully imposed resale restrictions upon potential competitors. The NRC was well

⁹ CEI and CPP engaged in active competition to serve the Medco load in 1991. CEI won that competition and entered into a five-year service contract with Medco. Contemplating the 1996 expiration of that contract, Medco initiated another competitive battle between CEI and CPP. This time, Medco decided to purchase electricity from CPP as of September 1, 1996.

aware at the time it adopted the Antitrust License Conditions of the presence of door-to-door customer competition between CEI and CPP, and of specific efforts by CEI to preclude customer switching, including through the use of direct and indirect restrictions on power transmitted to Cleveland by CEI.¹⁰ With respect to specific examples, the Licensing Board noted CEI's willingness "in the 1960's" to interconnect with CPP "on the condition that [CPP] would fix its rates at the level of rates set by CEI and that Cleveland would reduce its charges to the City for street lighting service." 5 NRC at 167, citations omitted. The Board found that in seeking these conditions, CEI's "larger motivation was clear. CEI considered an increase in the rates charged by [CPP] as essential to a successful acquisition of [CPP]." *Id.* The Board went on to note that:

CEI also believed that if [CPP] would fix its rates at CEI's level, this would not only eliminate the major reason for customers leaving CEI to take service from [CPP], [citations omitted], but also would result in customers switching from [CPP] to CEI. [citations omitted].

Id. The NRC found CEI's "attempt to fix [CPP's] rates and street lighting charges in exchange for interconnection constitutes a *per se* violation of the antitrust laws." *Id.* at 167-168.

In addition, the NRC found evidence that CEI "sought to prevent future competition with" the Painesville, Ohio municipal system (the only municipal system in the CEI service territory other than CPP) by offering Painesville a territorial agreement that would have eliminated competition and foreclosed the growth of the municipal

¹⁰ As mentioned earlier, the NRC Licensing Appeal Board, summarizing the finding of an NRC Licensing Board, noted that "each Applicant took actions intended or with the foreseeable effect of eliminating competition with non-Applicants in retail power transactions." 10 NRC at 279.

system by allotting to CEI those areas where Painesville had the greatest potential load growth." 5 NRC at 177, citations omitted. Similarly, CEI subsequently offered to "supply an interconnection" to Painesville

in consideration for CEI taking over Painesville's greatest load growth area [citation omitted], together with Painesville's promise not to seek to serve that area in the future. [citations omitted]. In addition, CEI explicitly conditioned interconnection on rate equalization. [citations omitted].

5 NRC at 177-178.

Similarly, the NRC noted the presence of language in each of Ohio Edison Company's contracts with several rural electric cooperatives prohibiting sale for resale of wholesale power wheeled by Ohio Edison. 5 NRC at 201. The Commission found that "[b]y these restrictions, Ohio Edison has eliminated wholesale competition between it and the rural electric cooperatives within its service area." *Id.* Similarly, the Commission found that

[p]rior to 1965, Ohio Edison restricted its municipal wholesale customers in reselling power to industrial customers except in relatively small amounts controlled by Ohio Edison [citation omitted].

* * *

The effect of these restrictions was to maintain Ohio Edison's position with the municipalities and to eliminate competition for virtually all new industrial loads located outside the boundaries of the municipality although, under Ohio law, municipalities were entitled to compete for such business.

Id.

As a result of these findings (and other equally significant findings), the Commission imposed conditions that would prohibit precisely that which CEI now seeks to do. That is, the NRC conditions were intended to preclude restrictions on the resale of

power wheeled by the Applicants, including CEI. In refusing to provide the wheeling services needed by CPP to service a significant retail customer formerly served by CEI, the Company ignores the NRC's conditions and, equally important, their historical bases. The Commission should find CEI's actions to be contrary to the Companies' obligations under License Condition No. 3.

Furthermore, CEI's refusal to wheel is only the latest in a recent spate of such conduct by the Company. In May 1995, CEI stated that it would not provide on a firm basis 62 MW of transmission service needed by CPP to take delivery of power purchases from Ohio Power Company (30 MW) and PASNY (32 MW). The Company did not demonstrate that furnishing service for either purchase would cause a capacity or other operational problem for CEI. CEI's refusal to commit to transmit the PASNY purchase on a firm basis was particularly appalling in light of the Company's provision to CPP of firm PASNY wheeling service during the previous nine years. CPP subsequently filed a state court lawsuit challenging CEI's refusal to transmit on a firm basis, which was dismissed on jurisdictional grounds. Order of August 23, 1995, in *City of Cleveland, et al. v. Cleveland Electric Illuminating Co.*, Case No. 290259 (Common Pleas Ct. Cuyahoga County), *appeal pending*. The requested transmission services were ultimately provided by CEI, though on a non-firm basis.

In mid-June 1994, CEI went one step further, and actually interrupted transmission service to CPP because of alleged system constraints. As a result of the interruption (which occurred on June 17 and lasted roughly one and one-half hours), CPP was forced to blackout service to approximately 40 percent of its load. CPP contends that the interruption was unnecessary and, even if necessary, was the direct result of CEI's poor

transmission planning and maintenance decisions. In fact, during the peak service period in question, CEI had 1429 MW of capacity out of service for *scheduled* maintenance.

CPP subsequently challenged the Company's transmission service interruption as part of a complaint filed with FERC, captioned as *City of Cleveland, Ohio v. Cleveland Elec. Illuminating Co.*, FERC Docket No. EL94-80-000. Without any investigation of the underlying facts, the FERC rejected this portion of the CPP complaint. "Order On Complaints," 72 FERC ¶ 61,040 (1995). CPP has sought rehearing of this determination, which remains pending.

To be sure, CPP has been irreparably harmed by CEI's unnecessary threatened and actual service interruptions, as well as by the Company's provision of "non-firm" transmission service in place of the firm wheeling requested by CPP. By threatening or actually failing to provide firm service, CEI is able to create questions about the reliability of CPP retail service. Indeed, CPP believes that CEI has actually used this perception of diminished reliability in marketing efforts by planting doubts in the minds of potential switch-over customers as well as those, like Medco, that have already shifted suppliers. *See* n.5, *supra*. Such customer concern and dissatisfaction would be of little concern to this Commission if the dissatisfaction were somehow the result of CPP's actions. However, CPP's concern arises solely as a result of CEI's steadfast refusal to comply with its unequivocal license condition obligation to provide transmission service to CPP.

Finally, CPP notes that the pendency of two proceedings at FERC concerning the legality of CPP's refusal to transmit the Ohio Power purchase should not forestall expeditious action in this case. On November 29, 1995, CPP filed a Federal Power Act Section 206

complaint (and related requests for relief) against CEI. Designated as Docket No. EL96-21-000, this complaint challenges CEI's failure to provide the requested 40 MW of firm wheeling service as contrary to CEI's transmission tariff and license condition obligations. In addition, on November 2, 1995, CEI filed a petition with FERC (designated at Docket No. EL96-9-000) requesting a ruling that CEI is not required under Federal Power Act Sections 211 or 212 to provide the requested firm transmission service to CPP. CPP filed its opposition to this Petition on December 13, 1995.

This Commission should not stay its hand because FERC may resolve CPP's complaint based entirely on the language of the Company's Transmission Tariff No. 1, and will choose not to address CEI's obligation under Antitrust License Condition No. 3. (CEI's Petition does not address the Antitrust License Conditions.) Indeed, CEI has taken the position in a rehearing application filed in another pending FERC proceeding, Docket No. EL93-35-000, that FERC does not have the authority to enforce the NRC's Antitrust License Conditions, stating that "[e]nforcement of nuclear plant license conditions is subject to the jurisdiction of the Nuclear Regulatory Commission, not this Commission." See Attachment 6, which contains an excerpt of CEI's pleading, at 19.¹¹ CEI went on to contend that "[i]mplementation of the Atomic Energy Act is beyond the FERC's jurisdiction, and the FERC has no basis for usurping the NRC's statutory authority." *Id.* at 19-20.

¹¹ Docket No. EL93-35-000 involves CPP's challenge to CEI's refusal to provide a requested fourth interconnection point between the CEI and CPP systems. On June 9, 1995, the FERC issued an order which, *inter alia*, directs CEI to provide the requisite interconnection. On July 7, 1995, CEI sought rehearing of the June 9 order. CEI's failure to provide the fourth interconnection constitutes a separate violation of the Antitrust License Conditions, addressed in Count 3, *infra*.

If CEI's argument were accepted by FERC (or if it were to order transmission on other grounds), the Commission would likely not address CEI's obligations under Antitrust License Condition No. 3. As there can be no dispute about this Commission's authority to enforce the License Conditions, the NRC should not withhold action in anticipation of FERC action. Absent a grant of summary judgment in CPP's favor, CPP asks that the Commission establish hearing procedures to resolve on an expedited schedule CPP's valid contention that CEI — independent of any obligation it has under Transmission Tariff No. 1 or anywhere else — has violated its obligation under Antitrust License Condition No. 3 to provide firm transmission service.

**COUNT 2: CEI HAS VIOLATED ANTITRUST LICENSE
CONDITION NO. 6 BY CONTRACTING WITH
TOLEDO EDISON COMPANY TO PROVIDE
EMERGENCY POWER ON A PREFERENTIAL
BASIS**

Antitrust License Condition No. 6 provides in part that Applicants, including CEI,

shall sell emergency power to requesting entities in the CCCT upon terms and conditions no less favorable than those Applicants make available: (1) to each other either pursuant to the CAPCO agreements or pursuant to bilateral contract

10 NRC at 298.

The April 1987 "Centerior Dispatch Operating Agreement" contains provisions relating to the sale of emergency power that do not comport with the requirements of License Condition No. 6.¹² The Operating Agreement states under the heading

¹² CPP did not become aware of this agreement until it was submitted to FERC on May 9, 1995, in Docket No. EC94-14-000, the proceeding in which the CEI-Toledo Edison Company merger is under consideration. A copy of the Operating Agreement is Attachment 7 hereto. The Operating Agreement sets

"Emergency Power/Reliability of Short Term Power" that CEI and Toledo (collectively "Operating Companies"):

will assign highest priority to provide each other emergency power. An Operating Company will terminate an existing emergency supply to an outside utility in order to honor a request for emergency power from an Operating Company.

Attachment 7 at 4.

This provision of the Operating Agreement includes identical priority language with respect to sales of "Short Term Power." *Id.* The agreement by CEI and Toledo Edison to assign each other the "highest priority" for the provision of emergency power, including the expressed willingness to terminate a sale of either emergency power (or Short Term Power) to another utility in order to provide it to each other, is in blatant violation of the requirements of License Condition No. 6.

**COURT 3: CEI HAS VIOLATED ANTITRUST LICENSE
CONDITION NO. 2 BY FAILING TO OFFER
CPP A FOURTH INTERCONNECTION POINT**

Antitrust License Condition No. 2 states in part that CEI (and the other applicants)

shall offer interconnections on reasonable terms and conditions at the request of any other electric entity(ies) in the CCCT [Combined CAPCO Company Territories], such interconnection to be available (with due regard for any necessary and applicable safety procedures) for operation in a closed-switch synchronous operating mode if requested by the interconnecting entity(ies).

10 NRC at 296. Based upon this condition, as well as an express, written commitment from CEI, CPP asked CEI to permit installation of a fourth interconnection between the

forth certain "activities" that are being undertaken "to perform coordinated dispatch of the electrical facilities of" CEI and Toledo Edison. Attachment 7 at 2.

CPP system and CEI's Fox Substation. The Company refused to grant this request. CPP challenged this refusal in April 1993, filing a complaint with the FERC designated as Docket No. EL93-35-000.

On June 9, 1995, the Commission directed CEI to provide a fourth interconnection with CPP. *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 71 FERC ¶ 61,324 (1995).¹³ FERC found that CEI's refusal to provide the fourth interconnection was a violation of both the Company's contractual commitments *and its Antitrust License Conditions*. Specifically, FERC's order is based upon CEI's commitments as stated in: (1) NRC Antitrust License Condition No. 2; (2) a September 19, 1985 letter from the former Chairman of CEI to then-Cleveland Mayor George Voinovich, stating CEI's willingness to provide the interconnection; and (3) a 1985 contract among CEI, Toledo Edison and AMP-Ohio, in which the companies agreed to provide interconnections to the AMP-Ohio members. 71 FERC at 62,267-269.

CEI was directed to: (1) provide the fourth interconnection; and (2) file with FERC CEI's proposed charge for the fourth interconnection.¹⁴ With respect to the License Condition, FERC stated:

NRC Licensing Condition No. 2 describes conditions under which CEI is bound to provide an interconnection to Cleveland, i.e., upon request by Cleveland in exchange for the NRC's approval of the licenses. Cleveland has, in fact, made such a request. As such, given the facts of this case including the close nexus between NRC Licensing Condition

¹³ The Commission order also rejected Cleveland's complaint with respect to improper billing by CEI for inadvertent energy during a "locked in" past period.

¹⁴ The Commission also directed CEI to file with FERC a 1985 Agreement between CEI and American Municipal Power-Ohio, Inc. ("AMP-Ohio") (discussed below) and NRC License Condition No. 2. Without any explanation, CEI has not done so.

No. 2 and the matters at issue here, we likewise will direct CEI to file NRC Licensing Condition No. 2 pursuant to section 205(c) of the FPA, [footnote omitted] and, consistent with the condition, to file a proposed interconnection agreement.

Slip op. at 14.

Notwithstanding the FERC Order, issued in response to a CPP Complaint filed roughly two and one-half years ago, CEI remains unwilling to provide the requested interconnection. The Company was required to submit, by October 9, 1995, its proposed charges for the interconnection. Instead, CEI submitted a letter, included as Attachment 8 to this Petition, informing FERC that the Company could not and would not provide the proposed interconnection charges absent resolution of a host of unrelated issues.¹⁵ In defiance of FERC's mandate, CEI maintains that it cannot comply absent resolution of allegations concerning stranded investment charges and claimed safety violations on the CPP retail distribution system. Attachment 8 at 3-5.¹⁶ CEI has also raised specious technical roadblocks including, "the voltage at which the interconnection will operate, the facilities to be installed by each of the parties, and the modification or reinforcement of existing facilities that may become necessary as a result of the interconnection." Attachment 8 at 1. These new roadblocks are specious because CEI has already built three interconnections with CPP since 1975. In any event, the Company's resort to self-

¹⁵ On January 12, 1996, CEI submitted an engineering study to CPP that claimed that the physical cost to CEI of building the interconnection, to be reimbursed by CPP, is \$7.1 million, plus or minus 40%. CEI has not filed this or any other cost data with FERC, has not withdrawn its opposition to providing the fourth interconnection and has not modified its claim that a host of extraneous matters must be resolved in advance of determining the full cost of the interconnection.

¹⁶ For example, CEI seeks "proof" that CPP has "specific plans and procedures" for, *inter alia*, "discouraging the City and its contractors from trespassing against, altering, removing or interfering with CEI's lines, facilities and service equipment." Attachment 8 at 5.

help tactics demonstrates that CEI believes it can flout its legal obligations with impunity, taking comfort in the apparent belief that the Company's disobedience will lead to nothing worse than yet another order to comply.

Although FERC's order (which is pending on rehearing and is, of course, subject to possible court appeal by CEI) directs CEI to permit the fourth interconnection, CPP nevertheless urges the Commission to grant expeditiously CPP's request in this proceeding for an order directing a fourth interconnection. This case is distinguishable from the circumstances involved in a May 1995 "Director's Decision" by the Office of Nuclear Reactor Regulation ("NRR") that dismissed a Section 2.206 petition for license condition enforcement submitted by Florida Municipal Power Agency ("FMPA") because the issues raised by the petition were being addressed in an ongoing FERC proceeding.¹⁷

In dismissing the FMPA proceeding, the Director stated (at 12) that "FERC's Order requiring FPL to provide network transmission service to FMPA and the subsequent ongoing rate proceeding before the FERC[] adequately address and resolve the concerns raised in FMPA's Section 2.206 petition" That is not the case here. CPP is asking that this Commission exercise its statutory authority (under 42 U.S.C. § 2822(a)) to impose penalties upon CEI if it is found to have violated its license conditions. A significant financial penalty is sorely needed here, but FERC lacks the authority to impose one. CEI should be penalized because it is apparent that the prospective relief

¹⁷ In its May 26, 1995, "Director's Decision Under 10 CFR § 2.206" in *Florida Power & Light Company (St. Lucie Plant, Unit 2)*, Docket No. 50-389A, the NRR Director denied FMPA's request for the initiation of an enforcement action against licensee Florida Power & Light Company ("FPL") for alleged violations of FPL's St. Lucie antitrust license conditions. As in this case, a proceeding had previously been initiated at FERC by FMPA seeking similar prospective relief.

available from FERC has been and is likely to remain insufficient to convince the Company to honor its license obligations. Indeed, it is hard to escape the conclusion that CEI's unwillingness — in the face of a clear FERC directive — to provide the fourth interconnection is based upon the Company's realizations that: (a) every day of delay inflicts competitive injury upon CPP; and (b) further CEI inaction will, at most, result in yet another FERC compliance order.

This Commission has already been required to pursue an enforcement action against CEI to ensure compliance with the license conditions. In 1978, a Notice of Violation was issued against the Company.¹⁸ In 1979, following CEI's persistent unwillingness to correct the violation, the Commission modified CEI's License Condition No. 3 to direct CEI to file with FERC a transmission service tariff that complied with very specific requirements.

CEI's status as a "repeat offender" with respect to the violation of its license condition obligations requires that this Commission do more than simply defer to proceedings before FERC. For the reasons presented in this Petition, CEI needs and should receive another effective and enforceable reminder that the Company must comply with its license condition obligations.

Moreover, on July 7, 1995, CEI sought rehearing of the FERC's order directing installation of the fourth interconnection. There, the Company renewed its rejected contention that only the NRC — not FERC — has legal authority to enforce the Antitrust

¹⁸ Notice of Violation (issued June 28, 1978) and *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 (issued June 25, 1979), Docket Nos. 50-346A, 50-440A, and 50-441A.

License Conditions.¹⁹ There can be no question that this Commission has the authority to enforce the Antitrust License Conditions and, in so doing, to provide to CPP the types of relief requested here. The appropriate procedures for imposing the remedies sought by CPP — including issuance of a Notice of Violation and, where appropriate, the imposition of civil penalties — are provided for under 10 C.F.R. § 2.200, *et seq.*²⁰

Finally, FERC's delay in taking action, and CEI's subsequent defiance of FERC are only two of the reasons why CPP has chosen to file a petition with this Commission. As the course of the FERC proceeding demonstrates, even when available, after-the-fact, sanctionless relief from FERC is slow and often ineffective, particularly as a deterrent against new violations.

For the reasons explained here, CPP requests that this Commission, in accordance with recent action by FERC and in light of even more recent refusals by CEI to comply with FERC's ruling: (a) issue a notice under 10 C.F.R. § 2.201(a)(1) stating that CEI has violated Antitrust License Condition No. 2; and (b) if CEI remains unwilling, join FERC by issuing an order under 10 C.F.R. § 2.202(a) directing that CEI comply with the license condition by offering immediately to CPP the requested fourth interconnection on

¹⁹ Attachment 6 at 18-20.

²⁰ Relief from the NRC is available for violations of the antitrust conditions of a license as well as for violations of technical license provisions. The Commission's Office of Nuclear Reactor Regulation's "Procedures for Meeting NRC Antitrust Responsibilities," NUREG-0970 (1985), provide:

In its June 5, 1977 Memorandum and Order on South Texas, the Commission referred to Section 186 of the Act as follows:

Indeed, all concede that other language in Section 186 gives the Commission authority to initiate a postlicensing enforcement proceeding in the event of violation of a specific antitrust licensing condition.

Houston Lighting & Power Co., 5 NRC 1303 at 1311 (1977).

reasonable terms and conditions. In addition, the Commission should do what FERC cannot by imposing appropriate and substantial penalties upon CEI for its refusal to agree to provide the fourth interconnection absent an order from this Commission.²¹

A. THE PROPOSED FOURTH INTERCONNECTION IS NEEDED TO PROVIDE RELIABLE SERVICE TO CLEVELAND'S WEST SIDE

The proposed fourth interconnection is part of CPP's Phase II system expansion program, and it is critical to the maintenance of reliable electric service in Cleveland. CPP is undertaking the system expansion program to enable the City to serve additional residential, commercial and industrial customers on the west side, including the Cleveland Hopkins International Airport. Reliability of service to that portion of the City will be improved substantially if the proposed interconnection is completed.

CPP's present interconnections with CEI limit the City's transfer capability to 300 MVA. CPP's 1995 summer peak reached 249 MVA, and with its current additions of residential and small commercial customers in the eastern area of the City, *CPP expects to exceed the 300 MVA limit within the next two years.*²² Customer connections on the City's west side are projected to begin within this time frame, at which point CPP's customer requirements will exceed the capacity of its existing interconnections. Given these objectives, the City originally anticipated having the fourth interconnection

²¹ To be clear, the arguments presented here are offered in addition to the finding by FERC in *City of Cleveland v. Cleveland Elec. Illuminating Co.*, 71 FERC ¶ 61,324 (1995), that CEI is obligated to provide the requested fourth interconnection. CPP asserts that FERC's finding — in and of itself — is sufficient basis for the NRC to issue: (a) the requisite Notice of Violation; (b) an order directing the fourth interconnection; and (c) an order imposing appropriate penalties. To the extent the Commission disagrees and wishes to make an independent evaluation, CPP's arguments are presented in the sections which follow.

²² The September 1996 addition of Medco as a CPP customer, which is the subject of Petition Count 1, *supra*, will by itself represent an additional 50 MW load on the CPP system.

in service by the end of 1995; CEI's violation of its license condition obligations has rendered achievement of this timetable impossible.

Moreover, Antitrust License Condition No. 3 states in part that CEI "shall make reasonable provisions for" CPP's disclosed transmission requirements. 10 NRC at 297. CEI's failure to install the fourth interconnection constitutes a violation of its obligation to make "reasonable provisions" for CPP's transmission needs. CEI has known for many years of CPP's need for the fourth interconnection, and of the concern that the current three-interconnection configuration would be insufficient to meet CPP's planned needs; nonetheless, the Company has refused to comply with CPP's request.

**B. CEI PREVIOUSLY COMMITTED TO PERMIT THE PROPOSED
FOURTH INTERCONNECTION, AND NOW SEEKS TO VITIATE
THAT COMMITMENT**

Antitrust License Condition No. 2 obligates CEI to "offer interconnections upon reasonable terms and conditions" upon the "request of any other electric entity(ies) in the CCCT," including CPP. Although the issue had been raised previously, CPP clearly gave notice to CEI of the City's need for the fourth interconnection in 1985, during discussions concerning a pending Securities and Exchange Commission proceeding in which CEI and Toledo Edison were seeking authorization to move toward merger (by allowing newly-created Centerior Energy Corporation to acquire all of the outstanding stock of the two utilities).

In a September 19, 1985 letter from CEI Chairman of the Board Robert M. Ginn to Cleveland Mayor George V. Voinovich, Attachment 9 hereto, the Company acknowledged the City's requests for both the third and the fourth interconnections, and — in exchange

for Cleveland's agreement not to oppose the merger — CEI committed to "concur" in the City's requests for FERC approval of the two interconnections. Paragraph 5 of the letter states:

The Company acknowledges the desire of the City to construct transmission lines from — (1) The City's Collinwood Substation to the City's Nottingham Pumping Station and (2) From the City's existing Clinton-West 41st Street line to Cleveland Hopkins Airport. *The Company agrees that if such lines are constructed, it will interconnect them to its system.* The first interconnection would be made to the Company's Lloyd-Jordan line in the vicinity of the Nottingham Pumping Station and the second either to the Company lines in the vicinity of the Airport, or alternatively, to CEI's Fox Substation. Although CEI agrees to such interconnections, it must, of course, reserve the right to take whatever actions it deems appropriate with respect to the proposed construction of the lines, but the Company will definitely concur in the City's effort to obtain from the Federal Energy Regulatory Commission its regulatory approval of the interconnection.

Attachment 9 at 2, emphasis supplied. The proposed fourth interconnection is plainly described here, as it will involve the connection of a 138 kV transmission line "[f]rom the City's existing Clinton-West 41st Street line" to "CEI's Fox Substation."

Notwithstanding (1) CPP's request for the interconnection, (2) CEI's commitment to support that request, and (3) the Company's obligations under Antitrust License Condition No. 2 to offer the interconnection, CEI has steadfastly refused to permit the interconnection, let alone "offer" one on "reasonable terms and conditions." As a consequence, on April 22, 1993, the City filed the complaint initiating FERC Docket No. EL93-35-000. Years after agreeing to provide the precise interconnection at issue, CEI responded to the CPP complaint by taking the position that the Company

cannot consider agreeing to any such interconnection until all of the details of the proposed interconnection have been established and until CEI has assurance that the interconnection will not impair reliability of service to CEI's customers and that the City will pay all of the costs associated with creation of the interconnection and services to be provided across the interconnection, including stranded investment costs.

CEI's Answer to CPP Complaint in FERC Docket No. EL93-35-000, at 23-24.²³ Now that FERC has ordered the interconnection, CEI's position — as expressed in the aforementioned October 9 letter — remains the same: CEI will not consider complying with the FERC order "until all the details" and some major, unrelated issues have been worked out.

Consistent with FERC's recent order, the NRC should reject CEI's position as not credible and inconsistent with the Company's prior commitments to Cleveland and to this Commission. CEI should be held to its obligation under the license conditions, as well as its 1985 representation that it would "concur" in the City's request for regulatory approval.

Given CEI's explicit obligations and voluntary commitments, and viewed in light of CEI's history of (and ongoing) anticompetitive behavior, it is apparent that CEI's current unwillingness to agree to the new interconnection is based upon a continuing desire to stifle the City's ability to compete. The Commission should issue an order: (1) finding, consistent with the FERC ruling, that CEI has violated Antitrust License Condition No. 2; (2) requiring CEI to comply with the Antitrust License Condition by offering the fourth interconnection (as requested by CPP) on reasonable terms; and

²³ An excerpt from CEI's Answer is Attachment 10 to this Petition.

(3) penalizing CEI for its failure to comply with its Antitrust License Condition obligation.

**COUNT 4: CEI HAS VIOLATED ANTITRUST LICENSE
CONDITION NO. 2 BY IMPOSING AN
EXORBITANT AND UNREASONABLE
\$75/KW-MONTH "DEVIATION CHARGE"**

In March 1993, CEI unilaterally filed with FERC (initiating the still pending Docket No. ER93-471-000) a set of proposed amendments to the 1975 Interconnection Agreement between CEI and CPP. One of the proposed amendments would add a requirement that CPP pay a "deviation charge" of \$75/kW-month for the maximum number of kilowatts of power delivered by CEI in any hour in excess of the amount of power CPP had scheduled for delivery in that hour. The charge is exorbitant, as it is three times CEI's proposed firm power "ceiling" rate of \$25/kW-month. Indeed, the "ceiling" rate is itself enormous; by contrast, emergency power is available to CPP on the market for 100 mills per kWh, with no demand charge.

The Commission accepted the proposed amendments for filing, including the deviation charge, suspended their imposition for five months (the maximum suspension permitted by law), and set the amendments for hearing. The amendments became effective, subject to refund, following expiration of the suspension period in November 1993. *Cleveland Elec. Illuminating Co.*, FERC Docket No. ER93-471-000, 63 FERC ¶ 61,244 (1993), *order on reh'g*, 64 FERC 61,097 (1993). While the Initial Decision in Docket No. ER93-471-000, 69 FERC ¶ 63,008 (1994), would reduce the \$75 charge to a still exorbitant \$25, FERC action on that ruling is still pending and it is not known when

FERC will act. Thus, the amendments remain in effect today, and CEI's proposed "open access" transmission tariffs propose continuation of the charge.²⁴

CEI's deviation charge is a facially discriminatory and anticompetitive restriction on CPP's right under Antitrust License Condition No. 2 to obtain interconnections with CEI "upon reasonable terms and conditions." It is discriminatory because the proposed charge would, without justification, enable CEI to treat differently transmission customers who provide their own control area services as compared to those, like the City, who purchase such services from CEI. Under the proposed transmission tariffs, the former customer class would be able to address imbalances between scheduled and actual energy delivered through the return in kind of energy inadvertently interchanged between control areas. By contrast, "positive deviations" between scheduled and actual energy flows experienced by the City result in a deviation charge of \$75/kW-month, applied against the maximum kilowatthours of positive deviation in any one hour of the month. The charge is anticompetitive in that the only utility against which the charge would be imposed is CPP, which is also the only utility with which CEI is engaged in direct, door-to-door competition for retail customers.

In addition, the charge is unreasonable because it grossly exceeds even the penalty provisions imposed by other utilities upon unscheduled deliveries to their wholesale customers. Although FERC will allow a utility to depart from cost-based pricing and

²⁴ As mentioned earlier, the Commission determined by order dated December 20, 1995 in Docket Nos. EC95-1104-000, *et al.*, that the tariffs are deficient and must be revised substantially. Absent the requisite revisions, the Commission has stated that it may issue a further order rejecting the tariffs and merger application, as well as a related application for approval to charge market-based generation rates. Slip op. at 10, Ordering ¶ (C).

charge "incentive" rates for unscheduled emergency service (to keep wholesale customers from unduly relying upon the utility to make up scheduling shortfalls), there are limits to a utility's ability to exceed the costs of providing such service.²⁵ In *Indiana Michigan Power Co.*, 44 FERC ¶ 61,313 at 62,079 (1988), FERC approved emergency energy rates of 100 mills/kWh (or ten cents), but cautioned that this rate represented "the upper end of a range of reasonable rates to act as a disincentive to use emergency service as an economic alternative to non-emergency service, and at the same time not to be exorbitant or exploitative." *Id.* at 62,079. At \$75/kW-month, the Company's deviation charge applied to a single unscheduled delivery of 1,500 kW in one hour of a month would produce a higher payment to CEI than if it assessed a 100 mill/kWh rate for 1,500 kWh of emergency energy in each and every hour of the month. Thus, CEI's deviation charge is insupportable, even as a penalty provision.

Moreover, when CPP overschedules deliveries of power from third parties to avoid the enormous "deviation charge," it is competitively harmed by another of CEI's proposed amendments. In hours when CPP schedules more energy for delivery than it can use, a prudent practice in light of the \$75/kW-month charge, CEI retains the excess energy for its own use and pays CPP a rate equal to only one-half of CEI's fuel costs, while CPP must, of course, still pay its suppliers full price for that energy. Thus, CEI gets cheap energy that it can use, while CPP pays full price (less the modest payment made by CEI) for energy that CPP cannot use. As a result, CEI has an unfair competitive

²⁵ The Antitrust License Conditions provide that "all rates, charges or practices in connection" with the implementation of the Conditions "are to be subject to the approval of regulatory agencies having jurisdiction over them." 10 NRC at 299.

advantage either way — the Company either gets very inexpensive energy or it collects enormous penalties.²⁶ Even if CPP prevails at FERC and obtains a refund of penalty charges paid, CPP will be unable to recover the costs of overscheduling energy in order to avoid this penalty or the permanent costs of competitive harm during the period in which the penalty charge is effective.

Further tilting this “heads I win, tails you lose” mechanism in its favor, CEI is proposing that these provisions apply to all “deviations” above and below zero, no matter how insignificant. The failure to utilize a “deadband” approach (within which no penalties would apply for deviations of less than, say, five percent of scheduled amounts, to recognize the impossibility of zero deviation) is contrary to standard industry practice.

REQUESTS FOR RELIEF

For the reasons set forth above, CPP requests that the Commission:

- (1) find that CEI is obligated under the Antitrust License Conditions to provide interconnection and wheeling services as specified in this Petition, including providing the requested fourth interconnection with CPP at the Fox Substation;
- (2) issue a Notice of Violation against CEI for its failure to comply fully with these obligations;
- (3) require CEI to submit a timely written reply admitting or denying that CEI is in violation of these obligations, setting forth the steps it is taking to ensure compliance with the Antitrust License Con-

²⁶ This impediment to accurate scheduling was exacerbated by CEI's unilateral and unwarranted 1994 imposition of severe schedule change restrictions that prohibited changes in scheduled deliveries of energy except on a day-before basis. The FERC initiated a proceeding on scheduling issues in response to CPP's August 12, 1994, Complaint. A recently entered into settlement agreement in that proceeding that substantially increases scheduling flexibility in a manner more consistent with widespread industry practice is now pending before FERC.

ditions, and providing other compliance information required by this Commission;

- (4) direct CEI to comply immediately with the portions of the Antitrust License Conditions at issue here, including requiring CEI to withdraw immediately from the Federal Energy Regulatory Commission the portions of CEI's filing at issue in Docket No. ER93-471-000 that are inconsistent with the License Conditions, as specified herein;
- (5) direct CEI to provide firm wheeling service during 1996 in the amounts requested by CPP in its August 11, 1995, letter to CEI and in accordance with CEI's obligation under Antitrust License Condition No. 3;
- (6) impose the maximum fines under the Atomic Energy Act permissible for CEI's violations of the license conditions (42 U.S.C. § 2822(a)) which, through the end of 1995, would amount to close to \$100,000,000;²⁷ and
- (7) undertake these requested actions on an expedited basis, consistent with the demonstration here that CEI has not met its License Condition obligations, and that each day of delay in its doing so is causing unlawful competitive injury to CPP.

With respect to item (4), above, the specific actions which CEI should be directed to undertake include requiring the Company to:

- (A) withdraw the \$75.00/kW-month "deviation" charge from the rate schedules at issue in ER93-471-000 and those filed at FERC on May 25, 1995; and

²⁷ Even if the violations are considered to be a single violation, and if they are deemed to commence in April 1993 when CPP formally filed at FERC for the fourth interconnection, after CEI had refused to provide it, that represents almost 1,000 days of violation. 42 U.S.C. § 2822(a) permits the imposition, for a "continuing" violation, of up to \$100,000 per day of violation.

- (B) withdraw that portion of the "Operating Agreement" providing to Toledo Edison "highest priority" treatment for its purchases of emergency power from CEI.

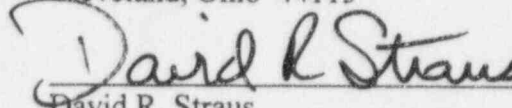
CONCLUSION

WHEREFORE, for the foregoing reasons, CPP asks that the Commission act expeditiously to enforce the Antitrust License Conditions attached to CEI's nuclear plant licenses in the manner specified in this petition.

Respectfully submitted,

Sharon Sobol Jordan
Director of Law
William T. Zigli
Chief Assistant Director of Law
CITY OF CLEVELAND, OHIO
106 City Hall
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2814

Glenn S. Krassen
CLIMACO, CLIMACO, SEMINATORE,
LEFKOWITZ AND GAROFOLI, Co., L.P.A.
The Halle Building, Suite 900
1228 Euclid Avenue
Cleveland, Ohio 44115



David R. Straus
Scott H. Strauss
SPIEGEL & MCDIARMID
Suite 1100
1350 New York Avenue, NW
Washington, DC 20005-4798
(202) 879-4000

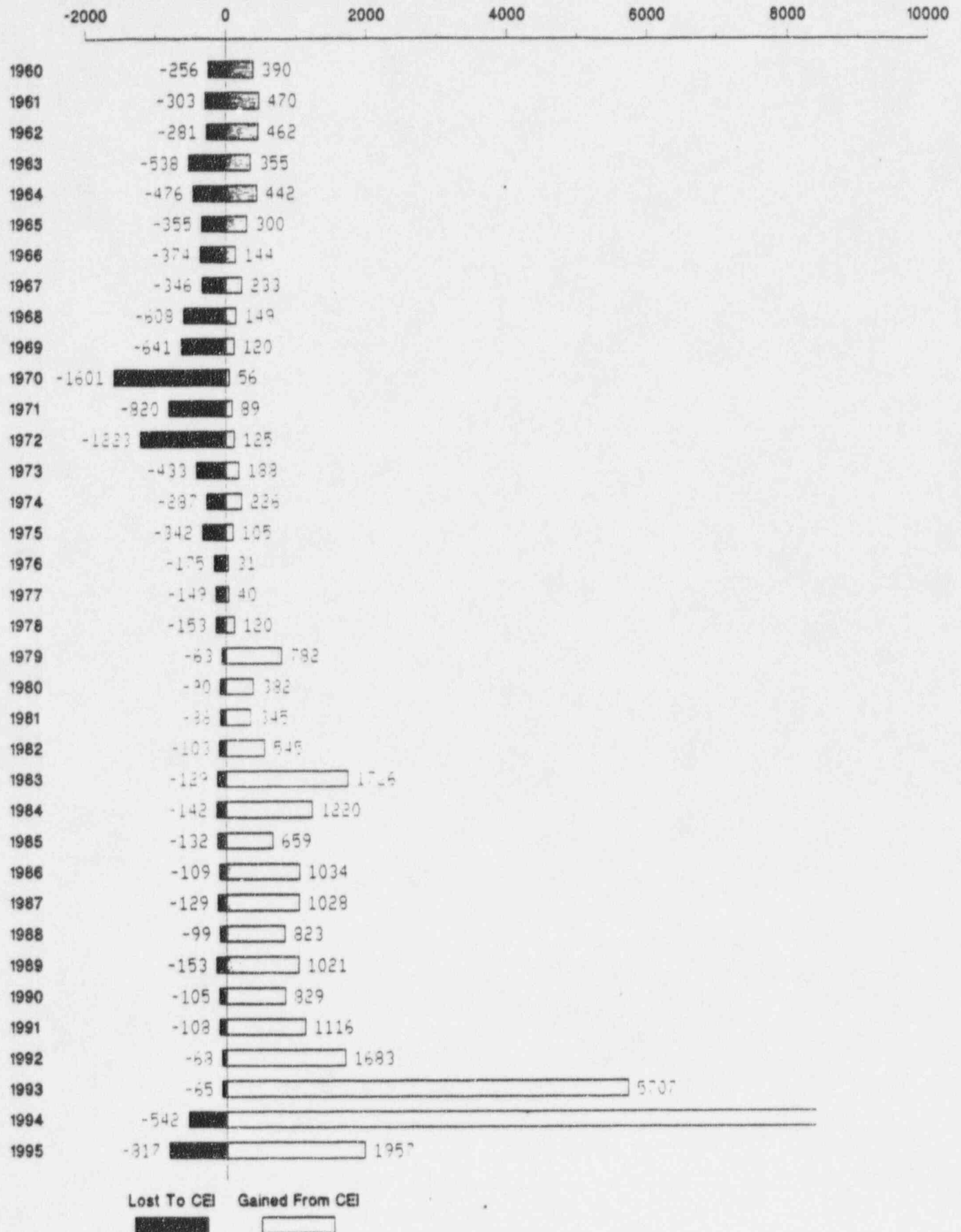
January 23, 1996

LIST OF ATTACHMENTS

1. GRAPH DETAILING CEI-CPP RETAIL CUSTOMER SWITCHING, 1960 TO DATE
2. CEI MARKETING FLYERS
3. LETTER TO CEI FROM CPP, DATED AUGUST 11, 1995, REQUESTING FIRM TRANSMISSION SERVICE RESERVATIONS FOR USE DURING 1996
4. EXCERPT FROM CEI FIRM TRANSMISSION TARIFF NO. 1
5. LETTERS TO CPP FROM CEI DATED NOVEMBER 2 AND 3, 1995, STATING CEI'S REFUSAL TO PROVIDE TRANSMISSION TO CPP FOR ITS PURCHASE FROM OHIO POWER
6. EXCERPT FROM CEI APPLICATION FOR REHEARING IN FERC DOCKET NO. EL93-35-000
7. CEI-TOLEDO EDISON COMPANY OPERATING AGREEMENT, DATED APRIL 1987
8. LETTER TO FERC SECRETARY CASHELL FROM CEI, DATED OCTOBER 9, 1995, IN FERC DOCKET NO. EL93-35-000
9. LETTER TO CLEVELAND MAYOR GEORGE V. VOINOVICH FROM CEI CHAIRMAN OF THE BOARD ROBERT M. GINN, DATED SEPTEMBER 19, 1985
10. EXCERPT FROM CEI'S ANSWER TO CPP COMPLAINT IN FERC DOCKET NO. EL93-35-000

ATTACHMENT 1

Cleveland Public Power
Annual Meter Gains and Losses



ATTACHMENT 2

SOME
QUESTIONS
TO CONSIDER
ABOUT THE
"HIDDEN COSTS"
OF MAKING
A CHANGE.



A Message From Your
BEST SERVICE Electric Company

The Illuminating Company
A Centene Energy Company

The Illuminating Company
A Centene Energy Company

WHEN YOUR HOME'S LOOK IS AT STAKE, MAKE SURE YOU KNOW ALL THE FACTS

You may be asked to leave The Illuminating Company for another electric supplier. But there are many "hidden costs" in making a change, some of which can affect the exterior of your home and your landscaping.

So here are a few questions you might want answered concerning these issues.

What work done by the other electrical supplier can affect my home?

Getting hooked up to another electric supplier can be difficult if all preparation work is not completed properly. You may want to find out if the other supplier needs to install its equipment to the outside of your home.

- Will the other electric supplier put in an additional service box on your home if their poles are placed in front of your property?
- Will your present electrical service box need to be removed?
- Who will be responsible for any possible damage to your home if equipment is removed?
- What exterior work on your home needs to be completed if a replacement service box is installed?

- Who will be responsible for any possible damage to your home if the replacement service box is installed?
- If necessary, how much additional equipment will be attached to your home?
- To whom do you give permission to install any more equipment?

Will any installation work affect my landscaping?

- Will there be a problem running a power line through any trees, shrubs, bushes, etc. on your property? Will they be damaged?
- Will any landscaping right next to your home be affected by a replacement service box?

We hope the above questions can serve as a starting point in getting the answers you need if you are approached by another electric supplier. As your full-service electric company, our phone lines are always open.

Please feel free to call us anytime - day or night - at 861-9000.



THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

P.O. BOX 5000 • CLEVELAND, OHIO 44101 • TELEPHONE (216) 622-9800 • ILLUMINATING BLDG. • 35 PUBLIC SQUARE
Serving The Best Location in the Nation

Dear Friend,

The Illuminating Company has been providing streetlighting for your neighborhood for many years.

We recently were told by the City of Cleveland to remove streetlights in front of your house and along your entire street. Because of this change, you may notice less light on your street or streetlights burning during the day or ones that are out at night. These problems should be reported to The City of Cleveland at 664-2000.

The Illuminating Company is still here to serve your home with safe, reliable electricity. We would be happy to have you join the 750,000 Northeast Ohio customers who are served by the area's only full-service electric utility.

Sincerely,

The Illuminating Company

A Centenor Energy Company

ATTACHMENT 3



City of Cleveland
MICHAEL R. WHITE, MAYOR
1300 LAKESIDE AVENUE
CLEVELAND, OHIO 44114-1100



August 11, 1995

Mr. Thomas G. Solomon, Manager Bulk Power Operations
Cleveland Electric Illuminating Company
6896 Miller Road
Brecksville, Ohio 44141

Dear Tom:

Enclosed are transmission service agreements under the CEI FERC Transmission Tariff for the following reservations:

East Kentucky Power Cooperative for 30 MW from January 1, 1996 through December 31, 1996

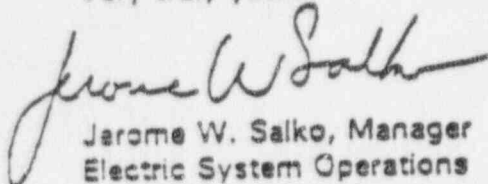
Cincinnati Gas & Electric Co. For 50 MW from January 1, 1996 through December 31, 1996

New York Power Authority for 32 MW from January 1, 1996 through December 31, 1996

Ohio Power Company for 40 MW from September 1, 1996 through December 31, 1996

Please respond to these reservation requests as soon as possible. The transmission reservations for the 35 MW of AEP Tanners Creek and 10 MW AMP-Ohio Gorsuch power will be sent to you by AMP-Ohio.

Very truly yours,


Jerome W. Salko, Manager
Electric System Operations

cc: Nagah Ramadan
George S. Pofok
William Zigli

ATTACHMENT 4

the Cleveland Electric
Illuminating Company
AC Electric Tariff
Original Volume No. 1
First Revised

2278-194

Original Sheet

Effective

ACCEPTED FOR FILING 12/1
TO BECOME EFFECTIVE:
2/22/78

PERC ELECTRIC TARIFF
ORIGINAL VOLUME NO. 1

OF

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

FILED WITH

FEDERAL ENERGY REGULATORY COMMISSION

ISSUED BY

RICHARD A. MILLER
EXECUTIVE VICE PRESIDENT
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

ACCEPTED FOR FILING
TO BECOME EFFECTIVE:

TRANSMISSION SERVICE TARIFF

2/28/78

A. Service Provided

The service provided hereunder (Transmission Service) shall be the transmission of electric power between delivery (interconnection) points of The Cleveland Electric Illuminating Company (CEI) to, from, between, or among rural electric cooperatives or municipalities located within the Combined CAPCO (Central Area Power Coordination Group) Company Territories (CCT) (Customer). The service will be 60 Hertz, alternating current and three phase.

It is understood that the obligation of CEI to transmit power for Customer's account shall be subject to CEI's ability to transmit and deliver stated power consistent with the operation of its system under normal and emergency conditions for its own purposes. The availability of Transmission Service hereunder shall be determined by CEI, and the obligation of CEI shall be further limited to times during which power is actually received by CEI for delivery to Customer. Nothing herein shall be construed as requiring CEI to enlarge its facilities to transmit such power. When CEI determines that Transmission Service is unavailable, it shall promptly orally notify the requesting party to that effect and the reason(s) therefor. This shall be confirmed in writing as soon as practicable but not later than three (3) days following the oral notification. The written confirmation shall be in sufficient detail to explain clearly the capacity constraints upon the system which make wheeling service unavailable. If, after having agreed to transmit power on any particular occasion, CEI is prevented from making or continuing such delivery, it shall use all due diligence to remove the cause of disability and shall resume delivery as promptly as possible.

CEI shall provide Transmission Service within the limits of the capacity of its bulk transmission facilities, and related facilities, without undue interference with service to those interconnected systems the operations of which are conducted, in whole or in part, pursuant to the provisions of an agreement with CEI, except as stated below to other members of the CAPCO group, and to the extent that such Transmission Service does not impose a burden upon the system of CEI.

In the event that CEI must reduce wheeling services to other entities under this Service Schedule due to CEI's lack of capacity, such reduction shall not be effected until reductions of at least 5% have been made in CEI's transmission allocations to other CAPCO members, and thereafter shall be made in proportion to reductions imposed upon other CAPCO members.

Prior to commencement of Transmission Service under this tariff each Customer shall execute and deliver to CEI a Service Agreement in the Form of Service Agreement attached to this Tariff. The customer by commencing to take Transmission Service from CEI agrees to take and pay for, and CEI by commencing to furnish such Service agrees to furnish the Service, subject to the terms and conditions of this Service Tariff as they may be in effect from time to time subject to action by the governmental bodies having regulatory jurisdiction over services rendered hereunder.

Transmission Service shall be provided by CEI from time to time, upon (i) written request by a Customer for the reservation of transmission capacity (Transmission Reservation) for a period of one week or longer, and (ii) concurrence in such request by CEI in writing. When necessary, any request or concurrence relating to the availability of transmission service may be made orally and shall be confirmed in writing as soon as practicable but not later than the third day following the day such oral request or concurrence is given.

When CEI plans its future transmission capability, it will make reasonable provision for disclosed future transmission requirements or entities using wheeling services. 1/

B. Duration

This Service Tariff shall become effective 30 days after filing with the FERC and shall continue in effect for one year, and thereafter for similar periods unless changed, modified, or superseded. CEI reserves the right to make a filing with the FERC for termination of service under this tariff.

C. Changes in Charges and Terms and Conditions of Service

This Service Tariff, 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 FERC or any superseding regulatory authority having jurisdiction and both CEI and Customer shall have the right at any time to seek unilaterally superseding services, compensation, terms, conditions, and rates from such regulatory authority.

1/ The term "disclosed" is defined as the giving of reasonable advance notification of future requirements
by entities utilizing wheeling services to be made

D. Compensation

Customer shall, with respect to transmission services which shall be reserved during any period of one week or longer (the Reserved Period) under this Service Tariff, pay to CEI monthly, an amount calculated separately for each Transmission Reservation equal to the product of (i) the prorated monthly rate, \$1.718 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 if at any time during said Reserved Period the amount of power and energy actually delivered at the delivery point, adjusted for losses thereon from or to the interconnection point for which such transmission service shall be so reserved, shall exceed the actual amount of power and energy received at the receiving point, the excess shall be deemed to be and shall be paid for by Customer as an unscheduled inadvertent power delivery. Any such excess delivery shall be settled for either by the return of equivalent power and energy or payment of the out-of-pocket cost incurred by CEI, plus 10% of such cost. Out-of-pocket cost shall compensate CEI for costs incurred that would otherwise not have been incurred and shall be as of the delivery point specified in the appropriate Service Agreement. If equivalent energy is returned, it shall be returned at times when the load conditions of CEI are equivalent to the load conditions of CEI at the time the energy for which it is returned was delivered or, if CEI elects to have equivalent energy returned under different conditions, it shall be returned in such amount, to be agreed upon by CEI and the Customer, as will compensate for the difference in conditions. There shall be added to any amount calculated pursuant to any of the foregoing provisions of this Section 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).

E. Arrangements With Other Systems

If the requested Transmission Service involves transmission directly or indirectly on the facilities of a third utility system, Customer will make arrangements for use of those facilities directly with that third system, and CEI shall not be obliged to commence transmission service until such arrangements have been made. CEI shall be furnished promptly with copies of all agreements relating thereto and any arrangements or supplements thereto. Customer expressly agrees to indemnify and save harmless and defend CEI against all claims, demands, costs, or expenses arising out of providing the Transmission Service, including, without limitation, claims or demands asserted by any supplying utility or any third party in connection with the delivery of power to CEI for Customer's account.

F. Losses

Subject to the provisions of Section I and J hereof, CEC will in each hour that power is delivered to it for transmission for Customer account, transmit and deliver ninety-eight percent (98%) of such power (adjusted to the nearest whole MW) to delivery point of Customer, it is agreed that 1% of such power fairly reflects losses on the CEC system.

G. Billing and Payment

Bills for Transmission Service shall be rendered monthly by CEC and paid monthly by Customer. All such bills shall be due and payable within forty-five days from the receipt of the bill. Any amount due and unpaid after the due date shall be deemed delinquent and there shall be added interest of one percent (1.00%). For each succeeding ten-day period an additional one percent (1.00%) of the then unpaid amount be added until the amount is paid in full.

In order that bills may be rendered promptly after the end of each month, it may be necessary from time to time to estimate certain factors involved in calculating the monthly billing. Adjustments for errors in such estimates shall be included in the bill for the month following the time when information becomes available to make such corrections or adjustments in the billing for the preceding month or months.

H. Interruptions of Transmission Service

It is understood and agreed that the Transmission Service, if and when available, will be furnished except (1) for interruptions or reductions due to forces described in Section I of this Service Booklet; (2) for interruptions or reductions due to action required by automatic or manual control which results in disconnection for the purpose of maintaining overall reliability and continuity of CEC's transmission system or for the purpose of protecting its generation or transmission facilities; or (3) for temporary interruptions or reductions, which, in the opinion of CEC, are necessary or desirable for the purpose of maintenance, repairs, replacements, or installation of equipment, or investigation and inspection. CEC does not guarantee that the Transmission Service delivered hereunder will be free from interruption or impairment and CEC shall not be liable to Customer for damages resulting therefrom. CEC, except in case of emergency as determined by CEC, will give Customer reasonable advance notice of any scheduled temporary interruptions or impairment of Transmission Service. Customer will notify CEC's dispatcher of any scheduled interruption or impairment of Transmission Service by telephone and confirm such notice in writing on the next day such notice was given. CEC will use due diligence to remove all causes of such interrupted or impaired service.

1st Rev.

ACCEPTED FOR FILING 12/
TO BECOME EFFECTIVE:

2/28/78

I. Force Majeure

In case either CEI or Customer should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said parties by this Service Tariff by reason of or through strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, ice, invasion, civil war, commotion, insurrections, military or usurped power, order of any Court granted in any bona fide adverse legal proceedings or action, or of any civil or military authority either de facto or de jure, explosion, act of God or the public enemies, or any cause reasonably beyond its control and not attributable to its neglect; then, and in such case or cases, such party shall not be liable to the other party for or on account of any loss, damage, injury or expense resulting from or arising out of such delay or prevention; provided, however, that the party suffering such delay or prevention shall use due and, in its judgment, practicable diligence to remove the cause or causes thereof; and provided, further, that neither party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such settlement seems advisable.

J. Customer's and CEI's Responsibilities

Customer and CEI will exercise diligence to use and provide the electric service furnished under this Service Tariff with a view to securing efficiency of Customer's and CEI's apparatus and systems in keeping with generally accepted good operating standards, will maintain a power factor as near unity as practicable consistent with good engineering practice, will coordinate their respective systems relaying and fusing so as to preclude unnecessary interruptions, will maintain their respective lines at all times in a safe operating condition, will operate their respective lines in such manner as not to interfere with the service to customers of either party; and will coordinate maintenance which may adversely affect the operation of their respective facilities. Customer will use electric service equally from three phases as nearly as possible. If CEI shall deem it necessary that voltage regulating equipment, including but not limited to the structures and devices associated with such equipment, is required, such equipment shall be provided, owned and maintained by Customer.

Customer assumes all responsibility for electricity beyond the point of delivery and CEI shall not be liable for damages to the person or property of Customer or its employees or any other persons resulting from the use or presence of electricity beyond the point of delivery.

15V

ACCEPTED FOR FILING 12/15/
TO BECOME EFFECTIVE:

~~Page~~ 2/28/78

K. Metering

Metering equipment will be supplied, installed, wired, owned and maintained, calibrated and scaled by CEI. Such meters shall be of a type selected by CEI.

When metering is at a point other than the delivery point, the metering equipment shall be compensated to registered values, which would have been recorded if the equipment had been located at the delivery point.

The accuracy of the metering equipment shall be verified by proper test at any time upon reasonable notice given by either CEI or Customer to the other, and each party shall be entitled to have a representative present at such verification.

The work of testing and adjusting any meter for accuracy shall be performed by and at the expense of CEI, provided that such test is not called for by Customer more often than once in twelve months. If either party shall require more than one verification of any meter in any twelve month period, and the meter proves to be accurate within two (2) percent plus or minus, the additional verification shall be at the expense of the party requesting it.

If such equipment is found to be inaccurate by more than two (2) percent plus or minus, the equipment shall be made accurate and the meter readings for the period of inaccuracy shall be adjusted to correct such inaccuracies as far as the same can be reasonably ascertained. If the period of inaccuracy cannot be reasonably ascertained, the period of inaccuracy will be deemed to have encompassed one-half of the time period since the last test of the meter.

In the event that CEI's meters fail to register properly during any billing period, the demand and energy quantities will be estimated by CEI from the best available data.

Customer agrees to supply, free of cost, a suitable location for the installation of CEI's metering equipment and such other facilities as are required by CEI in its judgment in providing the requested service. Such location shall be in accordance with specifications as supplied by CEI.

Customer gives all necessary permission to enable the agents of CEI to carry out the terms and conditions of this rate schedule and construct and maintain its lines and circuits in and at all places required by CEI and owned, leased or controlled by Customer. Customer gives to CEI the right for its duly authorized agents and employees to enter the premises of Customer at all reasonable times for the purpose of reading meters, keeping in repair or removing its property or inspecting its work incident to rendering service under this Service Tariff.

The Cleveland Electric
Illuminating Company
FERC Electric Tariff
Original Vol. No. 1

1st Rev

ACCEPTED FOR FILING 12/15/81
TO BECOME EFFECTIVE:

2/28/78

First Revised Sheet
Original Sheet No. 86

Other arrangements for ownership, testing, installing calculations may be used as may be mutually agreed to by CEI and Customer.

2. No Dedication of Facilities

Any undertaking by one party to the other under any provision of this Service Tariff shall not constitute the dedication of the system or any portion thereof of any party to the public or to the other party, and it is understood and agreed that any such undertaking by any party shall cease upon termination of this Service Tariff.

The Cleveland Electric
Illuminating Company
ERC Electric Tariff
Original Vol. No. 1

Second Revised Sheet No. 9
Cancels First Revised Sheet No.
Effective: October 1, 1985

FORM OF SERVICE AGREEMENT

This Agreement made and entered into this ____ day of
____, 19__ by and between The Cleveland Electric
Illuminating Company (CEI) and _____
(Customer).

WITNESSETH

That in consideration of the mutual covenants and agreements
herein contained, the parties hereto covenant and agree with each
other as follows:

CEI shall provide transmission service in accordance with
the terms and conditions of CEI's FERC Electric Tariff, Original
Volume No. 1, as the same may be amended from time to time and in
accordance with the specifications set forth on attached Exhibit
A.

In Witness Whereof, CEI and Customer have caused this
Service Agreement to be executed in duplicate in their names by
their respective duly authorized officials, as of the day and
year first above written.

Attest:

Name of Customer

By _____

Approved:

THE CLEVELAND ELECTRIC .
ILLUMINATING COMPANY

By _____

Issued by:

Richard A. Miller
Executive Vice President

The Cleveland Electric
Illuminating Company
ERC Electric Tariff
Original Vol. No. 1

Second Revised Sheet No. 10
Cancels First Revised Sheet Nos. 10 a
Effective: October 1, 1985

EXHIBIT A
DELIVERY POINT AND SERVICE SPECIFICATIONS

1. Name of Customer: _____
2. Location of point of delivery: _____

3. Description of electricity:

Electricity delivered by CEI will be three phase, _____
wires, alternating current of approximately 60 Hertz, at a
nominal voltage of _____ volts.
4. Metered voltage: _____
5. Location of meter: _____

6. Effective date: _____
7. Provisions for special facilities or conditions: _____

In Witness Whereof, CEI and Customer have each caused this
Exhibit A to Service Agreement for Provision of Transmission
Service to Municipalities and Rural Electric Cooperatives, dated
_____, to be executed in their names by their
respective duly authorized officials on this ____ day of
_____, 19__.

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY**

Name of Customer

By _____

By _____

Issued by:
Richard A. Miller
Executive Vice President

The Cleveland Electric
Illuminating Company
RC Electric Tariff
Original Vol. No. 1

Second Revised Sheet No. 11
Effective: October 1, 1985

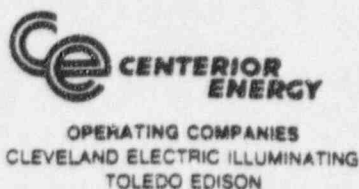
This Sheet Was Cancelled By Second Revised Sheet No. 10,
Effective October 1, 1985

Issued by:
Richard A. Miller
Executive Vice President

ATTACHMENT 5

ATTORNEYS
MARY E. O'REILLY
KEVIN P. MURPHY
MICHAEL C. REGULINSKI
BRUCE T. ROSENBAUM
DOUGLAS J. WEBER
MARK R. KEMPIC

PARALEGAL
AMY B. McCABE



CLEVELAND OFFICE
5200 OAK TREE BLVD
ROOM 448
INDEPENDENCE, OH 44131
FAX (216)447-2592

TOLEDO OFFICE
EDISON PLAZA
300 MADISON AVENUE
TOLEDO, OHIO 43652
FAX (419)249-5251

CORPORATE/REGULATORY PRACTICE AREA

November 2, 1995

David R. Straus, Esq.
Spiegel & McDiarmid
1350 New York Ave., N.W.
Washington, D.C. 20005-4798

Dear David:

Please be advised that The Cleveland Electric Illuminating Company (CEI) will not provide the transmission services requested by Cleveland Public Power (CPP) associated with the power sale by the Ohio Power Company (Ohio Power) to CPP for delivery of 40 MW to the CEI/Ohio Power interconnection commencing September 1, 1996 through December 31, 1996. This transaction, although contractually described as a wholesale sale from Ohio Power to CPP, will be the functional equivalent of a sale "directly to an ultimate consumer"; accordingly, in accordance with Section 212 of the Federal Power Act, CEI is not required to provide transmission services with respect to this transaction. Furthermore, the Federal Energy Regulatory Commission (Commission) lacks authority to issue a mandatory wheeling order against CEI under the Federal Power Act to effectuate this transaction.

On this date, the Company has sought a declaratory order from the Commission that it is not required to provide the required transmission services associated with this transaction. I have enclosed herein a copy of the petition for declaratory order filed with the Commission.

Please be further advised that CEI's refusal to provide the requested transmission services is not due to any limitation on the CEI transmission system, and CEI will provide the other transmission services requested by CPP in its letter dated August 11, 1995. Copies of the other transmission service agreements are being returned to CPP executed by the appropriate CEI personnel on this date.

Very truly yours,

Michael C. Regulinski
Senior Counsel

MCR:ms



8200 Oak Tree Boulevard
Independence OH
216-447-3100

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

November 3, 1995

HAND DELIVERY

Jerome W. Salko, Manager
Electric System Operations
City of Cleveland, Ohio
1300 Lakeside Avenue
Cleveland, Ohio 44114-1100

Dear Jerry:

In response to your request for transmission service dated August 11, 1995 under CEI FERC Transmission Tariff, CEI will provide the services indicated below. CEI's agreement to provide the services is expressly conditioned upon the following:

1. The installation of the 138 kV capacitors before the 1996 summer load season as stated in your letter of September 22, 1995 and Mr. Pofok's letter of October 30, 1995; and
2. Completion of the necessary transient interaction studies involved with capacitor installations to avoid electrical disturbances on the City's and CEI's systems and communication of the results of the studies to CEL

CEI can perform the necessary transient interaction studies at your request. Please notify me within ten days whether the City will meet these conditions.

In anticipation of the City's agreement with these conditions, I have enclosed the following signed service agreements:

1. East Kentucky Power Cooperative for 30 MW from January 1, 1996 through December 31, 1996;
2. Cincinnati Gas & Electric Company for 50 MW from January 1, 1996 through December 31, 1996; and

Operating Companies:
Cleveland Electric Illuminating
Toledo Edison

3. New York Power Authority for 32 MW from January 1, 1996 through December 31, 1996.

The request for transmission services related to Ohio Power for 40 MW from 9/1/96 through 12/31/96 is denied for the reasons stated in the enclosed letter to Mr. David R. Straus.

Very truly yours,

T. G. Solomon / sfs

Thomas G. Solomon
Manager - Bulk Power Operations

TGS:ms

Effective: October 1, 1985

SERVICE AGREEMENT

This Agreement made and entered into this August 11, 1995
by and between The Cleveland Electric Illuminating Company
(CEI) and Cleveland Public Power (Customer).

WITNESSETH

That in consideration of the mutual covenants and agreements
herein contained, the parties hereto covenant and agree with each
other as follows:

CEI shall provide transmission service in accordance with the
terms and conditions of CEI's FERC Transmission Service Tariff,
Original Volume No. 1, as the same may be amended from time to time
in accordance with the specifications set forth on attached
Exhibit A.

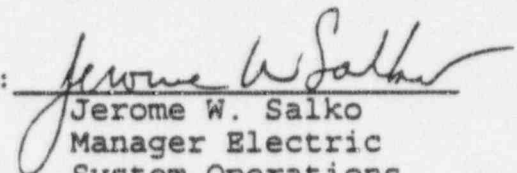
In Witness Whereof, CEI and Customer have caused this Service :
Agreement to be executed in duplicate in their names by their
respective duly authorized officials, as of the day and year first
above written.

Attest:

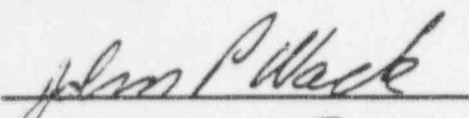


Date: 2/11/95

CLEVELAND PUBLIC POWER

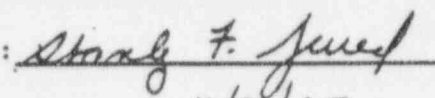
By: 
Jerome W. Salko
Manager Electric
System Operations

APPROVED:



Date: 11/1/95

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

By: 
10/31/95

Issued By: Richard A. Miller
President
Centerior Corporation

Effective: October 1, 1985

EXHIBIT A
POINT OF RECEIPT AND SERVICE SPECIFICATIONS

1. Name of Customer: CLEVELAND PUBLIC POWER
2. Location of point of receipt: CEI's existing interconnect with the Ohio Power Company.
3. Description of electricity: Electricity received from supplying utility will be three phase, 3 wires, alternating current of approximately 60 Hertz, at a nominal voltage of 345,000 volts.
4. Demand reservation: 30,000 KW originating from EK
5. Metered voltage: 138,000 volts
6. Location of meter: CPP/CEI interconnections
7. Effective date: August 11, 1995
8. Reservation period: January 1, 1996 0001 to December 31, 1996 2400 (hours ending).
9. Provisions for special facilities or conditions: _____

In Witness Whereof, CEI and Customer have each caused this Exhibit A to the Service Agreement for Provision of Transmission Service to Municipalities and Rural Electric Cooperatives, dated August 11, 1995 to be executed in their names by their respective duly authorized officials on this August 11, 1995.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

By: Stanley F. Jones

Date : 10/31/95

CLEVELAND PUBLIC POWER

By: Jerome W. Salko
Jerome W. Salko
Manager Electric
System Operations

Date: 8-11-95

Issued by: Richard A. Miller
President
Centerior Corporation

Effective: October 1, 1985

SERVICE AGREEMENT

This Agreement made and entered into this August 11, 1995
by and between The Cleveland Electric Illuminating Company
(CEI) and Cleveland Public Power (Customer).

WITNESSETH

That in consideration of the mutual covenants and agreements
herein contained, the parties hereto covenant and agree with each
other as follows:

CEI shall provide transmission service in accordance with the
terms and conditions of CEI's FERC Transmission Service Tariff,
Original Volume No. 1, as the same may be amended from time to time
in accordance with the specifications set forth on attached
Exhibit A.

In Witness Whereof, CEI and Customer have caused this Service
Agreement to be executed in duplicate in their names by their
respective duly authorized officials, as of the day and year first
above written.

Attest:

CLEVELAND PUBLIC POWER

Date:

8/11/95

By:

Jerome W. Salko
Manager Electric
System Operations

APPROVED:

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

Date:

11/1/95

By:

Stanley F. Jewel
10/31/95

Issued By:

Richard A. Miller
President
Centerior Corporation

Effective: October 1, 1985

EXHIBIT A
POINT OF RECEIPT AND SERVICE SPECIFICATIONS

1. Name of Customer: CLEVELAND PUBLIC POWER
2. Location of point of receipt: CEI's existing interconnect with the Ohio Power Company.
3. Description of electricity: Electricity received from supplying utility will be three phase, 3 wires, alternating current of approximately 60 Hertz, at a nominal voltage of 345,000 volts.
4. Demand reservation: 50,000 KW originating from CG&E
5. Metered voltage: 138,000 volts
6. Location of meter: CPP/CEI interconnections
7. Effective date: August 11, 1995
8. Reservation period: January 1, 1996 0001 to December 31, 1996 2400 (hours ending).
9. Provisions for special facilities or conditions: _____

In Witness Whereof, CEI and Customer have each caused this Exhibit A to the Service Agreement for Provision of Transmission Service to Municipalities and Rural Electric Cooperatives, dated August 11, 1995 to be executed in their names by their respective duly authorized officials on this August 11, 1995.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

By: Stanley F. Jones

Date: 10/21/95

CLEVELAND PUBLIC POWER

By: Jerome W. Salko
Jerome W. Salko
Manager Electric
System Operations

Date: 8-11-95

Issued by: Richard A. Miller
President
Centerior Corporation

Effective: October 1, 1985

SERVICE AGREEMENT

This Agreement made and entered into this August 11, 1995
by and between The Cleveland Electric Illuminating Company
(CEI) and Cleveland Public Power (Customer).

WITNESSETH

That in consideration of the mutual covenants and agreements
herein contained, the parties hereto covenant and agree with each
other as follows:

CEI shall provide transmission service in accordance with the
terms and conditions of CEI's FERC Transmission Service Tariff,
Original Volume No. 1, as the same may be amended from time to time
in accordance with the specifications set forth on attached
Exhibit A.

In Witness Whereof, CEI and Customer have caused this Service :
Agreement to be executed in duplicate in their names by their
respective duly authorized officials, as of the day and year first
above written.

Attest:

CLEVELAND PUBLIC POWER

Date:

8/11/95

By:

Jerome W. Salko
Manager Electric
System Operations

APPROVED:

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

Date:

11/1/95

By:

Stanley F. Jones

10/31/95

NOTE: THIS SERVICE AGREEMENT IS BEING SUBMITTED UNDER PROTEST AND WITH
FULL RESERVATION OF RIGHTS BY CLEVELAND PUBLIC POWER BASED ON THE SERVICE
AGREEMENT EFFECTIVE JUNE 1, 1986 FOR THE TRANSMISSION OF NYPA POWER TO
CPP AND THE PAST PRACTICE OF CEI SINCE THAT TIME.

Issued By:

Richard A. Miller
President
Centerior Corporation

Effective: October 1, 1985

EXHIBIT A
POINT OF RECEIPT AND SERVICE SPECIFICATIONS

1. Name of Customer: CLEVELAND PUBLIC POWER
2. Location of point of receipt: CEI's existing interconnect with the Pennsylvania Electric Company.
3. Description of electricity: Electricity received from supplying utility will be three phase, 3 wires, alternating current of approximately 60 Hertz, at a nominal voltage of 345,000 volts.
4. Demand reservation: 32,000 KW originating from NYPA
5. Metered voltage: 138,000 volts
6. Location of meter: CPP/CEI interconnections
7. Effective date: August 11, 1995
8. Reservation period: January 1, 1996 0001 to December 31, 1996 2400 (hours ending).
9. Provisions for special facilities or conditions: _____

In Witness Whereof, CEI and Customer have each caused this Exhibit A to the Service Agreement for Provision of Transmission Service to Municipalities and Rural Electric Cooperatives, dated August 11, 1995 to be executed in their names by their respective duly authorized officials on this August 11, 1995.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

By: Stanley F. Jones

Date : 10/31/95

CLEVELAND PUBLIC POWER

By: Jerome W. Salko
Jerome W. Salko
Manager Electric
System Operations

Date: 8-11-95

NOTE: THIS SERVICE AGREEMENT IS BEING SUBMITTED UNDER PROTEST AND WITH FULL RESERVATION OF RIGHTS BY CLEVELAND PUBLIC POWER BASED ON THE SERVICE AGREEMENT EFFECTIVE JUNE 1, 1986 FOR THE TRANSMISSION OF NYPA POWER TO CPP AND THE PAST PRACTICE OF CEI SINCE THAT TIME.

Issued by: Richard A. Miller
President
Centerior Corporation

ATTACHMENT 6

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

City of Cleveland, Ohio

v.

The Cleveland Electric
Illuminating Company

)
)
)
)
)
)

Docket No. EL93-35-000

APPLICATION OF
CLEVELAND ELECTRIC ILLUMINATING COMPANY
FOR REHEARING OF ORDER ISSUED JUNE 9, 1995

Pursuant to Rule 713 of the Federal Energy Regulatory Commission's rules of practice and procedure, the Cleveland Electric Illuminating Company ("CEI" or "Company") hereby requests that the Federal Energy Regulatory Commission ("FERC" or "Commission") grant rehearing and modify its Order Directing Interconnection and Denying Complaint issued in this proceeding on June 9, 1995 (the "June 9 Order") insofar as that order directs CEI to provide a fourth interconnection between its electric system and that of the City of Cleveland, Ohio ("City") and to file with the Commission certain materials pertaining to such fourth interconnection.

I. INTRODUCTION

CEI is an electric public utility subject to the Commission's jurisdiction under Part II of the Federal Power Act which operates electric generation, transmission and distribution facilities for the purpose of providing electric service in northeastern Ohio, including the City.

The City operates a municipal electric system within CEI's control area for the purpose of providing electric service to certain customers who reside within the City. CEI is

presently interconnected with the City's electric system at three 138 kv interconnection points that are operated in parallel and have a total capacity of approximately 300 MVA. CEI engages in interconnected system operations with the City pursuant to an Agreement for Installation And Operation of a 138 KV Synchronous Interconnection between CEI and the City dated April 17, 1975, as amended (CEI Rate Schedule FERC No. 12) (the "CEI-City Interconnection Agreement").

The three existing interconnections between CEI and the City are more than ample to serve the maximum loads imposed by the City over those interconnections in a reliable manner.¹ Nevertheless, on April 22, 1993, the City filed a complaint in this proceeding in which it requested the issuance of an order directing CEI to establish a fourth point of interconnection between the CEI and City electric systems (the "Complaint"). The City alleged in part that CEI was obligated to establish such additional interconnection point as result of (a) a letter dated September 19, 1985 from Robert M. Ginn, then Chairman of the Board of CEI, to the Mayor of the City of Cleveland (the "Ginn Letter"), (b) an agreement dated October 18, 1985 among Toledo Edison Company ("Toledo Edison"), CEI and American Municipal Power-Ohio, Inc. ("AMP-Ohio") (the "AMP-Ohio Agreement"), and (c) a license condition adopted by the Nuclear Regulatory Commission in The Toledo Edison Company and The Cleveland Electric Illuminating Company, 10 NRC 265 (1979) and incorporated in licenses issued to CEI for ownership of certain nuclear power plants (the "NRC License Condition").

1. The total transfer capacity of those interconnections as specified in the CEI-City Interconnection Agreement is 300 MW. The City's peak load in 1994 was approximately 210 MW.

Commission erroneously assumes in the June 9 Order that the City has made such a request (June 9 Order at 13).

Since the Complaint was submitted to the FERC, it cannot be considered to be a request to CEI for establishment of an additional interconnection. Moreover, the Complaint is void of many of the essential details pertinent to establishment of an additional point of interconnection which must be included in any such request.⁷ There is no evidence in this proceeding of any other request for an interconnection which might support the Commission's finding that the City has complied with the condition precedent to establishment of any interconnection pursuant to the AMP-Ohio Agreement by submitting to CEI a reasonably detailed request for a fourth point of interconnection in which it articulates the nature and character of the interconnection that it is seeking. For these reasons, the Commission's finding that the City had made a request to CEI for an interconnection is not supported by substantial evidence and must be reversed

4. The FERC Erroneously Found That NRC License Condition Confers Upon The City The Right To A Fourth Interconnection With CEI.

The NRC License Condition obligates CEI, inter alia, to:

offer interconnections upon reasonable terms and conditions at the request of any other electric entity(ies) in the CCCT, such interconnection to be available (with due regard for any necessary and applicable safety procedures) for

-
7. The Commission has recognized in Section 2.20 of its regulations under the Federal Power Act that a good faith request for transmission services must specify in detail the character and nature of the services being requested so that the person being requested to provide such services may properly evaluate the request. Although that section is not directly applicable to this proceeding, the principle that a good faith request to a regulated utility incorporate pertinent details as to the nature and character of the request should not be ignored.

operation in a closed-switch synchronous operating mode if requested by the interconnecting entity(ies). (emphasis added)

In a cryptic and narrowly written discussion, the Commission stated in the June 9

Order:

For purposes of Cleveland's filing here, NRC Licensing Condition No. 2 describes conditions under which CEI is bound to provide an interconnection to Cleveland, i.e., upon request by Cleveland in exchange for the NRC's approval of the licenses. Cleveland has, in fact, made such a request. As such, given the facts of this case including the close nexus between NRC Licensing Condition No. 2 and the matters at issue here, we likewise will direct CEI to file NRC Licensing Condition 2 pursuant to section 205(c) of the FPA, and, consistent with that condition, to file a proposed interconnection agreement. (emphasis added)

Enforcement of nuclear plant license conditions is subject to the jurisdiction of the Nuclear Regulatory Commission, not this Commission. As CEI noted in its response to the Complaint (CEI Response To Complaint At 11):

FERC does not have authority under Sec. 205 of the FPA to interpret or enforce conditions established by another agency which are not incorporated in a rate schedule on file with FERC. While having jurisdiction to regulate reasonable implementation of these licensing conditions, FERC has no jurisdiction to enforce those conditions. See The Cleveland Electric Illuminating Co., 7 FERC ¶63,030 (1979), Mod. in Part at 11 FERC ¶61,114 (1980). In North Carolina Eastern Municipal Power Agency, 57 FERC ¶61,372 (1991), FERC denied a motion to have filed with it the NRC antitrust license conditions, reasoning, based on its decision in Florida Power & Light, 30 FERC ¶61,230 (1985), that the conditions are public information and the licensee's obligations are not affected by whether or not the conditions are filed.

The FERC did not promulgate the license condition at issue in this case, and therefore has no basis for attempting to impute meaning to that condition. Rather, this license condition was promulgated by the Nuclear Regulatory Commission pursuant to Section 105 of the Atomic Energy Act of 1984, as amended. Implementation of the Atomic Energy Act

is beyond the FERC's jurisdiction, and the FERC has no basis for usurping the NRC's statutory authority.

Moreover, the NRC License Condition is similar to nuclear plant license conditions made applicable to numerous utilities during the 1970s and early 1980s. Because these license conditions do not constitute rate schedules, the FERC has not as a general matter required that such license conditions be filed pursuant to Section 205 of the Federal Power Act. See, e.g., North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Company, *supra*, 57 FERC at 62,252-62,254. The mere fact that the City requested an order directing CEI to provide a fourth point of interconnection in which it alleged, *inter alia*, that failure to establish such an interconnection was a violation of that license condition cannot give the FERC the statutory right to assert jurisdiction over that license condition. Accordingly, to the extent that the grant of relief in the June 9 Order was justified on the basis of the NRC licensing conditions, it was beyond the FERC's jurisdiction and must be reversed.

The June 9 Order further assumes that there has been a request for an additional point of interconnection that was given to CEI pursuant to the NRC License Condition. On the contrary, as discussed above with respect to the AMP-Ohio Agreement, there has been no such request. It is therefore evident that, once again, the condition precedent to establishment of any point of interconnection pursuant to the NRC License Condition has not been met.

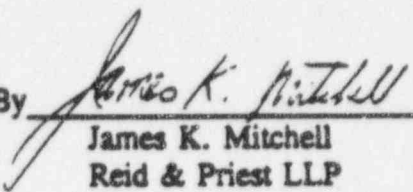
with respect to establishment of a fourth interconnection, it is not consistent with the terms of CEI's contractual commitments.

Accordingly, before the submittal of any compliance filing can be required by the Commission, it is essential that the Commission modify the June 9 Order in order to set forth clearly and unambiguously what is required for compliance with that order, and that any such requirement conform to the intent of the parties as reflected in the Ginn Letter, the AMP-Ohio Agreement and the NRC License Condition.

WHEREFORE, for the reasons set forth herein, CEI respectfully requests that the Commission grant rehearing and modify the June 9 Order insofar as that order purports to require that CEI submit a filing to the FERC for establishment of a fourth point of interconnection between the CEI and City electric systems in the west side of Cleveland.

Respectfully submitted,

CLEVELAND ELECTRIC ILLUMINATING
COMPANY

By 
James K. Mitchell
Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 508-402

Michael C. Regulinski
Centerior Energy Corporation
6200 Oak Tree Boulevard
Independence, Ohio 44131
(216) 447-2191

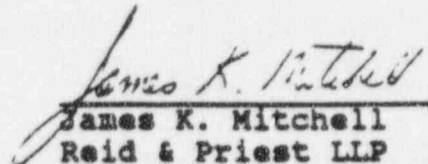
Its Attorneys

July 7, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 7th day of July, 1995.


James K. Mitchell
Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20426
(202) 508-4002

Of Counsel for
Cleveland Electric
Illuminating Company

ATTACHMENT 7

CENTERIOR ENERGY CORPORATION

CENTERIOR DISPATCH

OPERATING AGREEMENT

April 1987

Issued By: The Centerior System
Engineering & Operations
Department

This document lists the guidelines for the Centerior Dispatching Operation including economic loading of generating units and power transactions with other utilities.

Approved By:

H.W. Williams
H.W. Williams
Executive Vice President
Engineering & Operations
Centerior Service Company

Date

4/27/87

W.D. Masters
W.D. Masters
Vice President
System Engineering &
Operations
Centerior Service Company

Date

4/27/87

J.W. Fenker
J.W. Fenker
Senior Vice President
Engineering & Operations
The Cleveland Electric
Illuminating Company

Date

4.27.87

R.P. Crouse
R.P. Crouse
Senior Vice President
Engineering & Operations
The Toledo Edison Company

Date

4/23/87

CENTERIOR DISPATCH OPERATING AGREEMENT

Description of Parties

Centerior Energy Corporation ("CENTERIOR") through Centerior Service Company has undertaken activities to perform coordinated dispatch of the electrical facilities of The Cleveland Electric Illuminating Company ("CEI") and The Toledo Edison Company ("TE"). The term "Operating Companies" refers to CEI and TE.

Hour By Hour Transactions

The guiding principle in making hourly transactions between the Operating Companies versus other utilities will be to minimize total generation costs and maximize savings resulting from the combined Centerior operation. All transactions between the Operating Companies will be in accordance with and pursuant to a specific Service Schedule contained in the CAPCO Basic Operating Agreement.

1. In order to minimize the total generation costs of the Operating Companies the following policies have been adopted.
 - a. The Economy transactions as contained in the CAPCO Operating Agreement among CEI, TE, Ohio Edison Company, Duquesne Light Company and Pennsylvania Power Company will be used.
 - b. Incremental generation costs between the Operating Companies will be compared with other utilities' costs and the most economic source shall be utilized.
 - c. Normally, quotes shall be exchanged once an hour based on the forecasted load in the next hour.
 - d. For transactions between the Operating Companies, no minimum spread constraints shall be required, after the accounting of third party losses on the Ohio Edison Company system.
 - e. The operating companies shall strive for a 0 MW minimum power limit for transactions. The maximum power limits for transactions shall be the first contingency transmission system capability of the CAPCO parties transmission systems.
 - f. After the Operating Companies dispatchers have determined the amount of power transfer required to equalize incremental generation costs, CEI shall notify CAPCO of this amount for operating and loss accounting purposes.

- g. Each Operating Company Dispatch Organization shall make all necessary contacts with non-Centerior Operating Companies for other hourly transactions.

One Day or Longer Transactions

The guiding principle in making next day or longer transactions between the Operating Companies versus other utilities will be to minimize total generation costs and maximize savings resulting from the combined Centerior operation. All transactions between the Operating Companies will be in accordance with and pursuant to a specific Service Schedule contained in the CAPCO Basic Operating Agreement.

1. Next day transactions between the Operating Companies will be based on a willing buyer, willing seller policy.
2. CEI/TE shall initially charge the same demand charge for power sales to CEI/TE that is being offered to the other utilities.
3. If both Operating Companies are potential power purchasers then the Operating Companies will always buy the power for the lowest available cost.
4. If both the Operating Companies are potential power sellers, each company's selling price, and amount, shall be made available to all potential buyers. The potential buyers shall have the option of selecting either Operating Company as the power seller.
5. If one Operating Company is a potential buyer and the other a potential seller then the Operating Company that is in the buying position shall always buy the most economic power available whether from the other Operating Company or another utility. If the Operating Company sale price is equal to the other competitors, the Operating Company supplier shall be selected.

Approvals

1. The dispatching elements of the Operating Companies shall have the responsibility to approve all non-pass thru purchases of one day or less and non-pass-thru sales of 1 week or less. They will also approve all pass-thru transactions of one week or less.
2. The head of Centerior System Engineering and Operations will have the responsibility of final approval on all non-pass-thru interconnection purchases of more than one day and up to 2 weeks (not to exceed 200 MW's) and on all non-

pass-thru sales of more than one week and up to 2 weeks (not to exceed 200 MW's). He will also have the responsibility of final approval on all pass-thru interconnections transactions of more than one week.

3. The head of Centerior Engineering and Operations shall have the responsibility of final approval on all non-pass-thru interconnections transactions that (1) involve more than 200 MW's for 1 week or longer or (2) exceed 2 weeks in duration.
4. Interconnection transactions include those involving OVEC and municipal electric systems.

Pricing

All interchange between the Operating Companies will be priced immediately above internal load and Seneca pumping costs unless such pricing does not result in minimizing total generation costs and maximizing savings from the combined Centerior operation.

Emergency Power/Reliability of Short Term Power

Operating Companies will assign highest priority to provide each other emergency power. An Operating Company will terminate an existing emergency supply to an outside utility in order to honor a request for emergency power from an Operating Company. Operating Companies will assign highest priority to provide each other Short Term Power. In particular an Operating Company shall terminate Short Term Sales to other utilities before terminating such sales to the other Operating Company.

Mechanism for Solving Problems

Responsibility for resolving differences of opinion between the dispatching elements of the Operating Companies concerning economic dispatch operations and interconnection transactions shall belong to the head of Centerior System Engineering and Operations. If problems arise concerning Centerior dispatching the matter should be referred for resolution to the following three elements: Superintendent, System Operations Department or his alternate from Toledo, General Supervisor, System Dispatching Section or his alternate from The Cleveland Electric Illuminating Company, and Manager, Systems Operations Coordination or his alternate from Centerior. If a mutually agreeable solution cannot be reached, the head of Centerior System Engineering & Operations will settle the disputes after hearing the respective arguments.

Pertinent Documents and Agreements

Dispatching operation will recognize and consider the following:

CAPCO Basic Operating Agreement As Amended

CAPCO Transmission Agreement

Memorandum of Understanding and Agreement Dec. 19, 1985
(Regarding Centerior use of CAPCO transmission)

ECAR Document #2 (Daily Operating Reserve)

NERC Operating Guides and Minimum Criteria for Operating
Reliability

MEMORANDUM OF UNDERSTANDING
and
AGREEMENT

WHEREAS, The Cleveland Electric Illuminating Company ("CEI"), Duquesne Light Company ("DL"), Ohio Edison Company ("OE"), Pennsylvania Power Company ("PP") and The Toledo Edison Company ("TE") are members of the Central Area Power Coordination Group ("CAPCO"); and

WHEREAS, CEI and TE propose to become affiliated under a holding company structure wherein each would be the wholly owned subsidiary of a common parent and propose after that affiliation to make use for their benefit of certain transmission facilities which are owned in part by OE but which are subject to the CAPCO arrangements (the "OE CAPCO Lines"); and

WHEREAS, CEI, OE and TE are concerned that questions may arise after the proposed affiliation as to what is a permissible use of the OE CAPCO Lines by CEI and TE and wish to clarify the matter in advance for their mutual benefit and in order to enable CEI and TE to formulate definitive plans for the operation of their electric generating and distribution systems after their proposed affiliation is accomplished; and

WHEREAS, DL and PP could in the future be affected by any precedent established as a result of the use of the OE CAPCO Lines by CEI and TE after their proposed affiliation is accomplished if such use is alleged to be a permissible use under the CAPCO arrangements.

NOW, THEREFORE, the parties agree as follows:

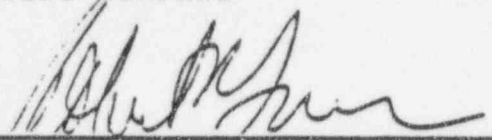
(1) That any use that CEI and TE might make of the OE CAPCO Lines would be improper unless such use was permissible under the CAPCO arrangements and that the CAPCO arrangements as they presently exist would permit CEI and TE to make use of the OE CAPCO Lines after their proposed affiliation only if such use is specified in a Schedule contained in the CAPCO Basic Operating Agreement dated as of September 1, 1980, as amended, or to obtain (each for itself as to its own ownership interest and not for the other) their ownership share of power generated by generating units designated as CAPCO Units under the CAPCO Basic Operating Agreement, and not otherwise; and CEI and TE, intending to be legally bound and in order to induce OE to formally acknowledge in advance the permissible scope under the CAPCO arrangements of their use of the OE CAPCO Lines after their proposed affiliation, agree that after their proposed affiliation is accomplished, any use by them or for their benefit of the OE CAPCO Lines that is not a use specified in a Schedule contained in the CAPCO Basic Operating Agreement or to obtain their ownership share of power as described above from a CAPCO Unit (hereafter called an "Additional Use") would be improper, would not be permissible under the CAPCO arrangements as they presently exist and will be made only after consultation with all of the CAPCO parties, and after appropriate amendments to the CAPCO Basic Operating Agreement have been entered into or other arrangements have been made to permit the Additional Use being contemplated. Any amendments to the CAPCO Basic Operating Agreement or other arrangements that are entered into for the purpose of permitting an Additional Use shall take into account

the extent of the interference or burden that will be imposed upon any CAPCO Party as the result of such Additional Use, and the Parties hereto agree that they will negotiate in good faith and on a reasonable basis to effectuate such amendments or other arrangements in order to permit any Additional Use that CEI and TE may request. CEI and TE specifically agree that any use of the OE CAPCO Lines to facilitate the operation of the CEI system (i.e., that part of the CEI-TE systems situated north and east of OE's service area) and the TE system (i.e., that part of the CEI-TE systems situated west of OE's service area) as a single control area would be such an Additional Use.

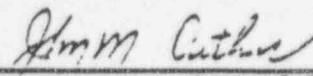
(2) In the event of any conflict between the terms of this Memorandum of Understanding and Agreement and any other CAPCO agreement or agreements previously entered into by and among the CAPCO Companies, the provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the CAPCO Parties have caused this Memorandum of Understanding and Agreement to be duly executed as of the 19th day of December 1985.

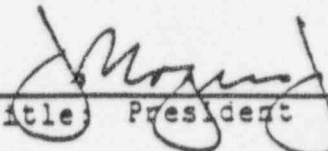
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By 
Title: Chairman of the Board & CEO

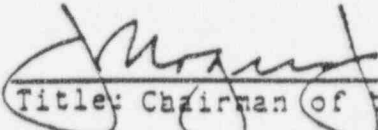
DUQUESNE LIGHT COMPANY

By 
Title: Chairman and President

OHIO EDISON COMPANY

By 
Title: President

PENNSYLVANIA POWER COMPANY

By 
Title: Chairman of the Board

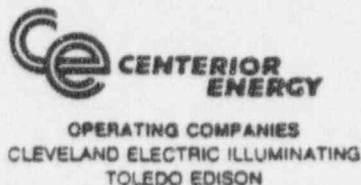
THE TOLEDO EDISON COMPANY

By 
Title:

ATTACHMENT 8

ATTORNEYS
MARY E. O'REILLY
KEVIN P. MURPHY
MICHAEL C. REGULINSKI
BRUCE T. ROSENBAUM
DOUGLAS J. WEBER
MARK R. KEMPIC

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TOLEDO OFFICE
EDISON PLAZA

RECEIVED
300 MADISON AVENUE
CANTON, OHIO 44702
FAX (419) 248-6251

October 9, 1995

Ms. Lois Cashell, Secretary
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Re: City of Cleveland, Ohio v. The Cleveland Electric
Illuminating Company; FERC Docket No. EL93-35-000

Dear Ms. Cashell:

This proceeding involves a complaint filed by the City of Cleveland, Ohio (the "City") against The Cleveland Electric Illuminating Company ("CEI" or the "Company") in which the City alleged, *inter alia*, that CEI was obligated by certain agreements into which it had entered to establish a fourth physical interconnection between the CEI electric system and the City's municipal electric system. In an Order Directing Interconnection and Denying Complaint issued June 9, 1995 (the "June 9 Order"), the Commission agreed with the City's allegation. It therefore directed CEI to provide a fourth interconnection with the City and "to file with the Commission its proposed charge for making the fourth interconnection within 120 days of the date of this order."

On July 7, 1995, CEI filed a timely application for rehearing of the June 9 Order in which it noted that the documents relied upon by the Commission in its June 9 Order failed to delineate many essential engineering details that are pertinent to establishment of an additional point of interconnection. Among the issues that must be resolved before an additional point of interconnection can be established and before the charges for the establishment of the interconnection can be determined are the location of the interconnection, the voltage at which the interconnection will operate, the facilities to be installed by each of the parties, and the modification or reinforcement of existing facilities that may become necessary as a result of the interconnection. The June 9 Order also left unresolved issues relating to compensation. CEI advised the Commission that until these issues were resolved, it could not make a compliance filing with confidence that it complied with the Commission's mandate.

On August 1, 1995, the Commission granted rehearing of the June 9 Order for the purpose of affording itself additional time in which to consider the issues raised in CEI's application for rehearing. No further action has been taken by the Commission since that time. Accordingly, the issues identified in CEI's application for rehearing of the June 9 Order remain unresolved. Without further clarification from the Commission regarding the issues identified in CEI's application for rehearing of the June 9 Order, CEI cannot be expected to develop a proposed charge for making the FERC-directed fourth interconnection or otherwise prepare a compliance filing with confidence that it conforms with the mandate of that order.

While awaiting clarification and instruction from the Commission, on June 30, 1995, CEI suggested to the City that it would be more practical and efficient to incorporate an evaluation of a potential fourth interconnection into another closely related study which CEI was already performing for the City to evaluate their request for transmission service for the period 1996 through 2003. On July 13, the City requested CEI to prepare an Engineering Studies Agreement to evaluate a fourth point of interconnection as recently proposed by the City and instructed CEI to perform this study separately and distinct from the transmission service study which was underway. Although CEI was somewhat surprised by the City's reluctance to merge the studies, CEI issued an Engineering Studies Agreement to the City on July 21, 1995 under which Centerior, as the agent for CEI, would perform the studies requested by the City that may be appropriate to evaluate the construction of a proposed fourth interconnection. At this opportunity, the Company also requested electrical diagrams showing the City's desired point of interconnection with the CEI transmission system and detailed power flow data for the City's existing transmission system in order to update CEI's engineering databases.

To date, the parties have entered into an Engineering Studies Agreement pursuant to which CEI is evaluating the engineering feasibility of a fourth point of interconnection as proposed by the City at CEI's Fox Substation. As requested by CEI, the City has provided CEI with electrical diagrams and power flow data which are necessary to enable CEI to model the electrical characteristics of the City's proposed expanded system. CEI has also presented the City with two supplemental requests for data. The City has responded to the first supplemental request and CEI anticipates the City's response to the second request in the near-term to support timely continuation of the study. CEI has informed the City that a meeting between the parties to discuss the technical aspects of the proposed interconnection would be productive once CEI has prepared its model of the City's system. CEI has also informed

the City that assuming the City timely complies with CEI's requests for data the target date for completion of the study is November 17, 1995.

Assuming, arguendo, that a fourth point of interconnection meeting the City's specifications can be established at the Fox Substation, there are several issues that are extremely important to establishing an additional interconnection between CEI's and the City's electrical systems. These issues will need to be resolved through negotiations between CEI and the City before a definitive interconnection agreement can be prepared. In addition, the City has requested CEI to assume in evaluating the interconnection that 90% of the City's projected load growth (i.e., from 245 MW in 1995 to 443 MW in the year 2003) will be attributable to customer conversions from CEI to the City, thereby introducing the issue of stranded investment into the interconnection agreement negotiations.

The respective costs for facilities associated with installation of a fourth interconnection at the Fox Substation will be derived from the study which is currently underway pursuant to the above-mentioned Engineering Services Agreement and subsequent facilities studies addressing the detailed engineering, design and cost of network additions or upgrades. Thus, computation of a proposed charge for making the City's proposed fourth interconnection will include, though may not be limited to, the costs of the following as they are determined:

- o construction of a fourth synchronous interconnection (its increased net transfer capability to be determined subject to study);
- o additional circuits, poles and taps;
- o additional equipment for synchronous operation with the parties' existing systems--e.g., protective relaying, arresters, disconnect switches, circuit breakers, etc.;
- o modification to existing protective relaying and control at other locations;
- o necessary metering and telemetering arrangements and communication equipment;
- o modification of existing data acquisition equipment at CEI's System Operation Center;
- o other equipment for reliable interconnected

system operation in accordance with good utility practice and ECAR standards to avoid imposing any objectionable operating conditions or adversely affecting the quality of power;

- o any other system modifications or reinforcements that may be required in order to enable CEI's system to accommodate the City's proposed interconnection;
- o compensation to CEI for any stranded investment that may be incurred from load loss to the City as a result of the increase in transfer capability between the CEI and City electric systems after the interconnection has been installed.

In computing the cost for equipment and facilities, the parties will also have to determine which costs will be borne by the City as its own expense or will be reimbursed to CEI and which party will have responsibility for ownership and maintenance of any new facilities.

Certainly, the Commission should be well-aware that the City is obligated under the CEI/City Interconnection Agreement and recent Commission Orders to avoid introducing objectionable operating conditions on CEI's system. Additionally, the City must correct unsafe conditions on the City's electrical system which directly affect CEI personnel, facilities and the public safety in compliance with the National Electric Safety Code (NESC) and good electric utility standards and safety practices based upon the CEI/City Standards, Court Orders and Remediation Agreements.

The City anticipates that load growth on its system during the next few years may cause its demands to exceed the current limit on power transfers incorporated in the CEI/City Interconnection Agreement. For this reason, the fourth interconnection currently under discussion between CEI and the City is intended to expand substantially the transfer capacity between the CEI and City electric systems. The greater loads and expanded transfer capacity will result in a significant increase in the risk to the safety and reliability of CEI's system that may result from actions by the City such as those that have occurred in the past that are unsafe or otherwise contrary to good utility practice. Thus, in addition to developing the cost components of the proposed charge for making the fourth interconnection, CEI is compelled to require the City to provide proof, to both the Company and the Commission, that

other major issues affecting the safety and reliability of interconnected system operations between CEI and the City have been resolved. That is:

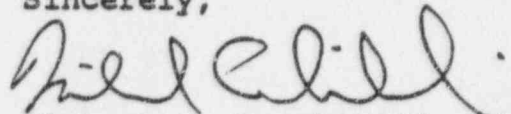
- o proof that the City has provided facilities adequate to reliably supply the reactive power requirements associated with the City's internal loads and refrain from drawing reactive power from CEI's system when to do so may introduce objectionable operating conditions on CEI's system as directed by the Commission in Cleveland Electric Illuminating Co. v. City of Cleveland, OH, 72 FERC ¶ 61,040, at p. 61,247 (1995);
- o proof that the City has established specific plans and procedures capable of enabling it to reduce demands on CEI's system, including the installation of remote-controlled switches capable of disconnection of portions of its load, when requested to do so to alleviate emergency conditions on CEI's system as provided in the CEI/City Interconnection Agreement;
- o proof that the City has established specific plans and procedures for: (1) discouraging and preventing the City and its contractors from trespassing against, altering, removing or interfering with CEI's lines, facilities and service equipment; (2) constructing the City's lines and service equipment with proper clearance from CEI's lines, service equipment and other utility facilities in compliance with the NESC and good electric utility standards and safety practices based upon the CEI/City Standards, Court Orders and Remediation Agreements; (3) identifying the presence of and avoiding CEI's underground facilities when digging; and (4) notifying and coordinating with CEI customer service transfers and power line protection requests; and
- o proof that the City has: (1) undertaken prompt remediation of the Lists of Notification of Additional NESC and Safety Violations (documenting to date over 2,000 City safety violations) before undertaking new expansion construction, including customer extensions; (2) conducted such remediation utilizing the CEI/City Standards, Court Orders and Remediation Agreements; and (3) complied with NESC and good electric utility standards and safety practices based upon the

CEI/City Standards, Court Orders and Remediation
Agreements for all future construction;

- o appropriate indemnification provisions to protect
CEI from the City's NESC and safety violations.

After agreement has been reached between CEI and the City
on these issues, CEI will be better able to prepare an
appropriate agreement establishing the rates, terms and
conditions under which a fourth interconnection point might be
constructed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael C. Regulinski". The signature is fluid and cursive, with a large initial "M" and "C".

Michael C. Regulinski, Esq.
Senior Counsel

cc: Parties of Record

ATTACHMENT 9



THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

P.O. BOX 5000 - CLEVELAND, OHIO 44101 - TELEPHONE (216) 622-8600 - ILLUMINATING BLDG. - 55 PUBLIC SQUARE

Serving The Best Location in the Nation

Robert M. Ginn
CHAIRMAN OF THE BOARD

September 19, 1985

The Honorable George V. Voinovich, Mayor
City of Cleveland
601 Lakeside Avenue, N.E.
Cleveland, Ohio 44114

Dear Mr. Mayor:

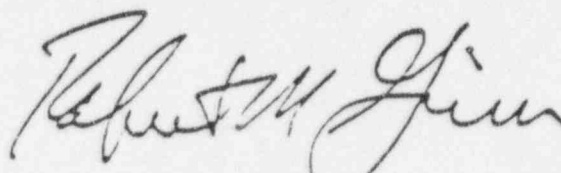
In accordance with recent discussions, I am setting forth our position on the following matters, upon agreement between the Company and the City:

1. The Company is willing to forego billing as firm demand the 5,420 kW demand registered on August 18, 1985 for the hour ending 9:00 p.m. This demand which was apparently caused by a dispatching error which was discussed by your dispatcher and ours shortly after the event. It appears that our dispatcher agreed to retroactively restate the power to be an emergency purchase by CPP. Although our dispatcher did not have the authority to make that determination, we will not reverse his decision in this case, otherwise, of course, fully reserving our rights in the future. According to your estimate this should result in savings to CPP of approximately \$240,000.
2. Upon receipt of the FERC Order in Case No. 83-138-000, the Company will neither seek rehearing nor otherwise engage in appellate proceedings. In this way the City will be able to expedite a refund which I believe you have estimated to be in excess of \$1,000,000.
3. Upon payment by the City of the sum of \$81,451 to the Company, the Company and the City will enter a consent judgment in City of Cleveland v. The Cleveland Electric Illuminating Company, Court of Common Pleas, Cuyahoga County, Ohio, Case No. 83-68505 and in the United States District Court for the Northern District of Ohio, Eastern Division, Case No. C84-338 as follows: "Settled and dismissed with prejudice, cost to be apportioned equally to the parties."

The Honorable George V. Voinovich, Mayor
City of Cleveland
September 19, 1985
Page 2

4. The Company will withdraw its opposition to City's "Motion for an Order Directing CEI to Discontinue Monthly Billing Reports to the Commission" filed June 25, 1985 in FERC docket Nos. E-7631, 7633, and 7713 and will agree to the closing of the aforesaid dockets.
5. The Company acknowledges the desire of the City to construct transmission lines from — (1) The City's Collinwood Substation to the City's Nottingham Pumping Station and, (2) From the City's existing Clinton-West 41st Street line to Cleveland Hopkins Airport. The Company agrees that if such lines are constructed, it will interconnect them to its system. The first interconnection would be made to the Company's Lloyd-Jordan line in the vicinity of the Nottingham Pumping Station and the second either to the Company lines in the vicinity of the Airport or, alternatively, to CEI's Fox Substation. Although CEI agrees to such interconnections, it must, of course, reserve the right to take whatever actions it deems appropriate with respect to the proposed construction of the lines, but the Company will definitely concur in the City's effort to obtain from the Federal Energy Regulatory Commission its regulatory approval of the interconnection.
6. The Company will file with the FERC the attached Service Schedule E - Economy Power.
7. The Company is presently exploring the possibility of an offer to supply firm power to the City with flexibility to cover situations when the amount of power scheduled from non-CEI sources, plus CEI-firm, is not adequate to meet the City's total requirements. We plan to make such a proposal, which has been discussed with Commissioner Pofok, within the next day or so; he is familiar with the parameters of our discussions in this regard.

Very truly yours,



Robert M. Einn
Chairman and CEO

ATTACHMENT 10

UNITED STATES OF AMERICA
BEFORE
THE FEDERAL ENERGY REGULATORY COMMISSION

City of Cleveland, Ohio)

v.)

Cleveland Electric)
Illuminating Company)

Docket No. EL93-35-000

**ANSWERS AND AFFIRMATIVE DEFENSES
BY THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

Introduction

On April 22, 1993, the City of Cleveland, Ohio ("City" or "CPP") filed a complaint with the Federal Energy Regulatory Commission ("FERC") for a fourth physical interconnection with The Cleveland Electric Illuminating Company ("Company" or "CEI").¹ Alternatively, the City requested summary disposition of a motion for an order to permit CPP to establish, at its own cost, a fourth physical interconnection. The City also seeks compensation for alleged overcollections or underpayments for power by CEI. The notice published on May 6, 1993 requires responses by June 7, 1993.

The Parties

The City owns and operates under the Ohio Constitution and state law a municipal electric system which provides retail service to customers within and without its municipal boundaries. The municipal system, now known as CPP, has three permanent 138 kV synchronous interconnections established with CEI:

1. The complaint asserted that certain documents were appended to it. However those documents were not filed with the FERC until May 12, 1993.

2. The proposed electrical configuration of the CPP transmission system, including the fourth interconnection.
3. The CPP long-range transmission plan.
4. The CPP current and long-range resource plan.
5. A current and long-range CPP load forecast that would provide substation loads in addition to the projected system load.
6. The schedule for initiating and terminating service.

Without this type of information, an engineering study cannot be conducted. The affect of a fourth 138 kV CEI to CPP synchronous interconnection on the capacity, reliability, voltage performance, power quality, fault protection and electrical stability of either the CEI or CPP electrical system cannot be determined without an in-depth engineering study. The City has not provided any of this pertinent information.

Finally, CEI denies that its strategy has been to limit Cleveland's ability to obtain maximum transfer capability (Comp., pg. 15). CEI denies it had refused to discuss an interconnection at CEI's Inland substation to restrict Cleveland access to the Regional Transmission Grid (See CEI Ex. 4-5). CEI denies that negotiations for a fourth interconnection have taken a similar course, ultimately ending in CEI's absolute refusal to even negotiate.

Complaint Part II. D-1: Section 202(b)

CEI restates and incorporates its answers and affirmative defenses previously given. The City has not shown in its complaint that a mandatory interconnection under Sec. 202(b), FPA, would serve the public interest under the Federal Power Act. The City is not transmission dependent on CEI. CPP has its own generating facilities. AMP-Ohio, a source of bulk power supply

for many municipal systems in Ohio, apparently plans the construction of transmission line systems into the City's service territory. CPP is also exploring additional generation options.

For the reasons stated in Part II. C-2, incorporated herein, CEI denies a fourth interconnection will not impose an undue burden on its system.

Sec. 201(a) of the FPA encourages voluntary interconnection and coordination. CEI is already physically interconnected at three locations with CPP. The City filed its complaint without establishing acceptable voluntary arrangements cannot be achieved.

Sec. 202(b) permits a FERC ordered interconnection only if "necessary or appropriate in the public interest." The City concedes that the present capacity of the interconnections is 100% greater than the load of the CPP system. CEI is without knowledge or information sufficient to form a belief as to whether 300 MVA will be inadequate once west side expansion is underway, and as more customers are connected to the CPP system on Cleveland's east side (Comp., pg. 17). However, CEI does not expect the City to add a substantial number of new customers in the next two years. The public interest would not be served in this case by requiring CEI to establish a fourth interconnection point with the City.

The City's failure in its complaint to establish the reasonableness or viability of its Phase II expansion plans for CPP on the west side leaves CEI without the knowledge or information sufficient to form a belief as to whether

a fourth interconnection to the CPP system would increase savings to the City, or would reduce energy costs to consumers within Cleveland (Comp., pg. 17).

However, CEI does not expect that a fourth interconnection would significantly improve the reliability of bulk power supply on the west side of Cleveland since the consumers are currently receiving reliable service from CPP or from CEI without it.

The City's complaint fails to specify the details of its Phase II expansion on the west side of Cleveland, or the details of the fourth interconnection point which it is seeking. For this reason, CEI nor FERC can properly assess the burden which the requested interconnection would impose on CEI. A fourth interconnection clearly results in duplication of facilities serving the west side of Cleveland. It is not in the public interest under the FPA for the Commission to order a fourth interconnection for the purpose of creating a more competitive retail market or to enable Cleveland to compete with CEI for the right to service residential loads on the west side of Cleveland.

Contrary to the City's allegations, CEI has not unreasonably refused to establish a fourth interconnection between CEI and the City at the Fox Substation or at any other location (Comp., pg. 18). However, CEI cannot consider agreeing to any such interconnection until all of the details of the proposed interconnection have been established and until CEI has assurance that the interconnection will not impair reliability of service to CEI's customers and that the City will pay all of the costs associated with creation of the interconnection and services to be provided across the interconnection,

including stranded investment costs. The FERC properly recognized in Shrewsbury Municipal Light Department v. New England Power Co., 32 FPC 373, 377 (1964) that the burden on the utility and its customers must be considered before ordering an interconnection under Sec. 202(b) FPA.

CEI has not unreasonably refused a fourth interconnection. CEI's alleged position of transmission control does not enable it to cripple CPP (Comp., pg. 18). The City is not a transmission-dependent utility since it has the ability to construct transmission lines to interconnect with other utilities besides CEI. By constructing such lines, the City can buy and sell power or energy on the market without wheeling by CEI.

Until details of the proposed fourth interconnection become available, CEI cannot assess the burdens on its system which the interconnection would cause. Whether CEI has ever before alleged any physical burdens from a fourth interconnection is not relevant until the City requests a fourth interconnection on the west side (Comp., pg. 18-19).

CEI denies the Letter was a binding commitment, or alternatively, is any longer a binding commitment. The phrase within that Letter regarding concurrence with the City's effort to receive FERC approval was not intended to forego addressing the physical burdens or economic burdens that a fourth interconnection might impose on CEI and its customers (Comp., pg. 19).

CEI is without knowledge or information sufficient to form a belief as to whether a fourth interconnection would require the enlargement of CEI's generating facilities or impair its ability to render adequate service to its

customers (Comp., pg. 19). However, the possibility cannot be overlooked. At a minimum, the City is not entitled to a mandatory interconnection under Sec. 202(b) FPA, unless the City can demonstrate the interconnection will not impair reliability of service to CEI customers or require enlargement of CEI generating facilities.

CEI denies that the absence of a fourth interconnection is tantamount to forcing CPP to give up its right to compete with CEI or to provide reliable service at reasonable cost to customers (Comp., pg. 19).

CEI denies that the Commission has ample authority and should order a fourth interconnection at CEI's Fox Substation pursuant to Sec. 202(b) of the FPA.

Complaint Part II. D-2: Sec. 210 of FPA

CEI restates and incorporates its answers and affirmative defenses previously given. CEI denies that the City is entitled to a fourth interconnection under Sec. 210, FPA. The City has not shown that a fourth interconnection is in the public interest. A fourth interconnection would not encourage overall conservation of energy or capital expenditures. Total consumption of energy by CEI and CPP consumers will remain unchanged, while a fourth interconnection will cause duplication of CEI and CPP facilities serving the west side of Cleveland and will result in wasteful use of capital. A fourth interconnection will not optimize the efficiency or use of facilities and resources, nor has the City shown a fourth interconnection will significantly improve the reliability of service in areas presently served by CPP.

Further, CEI denies the City has satisfied all the conditions under Sec. 210, regardless of whether Cleveland expresses a willingness to pay all appropriate direct costs of a fourth interconnection. The City also must pay for all of CEI's uncompensated economic loss resulting from an additional interconnection, including stranded investment costs. Failure of the City to completely compensate CEI is contrary to the public interest and unfair to CEI ratepayers. CEI is without knowledge or information sufficient to form a belief as to whether a fourth interconnection would place an undue burden on CEI's system, or would unreasonably impair CEI's ability to serve its current customer load.

Complaint Part II. E Summary Disposition

CEI restates and incorporates its answers and affirmative defenses previously given. Summary disposition is not warranted under the facts alleged by the City. FERC does not have available in this complaint all relevant facts necessary for determining that reasonable grounds for investigation of the complaint do not exist without a hearing. The City has failed to establish a basis under which the Commission might order the establishment of a fourth interconnection. FERC should summarily dismiss the City's complaint regarding such interconnection.

The minimum information required for an application for a mandatory interconnection under Section 202(b) of the FPA is set forth in Part 32 of the FERC regulations under the FPA, 18 CFR. Section 32.1 requires that the applicant set forth, inter alia:

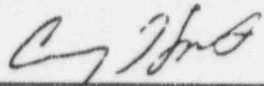
- * A description of the proposed interconnection, showing the proposed location, capacity and type of construction; and

Conclusion

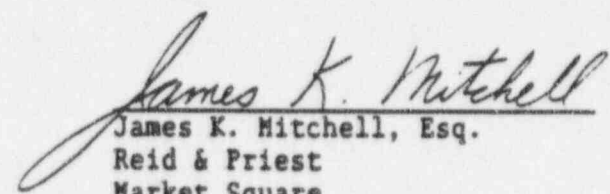
The City complaint fails to establish that it is entitled to the relief sought. The City is not entitled to a fourth interconnection under any of the factual or legal basis alleged. Further, the City is not entitled to a refund of \$2.8 million or to a payment of \$6.7 million. This complaint should be dismissed or else scheduled for hearing without consolidation with the CEI pending wholesale rate case.

Respectfully submitted this
7th day of June, 1993,
The Cleveland Electric
Illuminating Company

By



Craig I. Smith, Esq.
Principal Counsel
Michael C. Regulinski, Esq.
Counsel
Centerior Energy Corporation
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Independence, Ohio 44131
(216) 447-3206/447-2191



James K. Mitchell, Esq.
Reid & Priest
Market Square
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 508-4002

Attorneys for The Cleveland
Electric Illuminating Company

IN THE MATTER OF)
)
CLEVELAND ELECTRIC ILLUMINATING COMPANY)
)
(PERRY NUCLEAR POWER PLANT,) Docket No. 50-440-A
UNIT 1, FACILITY OPERATING LICENSE)
No. NPF-58) Docket No. 50-346-A
)
(DAVIS-BESSE NUCLEAR POWER STATION,)
UNIT 1, FACILITY OPERATING LICENSE)
No. NPF-3))

TO: Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 1996, copies of the foregoing document were served upon each of the following by first-class mail:

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Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Squire, Sanders & Dempsey
1201 Pennsylvania Avenue N.W.
Washington, D.C. 20044

D. Biard MacGuineas, Esq.
Volpe, Boskey and Lyons
918 Sixteenth Street, N.W.
Washington, D.C. 20006

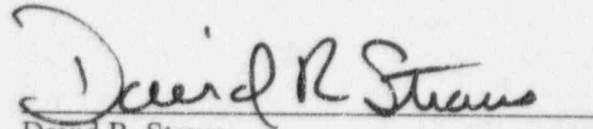
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Washington, D.C. 20037

A handwritten signature in dark ink, reading "David R. Straus". The signature is written in a cursive style with a large, looping "D" and "S". A horizontal line is drawn beneath the signature.

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