UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Office of Nuclear Reactor Regulation

In the Matter of	)	
	)	Docket Nos. 50-440
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY	)	50-346
	)	
	)	(City of Cleveland's 2.206 Petition
(Perry Nuclear Power Plant, Unit 1, and Davis-Besse Nuclear Power Station, Unit 1)	)	to enforce antitrust conditions)

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
RESPONSE TO CITY OF CLEVELAND's 2.206 PETITION

I. Introduction

The Cleveland Electric Illuminating Company ("CEI" or "Licensee") hereby responds to the "Petition of the City of Cleveland, Ohio for Expedited Issuance of Notice of Violation, Enforcement of License Conditions, and Imposition of Appropriate Fines" (Jan. 23, 1996) (hereinafter "Petition"). As requested by the NRC's letter of April 12, 1996, this response addresses each of the four allegations raised by the Petition. These allegations should be dismissed not only because they lack merit but also because they relate to matters currently under FERC consideration.

The City of Cleveland's petition is asking the Nuclear Regulatory Commission to take enforcement action against CEI because of several controversial disputes that FERC is currently considering in a number of pending proceedings that have been initiated either by CEI or the City of Cleveland. With respect to every allegation, whether or not there has been a violation of CEI's license conditions depends on the substantive resolution of those disputes being adjudicated by

FERC. In essence, the City of Cleveland seeks to circumvent these FERC proceedings through NRC intercession. This would usurp FERC's decisional responsibility and expertise.

While the NRC is a competent and professional agency, its primary expertise is not in the field of antitrust, or in interpretation or application of the Federal Power Act and Energy Policy Act of 1992 ("EPAct") amending the Federal Power Act. The issues raised by the Petition involve not only complex factual issues but interpretation and application of the Federal Power Act and EPAct amendments. Clearly, FERC should be permitted to apply its expertise and make its regulatory determinations before the NRC decides whether an additional enforcement proceeding should be initiated.

II. The Antitrust Conditions Must Be Interpreted and Implemented In a Manner Consistent with the Federal Power Act, the Energy Policy Act of 1992, and FERC-approved Rates, Charges and Practices

One of the major defects in the City of Cleveland's petition is that, in urging the NRC to act in advance of FERC rulings, the petition ignores the relationship of the antitrust conditions not only to proper interpretation and application of the Federal Power Act and EPAct, but also to the rates, charges and practices approved by FERC and other regulatory agencies. In this regard, CEI's licenses state:

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

License No. NPF-3, ¶ E(10); License No. NPF-58, App. C, ¶ A(11) (emphasis added).

This relationship is fundamental. The antitrust conditions in NRC licenses are not interpreted and enforced in isolation, but require consideration of the requirements of the Federal Power Act (and EPAct's amendments to the Federal Power Act), as well as FERC decisions and approvals. Thus, for example, while CEI's license conditions require CEI to wheel power, such wheeling must be consistent with the Federal Power Act and FERC-approved rates, charges and practices. Where a particular transaction would be inconsistent with the Federal Power Act or with FERC requirements (or with other applicable legal requirements), such wheeling is not required by the license conditions. Therefore, FERC's requirements and rulings may be determinative of a particular dispute.

III. Where Appropriate Implementation of a License Condition Depends on Interpretation of the Federal Power Act or Energy Policy Act, or on FERC Approvals, Watchful Deference to FERC is Appropriate

Where appropriate implementation of a license condition depends on interpretation of the Federal Power Act or EPAct, or on FERC rulings, NRC deference to FERC is clearly appropriate. FERC is the federal agency directly charged with administering the Federal Power Act, and it has the primary responsibility and expertise to decide under what terms and conditions wholesale transactions should be conducted. NRC attempts to decide substantive issues within FERC's purview could lead to conflicting federal rulings, and in any event would be a duplicative use of governmental resources.

The NRC has previously recognized the appropriateness of deferral to FERC. In Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), DD-81-15, 14 N.R.C. 589 (1981), the Director of Nuclear Reactor Regulation observed that allegations that certain NRC antitrust conditions had been

violated depended on FERC's interpretation of statutory terms used in those conditions. Noting that the particular issues had been raised by the petitioner and licensee in a pending FERC proceeding, the Director ruled that FERC should be afforded the opportunity to interpret the statute and its own regulations "free of any intrusion an advance interpretation on my part might cause." 14 N.R.C. at 590.

Similarly, in Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit 2), DD-95-10, 41 N.R.C. 361 (1995), the Director of Nuclear Reactor Regulation employed and endorsed the concept of "watchful deference" to FERC proceedings and decisions. 41 N.R.C. at 368, citing City of Holyoke Gas and Electric Department v. SEC, 972 F.2d 358, 363 (D.C. Cir. 1992). In that case, the Director ruled that a FERC order requiring network transmission service resolved the 2.206 petition before the NRC. The Director noted that there were issues outstanding between the licensee and petitioner that needed to be resolved before the petitioner could begin taking network transmission service, but ruled that such issues were "rate-related issues within the jurisdiction of the FERC, not the NRC." 41 N.R.C. at 368.

CEI urges the Commission to employ the concept of "watchful deference" espoused by both the NRC and Courts. See City of Holyoke Gas and Electric Department v. SEC, 972 F.2d 358, 363 (D.C. Cir. 1992); Wisconsin Environmental Decade v. SEC, 882 F.2d 523,527 (D.C. Cir. 1989). Such deference is not an abdication of responsibility, but rather a practical recognition that wasteful duplicative proceedings are not necessary when another agency is addressing a matter. City of

Holyoke, 972 F.2d at 363. Where that agency has primary jurisdiction and expertise, this policy of "watchful deference" is particularly compelling.

IV. All of the Allegations Raised by the Petition Are Issues Requiring FERC Resolution

In its Petition, the City of Cleveland makes four main allegations: (1) that CEI has violated Antitrust Condition No. 3 by refusing to provide firm wheeling service to the City's municipal electric system, Cleveland Public Power ("CPP"); (2) that CEI has violated Antitrust 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 Condition No. 2 by failing to offer the City a fourth "interconnection [point] upon reasonable terms and conditions"; and (4) that CEI violated Antitrust Condition No. 2 by unreasonably burdening use of the existing interconnections through unilateral imposition of a $75.00/kW-month deviation charge. Petition at 12.

A. The Provision of Wheeling Services

At the outset, the NRC should note that CEI has regularly and consistently offered firm wheeling services to CPP since 1978, under terms and conditions determined to be reasonable in FERC filed transmission tariff, CEI FERC Electric Tariff, First Revised Volume No.1. In this regard, CPP's peak transfers over the CEI/CPP interconnection in 1994 were approximately 204 MW (190 of which were wheeled under the transmission tariff), approximately 218 MW in 1995 (192 wheeled), and CPP has reserved 252 MW of firm transmission service for 1996. Further, CPP has requested and received short-term non-firm power sales and emergency transactions, under a FERC filed Interconnection Agreement between CEI and CPP designated as CEI Rate Schedule

FERC No. 12. From 1993 to 1995, CPP requested and received a greater share of its service as firm under the transmission tariff. Affidavit of Szwed, ¶ 4, 35.

In February 1996, CEI and Toledo Edison jointly filed open-access, non-discriminatory transmission tariffs. The filed tariffs would (a) expand the availability of point-to-point transmission over the CEI and Toledo Edison electric systems, (b) provide network transmission service under which power may be transmitted between and among multiple receipt points and multiple wholesale delivery points, and (c) enable entities to reserve transmission service over the combined Centerior transmission system for a system-wide rate. Moreover, the tariffs establish a basis under which rates, terms and conditions applicable to third party users of Centerior's transmission system will be comparable to Centerior's own uses of its transmission system for wholesale power transactions. Further, CEI and Toledo Edison will make the mandatory compliance filing providing non-discriminatory open access transmission service as required by the FERC final order on the open-access NOPR in Rule 888 issued April 24, 1996.

In contrast, the City of Cleveland's allegation that CEI has violated Antitrust Condition No. 3 relates to one disputed transaction -- CEI's refusal to wheel 40 MW from Ohio Power Company. Petition at 13-14. However on the date that CEI informed CPP that it would not agree to provide transmission service associated with the proposed transaction, it sought a ruling from FERC that the proposed transaction is the functional equivalent of retail wheeling not required under Sections 211 and 212 of the Federal Power Act. Affidavit of Wack, ¶ 9. As discussed in the affidavit of John P. Wack, CEI believes that this request in effect seeks retail wheeling between Ohio Power and one of

CEI's customers, the Medical Center Company, in CEI's service territory. As such, CEI has challenged the proposed transaction as a "sham wholesale transaction" prohibited by Section 212 of the Federal Power Act, and is awaiting FERC's ruling on this matter.

CEI's basis for challenging the requested wheeling of power from Ohio Power to the Medical Center is based on several facts. First, CEI understands that the proposed transaction is based on an oral agreement which was reached (probably in the spring of 1995) during face-to-face negotiations between Ohio Power (as power supplier) and Medical Center (the retail load). Second, the subsequent written contract between CPP and Medical Center reflects a direct pass-through of CPP payments to Ohio Power. Specifically, Medical Center agrees to pay a charge to CPP "based upon a fixed AEP [American Electric Power, Ohio Power's parent corporation] demand charge of $6.50 per kilowatt month, AEP's actual energy and emission charges ... plus an actual cost incurred by [CPP] for transmission and taxes of any kind, however measured, paid directly or indirectly by [CPP]." Thus, CPP is simply acting as a strawman to facilitate the retail wheeling of power from Ohio Power to Medical Center.

This sham transaction is not the sort of wheeling which CEI is required to undertake under the Federal Power Act, because it violates the EPAct amendments to the Sections 211 and 212 of the Federal Power Act. While Section 211 vests the Commission with "Certain (wholesale) Wheeling Authority" (in order to promote competition in the supply of electric energy at wholesale level), Section 212(g), which is entitled "Prohibition on Orders Inconsistent with Retail Marketing Areas," provides that no order may be issued under Section 211 which is inconsistent with a state law which

governs the retail marketers of electric utilities.[1] Section 212(h), "Prohibition on Mandatory Retail Wheeling and Sham Wholesale Transactions," further proscribes the issuance of a mandatory retail wheeling order, i.e. an order that would impose a condition on, or require, any transmitting utility to engage in "the transmission of electric energy: (1) directly to an ultimate consumer . . ." or (2) "to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless ..." such wholesale entity is one of several expressly permissible types (including a municipal electric system) and such permissible wholesale entity was already providing service to the ultimate consumer when the EPAct was enacted and would use transmission or distribution facilities that it owns or controls to make deliveries to the ultimate consumer.

Here, the transaction between Ohio Power and CPP and the transaction between CPP and Medical Center are two halves of the same transaction. The contemplated purchase of capacity by Medical Center, in reality, would be a purchase from Ohio Power, and the service contemplated to be provided by CPP, in effect, would be retail wheeling. Likewise, the wheeling services that CEI had been requested to provide with respect to the proposed transaction is tantamount to the wheeling of electric energy directly to an "ultimate consumer," i.e. Medical Center. Thus, the agreements between Medical Center, CPP and Ohio Power are "shams," transparently designed to conceal the Ohio Power/Medical Center oral agreement and to circumvent the prohibition in FPA

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1 CEI also filed with the PUCO a complaint alleging that the proposed transaction between Ohio Power, Medical Center and CPP violated the Ohio Certified Territory Act, but the complaint was dismissed on jurisdictional grounds. CEI has appealed the dismissal to the Ohio Supreme Court. Affidavit of Fullem, ¶ 16, fn. 4.

Section 212(g) and Section 212(h) against retail wheeling that would occur if and when CEI transmits the energy contemplated to be sold in the proposed transaction.[2]

The proposed transaction is not the sort of wheeling that CEI is required to undertake under its NRC license conditions, for several reasons. First, as a sham transaction effectively involving wheeling from Ohio Power to Medical Center, the transaction does not fall within the ambit of the license conditions, because those conditions do not require retail wheeling. The NRC's antitrust conditions require CEI to wheel power to a requesting "entity" explicitly defined by the conditions as an electric generation or distribution system. License No. NPF-3, ¶ E (Definitions); License No. NPF-58, App. C, ¶ A (Definitions). This condition does not require wheeling to a customer. Further, the purpose of the license condition is to allow competitive entities to develop "bulk power services options." License No. NPF-3, ¶ E(3) note **; License No. NPF-58, App. C, ¶ A(3) note **. Retail wheeling is clearly unrelated to this purpose for the NRC antitrust conditions.[3]

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[2] CEI has not opposed CPP's and Ohio Power's requests for expedition of the FERC proceedings. In fact, CEI filed its petition well in advance of the date that the proposed transaction can commence (assuming they are lawful) solely to resolve, as soon as possible, the key legal issue whether the transaction constitutes a sham.

[3] That the wheeling provision is intended to apply to wholesale transactions is also demonstrated by paragraph 11 of the provisions, stating: "These conditions are intended as minimum conditions and do not preclude Applicants from offering additional wholesale power or coordination services to entities within or without the CCCT." Further, in the NRC proceeding in which the antitrust conditions were formulated, wheeling was defined as the transfer by direct transmission or displacement electric power from one utility to another over the facilities of an intermediate facility. Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3; Perry Nuclear Power Plant, Units 1 and 2), ALAB-560, 10 N.R.C. 265, 275 n. 24 (1979). This definition also shows that the antitrust conditions were intended to refer to wholesale wheeling.

Second, the proposed transaction is not required by the license conditions because it is inconsistent with the Federal Power Act and with rates, charges and practices approved by FERC. If, as CEI maintains, the proposed transaction is a sham and in fact retail wheeling to a customer in CEI's service territory, CEI is not required to wheel such power either under its FERC-approved tariffs or under the Federal Power Act.

The City argues that the NRC should not stay its hand because FERC may resolve CPP's complaint based on CEI's tariff, and not address CEI's obligation under the NRC license conditions. Petition at 19. This argument simply ignores the relationship between FERC's approvals and the antitrust conditions.[4] If FERC rules that CEI in not obligated to wheel the power under FERC-approved tariffs and the Federal Power Act, there is no violation of the NRC antitrust conditions. Since FERC's ruling on this matter will be determinative, staying its hand until FERC has completed its proceeding is exactly what the NRC should do.

The City also attempts to suggest that CEI's refusal to wheel power is part of a larger pattern of conduct, but it is clear on the face of the City's pleadings that this claim is specious. The City first refers to a 1995 occurrence where CEI provided certain transmission services on a non-firm basis.

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[4] The City also remarks on CEI's position that FERC should not enforce NRC antitrust conditions. Petition at 19. All this signifies is that the antitrust conditions do not impose independent obligations on CEI, but instead require CEI to wheel power consistent with the FPA and subject to the rates, charges and practices approved by FERC. Thus, FERC's responsibility is to determine whether a proposed transaction is required or permissible under the Federal Power Act and to approve the rates, charges and practices that apply. NRC's responsibility is to take enforcement action if and when it is determined that CEI is refusing to wheel power in a manner consistent with the FPA and FERC rulings.

The City conveniently omits most of the relevant facts, glosses over the dismissal of a lawsuit related to this transaction, and makes no mention whatsoever of FERC's review of the matter.

As discussed in the Affidavit of Stanley F. Szwed, ¶ 20-26, on May 11, 1995, the City requested 62 MW of additional firm transmission service under the tariff on file with the FERC to start June 1, 1995. The total request for 187 MW total of firm transmission service greatly exceeded the 72 MW which had been reserved by the City in June of 1994. CEI promptly evaluated the City's request for additional firm transmission service under the tariff pursuant to an established planning criteria contained in CEI's annual transmission planning and evaluation report (FERC Form 715) on file with the FERC. Upon careful study of the request and the foreseen conditions, CEI offered to provide 25 MW of the requested 62 MW as firm service (for a total of 150 MW firm) and the remaining 37 MW on a non-firm basis. This denial of firm transmission service for the 37 MW increment of power was for only approximately five weeks, due to CEI's operational considerations until its Ashtabula No. 5 unit returned to service, and was conditioned upon CPP's ability to meet its own reactive needs.[5] More specifically, CEI stated that it anticipated that firm service could be provided starting July 5, 1995, and determined that CPP had enough internal generation in reserve to make up any potential loss of the offered non-firm 37 MW of transmission service in the interim. Further, CEI advised the City that the additional power needs could be scheduled under the

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[5] On July 11, 1994, CEI filed a complaint before the FERC in Docket No. EL94-75-000 pursuant to the CEI/CPP Interconnection Agreement and pursuant to Federal Power Commission Opinion No. 644. CEI's complaint sought to require CPP to install facilities to supply all of the reactive power requirements imposed by CPP on CEI's system, and other related actions. Pursuant to a July 14, 1995 FERC order, CPP was directed to install facilities necessary to meet its own reactive needs. CEI v. City of Cleveland, 72 FERC ¶ 61,040, at p. 61,255-61,256.

interconnection agreement on file with the FERC between CEI and CPP, and in fact all of the requested transmission, including the transmission of the 37 MW on a non-firm basis, was provided.

The City of Cleveland refers to one additional occurrence in 1994, where CEI interrupted transmission service to CPP for 1 1/2 hours because of system constraints. The City asserts that this interruption was unnecessary or the result of poor planning. Petition at 17-18. However, as the City's own petition indicates, this complaint has been considered and rejected by FERC. CEI v. City of Cleveland, 72 FERC ¶ 61,040, at p. 61,260-61,261 (1995).

B. Provision of Emergency Power

The City alleges that CEI has violated Antitrust Condition No. 6 by assigning the highest priority to the provision of short-term and emergency power to The Toledo Edison Company ("Toledo Edison"). Petition at 20-21. Condition 6 states,

> Applicants 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; or (2) to non-Applicant entities outside the CCCT.

License No. NPF-3, ¶ E(6); License No. NPF-58, App. C, ¶ A(6).

CEI has on file with the FERC a schedule by which CPP can purchase emergency and short term power pursuant to the CEI/CPP Interconnection Agreement. In fact, CPP has purchased emergency and short term power from CEI and Toledo Edison from time to time. In 1995, alone, CPP requested and received emergency power from CEI on one or more occasions for 24 days. CEI has and will continue to sell emergency power to CPP on an as-needed basis and has never refused to

provide emergency service when it had it available on its system. CEI cannot recall a single instance where CPP has requested emergency service from it and CEI or Toledo Edison were unable to provide such service to CPP, and CEI has procured emergency power in order to provide it to the City. Nor is CEI aware of any instance where short-term or emergency power was provided to CPP under terms or conditions less favorable than those available to other utilities outside the Centerior system for a comparable transaction. Therefore, CEI believes that it has honored both the letter and spirit of Condition No. 6.

The City does not dispute that CEI has provided CPP with emergency power and has done so under fair and reasonable terms and conditions. Instead, it predicates its challenge entirely on a provision in the 1987 Centerior Dispatch Operating Agreement, which states:

> The operating companies will assign a highest priority to provide each other power. An operating company will terminate an existing emergency supply to an outside utility in order to honor requests for emergency power from an operating company. Operating companies will assign the highest priority to provide each other short-term power. In particular, an operating company will terminate short term sales to other utilities before terminating such sales to the other operating company.

Although this provision has never been exercised in a manner to harm or discriminate against it, the City claims that this provision is a "blatant violation of License Condition No. 6."

Centerior does not believe that the antitrust condition was intended to prohibit Centerior's internal dispatching agreement and that a contrary interpretation would conflict with SEC requirements. In this regard, when their antitrust conditions were formulated, CEI and Toledo Edison were unaffiliated. Consequently, the antitrust conditions did not contemplate or address the interchange that might be appropriate if the common shares of two CAPCO utilities were later

acquired by a single holding company. The conditions simply indicated that each of the licensees would sell emergency and short-term power on terms no less favorable than those available to the other unaffiliated CAPCO companies.

This situation changed in April 1986 when the Securities and Exchange Commission (SEC) issued an order approving Centerior's acquisition of CEI and Toledo Edison as wholly-owned subsidiaries. Release No. 35-24073; 70-7149. The SEC noted that CEI and Toledo Edison were physically interconnected through Ohio Edison Company's transmission system thereby satisfying the integrated utility system standard necessary to approve the affiliation. The SEC required that Centerior file an operating agreement describing the manner in which Centerior will sustain the development of an integrated utility system. This Centerior Dispatch Operating Agreement was prepared and executed to satisfy this legal requirement.

As a result of the requirement to maintain an integrated utility system, Centerior now conducts interchange power transactions and coordinates the economic dispatch of CEI's and Toledo Edison's generating facilities to minimize generation costs. CEI and Toledo Edison also coordinate plant outages and thus depend on each other to satisfy power needs of the Centerior system, including operating margins and emergency requirements. The operation of Toledo Edison and CEI as an integrated system, and the associated power interchange and economic dispatch, necessarily require CEI and Toledo Edison to provide power to each other under an internal system. This is not an act of anticompetitive discrimination but the simple workings of an SEC-required integrated system.

The antitrust conditions should not be construed as prohibiting this type of coordinated internal activity in an integrated utility system, because the City is treated no differently from any other outside entity. Any other interpretation would result in the antitrust conditions being implemented in a manner inconsistent with SEC regulation, which is inappropriate under condition no. 11. Further, interpreting the antitrust conditions in a manner inconsistent with the operation of an integrated utility system is simply unreasonable. It would be absurd if the two affiliated operating companies, operating an integrated system contributing to the overall welfare benefit of the ratepayers and shareholders, should be required to provide emergency services to a third party company and forego assisting each other. Indeed, this would be in violation of common business sense and fiduciary duties to the sister company.

Accordingly, the antitrust conditions should not be interpreted to prohibit the provisions of Centerior's Dispatch Operating Agreement. Further, even if the Operating Agreement were viewed as conflicting with the antitrust agreement, such conflict would not be grounds for enforcement and sanctions against CEI, particularly since the City has suffered absolutely no injury from the provisions. At most, Antitrust Condition No. 6 should be amended to make it clear that it does not prohibit Centerior's internal power exchange and dispatch.

In any event, there is no need for the NRC to resolve this issue at this time. Again, the City suffered no injury from the challenged provision. Indeed, the City has never been denied short-term or emergency power. Therefore, at this juncture, the issue is merely academic. Further, Centerior's

Dispatch Operating Agreement was filed with SEC and made public in 1987, and it is remarkable that the City has waited nine years to complain of the power-sharing provision.[6] Finally, CPP has brought this issue regarding the violations of Licensing Condition No. 6 before the FERC, and the NRC may wish to await FERC's action on this matter to obtain the benefit of FERC's views.

C. The Fourth Interconnection

The City alleges that CEI has violated Antitrust Condition No. 2 by failing to offer a fourth interconnection point. Petition at 21. Antitrust Condition No. 2 states:

> Applicants, and each of them, shall offer interconnections upon reasonable terms and conditions at the request of any other electric entity(ies) in the Combined CAPCO Company Territories (CCCT), 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). Ownership of transmission lines and switching stations associated with such interconnection shall remain in the hands of the party finding the interconnection subject, however, to any necessary safety procedures related to disconnection facilities at the point of power delivery. Such limitations on ownership shall be the least necessary to achieve reasonable safety practices and shall not serve to deprive purchasing entities of a means to effect additional power supply options.

License No. NPF-3, ¶ E(2); License No. NPF-58, App. C, ¶ A(2)

Contrary to the City's allegation, CEI has complied with the license condition above by installing and maintaining three prior interconnections sufficient to meet all of the City's current needs, and by working toward the installation of the fourth. CEI has not "refused" to install a fourth interconnection, but instead has expended significant effort to establish reasonable terms for such

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[6] The City claims in a footnote that it did not become aware of the agreement until it was submitted to FERC in 1995. Since the City intervened in the SEC proceedings, was copied with the filing and it was publicly filed, this claim does not appear credible.

interconnection and ensure that the interconnection is compatible with the safety and reliability of CEI's system. Further, this entire matter is pending before FERC.

CEI has previously installed three interconnections for the City, and operates these interconnections pursuant to a FERC-approved CEI/CPP Interconnection Agreement. The total transfer capacity of these interconnections as specified in the CEI/CPP Interconnection Agreement is 300 MVA and exceeds the City's past peak loads, as well as the 252 megawatts of firm transmission that the City has reserved for 1996.

During the negotiations resolving the City's objections to the CEI/Toledo Edison affiliation and other matters, CEI and CPP reached an understanding that CEI would install a fourth interconnection upon the City's construction of certain transmission lines. During the 1988-1989 negotiation for the third interconnection, the City proposed a fourth interconnection at another location than Fox substation. In 1993, CPP led CEI to believe that instead of a fourth interconnection, the City might internally loop their system and relocate their existing west side interconnection to eliminate the need for the fourth interconnection. CEI has also become increasingly concerned with the safety and reliability of CPP's expansion program. CPP's system construction and engineering is below generally-accepted public utility standards, and as a result, service to CEI's customers has been interrupted, one CEI employee has been injured, and CEI's equipment has been damaged.[7]

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[7] CEI has brought suit in the Ohio Court of Common Pleas to require CPP to comply with applicable engineering and utility industry standards. CEI v. City of Cleveland, et al., No. 265008 (Cuy. Cty. Ct. Common Pleas). In a separate lawsuit in which contractors sued the City for nonpayment of costs associated with the construction of the City's distribution system, the City admitted in its answer, counterclaims and third party complaint

The City claims that CEI "refused to comply" with its request for a fourth interconnection at the Fox substation. Petition at 22. This claim is inaccurate. In 1993, CEI initiated negotiations to amend the CEI/CPP Interconnection Agreement. During one negotiating meeting, the City requested that CEI proceed with installation of a fourth interconnection at the Fox substation, and CEI merely responded that it wished to reach agreement on its proposed amendments to the interconnection agreement before turning to the matter of the fourth interconnection. After this single exchange, the City filed its FERC complaint.

The City claims, "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*." Petition at 22 (emphasis in original). This claim, too, is inaccurate. FERC ordered CEI to provide the fourth interconnection based upon a September 19, 1985 letter from CEI's chief executive to the mayor of Cleveland (CEI letter), a 1985 contract between CEI, Toledo Edison and American Municipal Power-Ohio (AMP-Ohio Agreement), and the license conditions. FERC did not find that CEI had refused to provide the fourth interconnection. Nor did FERC find that there was any violation of the Company's commitments or its antitrust conditions. Rather, FERC found that the CEI letter, AMP-Ohio agreement, and license conditions "support an order to provide a fourth interconnection" and directed CEI to file those documents with the FERC. 71 FERC ¶ 61,324 at p.

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that its system does not meet applicable codes and standards. Guarantee Company of North America, et al. v. City of Cleveland, et al., No. 1:95CV1936 (ND Ohio).

62,267 through 62,269. (FERC declined to order the interconnection under Sections 202(b) and 210 of the Federal Power Act. 71 FERC at 62,267 n. 13.)

The City next suggests that CEI is in "defiance of FERC's mandate" (Petition at 23), but only later in the petition acknowledges that CEI sought and was granted rehearing of FERC's order (Petition at 25). CEI sought rehearing for two reasons. First, CEI believes that FERC should not have ordered the interconnection pursuant to the CEI letter, AMP-Ohio agreement and license conditions without findings that the interconnection was warranted under Sections 202(b) and 210 of the Federal Power Act. Second, CEI has indicated that there are a number of essential issues that need to be decided before the interconnection can be installed. For example, there is currently no specification of the capacity of the interconnection, the voltage at which it will operate, the facilities that will be installed by each party, the date on which the interconnection is to be completed, metering arrangements, the payments to be made by the City to compensate CEI for the establishment of the interconnection, and modification of existing facilities that may be necessary as a result of the additional interconnection. There are also significant safety and reliability concerns that need to be resolved.

Further, CEI did not wait for a FERC ruling on its request for rehearing, but contacted the City to initiate the necessary evaluation of a fourth interconnection as proposed by the City. CEI proposed performing this evaluation as part of a related study on the City's request for transmission services through 2003, but at the City's request, agreed to perform a separate study of the fourth interconnection pursuant to an engineering studies agreement. In January, 1996, CEI provided to

the City a "Cost and Capability Analysis of the Proposed Fourth CEI/CPP Interconnection". The study incorporates all assumptions provided by CPP, and CPP's responses to supplemental data requests. The relevant data and materials used to perform the study were enclosed with the study, and Centerior instructed CPP on the manner in which to replicate the study using ECAR models and specific CEI data.

The City claims that the technical issues that CEI has been seeking to resolve are specious roadblocks. Petition at 23. The importance and necessity of these matters, however, has been put before FERC. In a response to a November, 1995 motion in which CPP asserted that CEI was not being responsive to FERC's order, CEI discussed in detail the unsafe practices by CPP which had jeopardized the integrity of CEI's electric system and CEI's employees. CEI explained that it was essential to address these safety violations in any agreement to establish a fourth interconnection because the greater load and expanding transfer capabilities (expected to result for the establishment of a fourth point of interconnection between CEI and CPP) will result in an increase in the risks to the safety and reliability of CEI's system resulting from the City's constructions activities that are unsafe or otherwise contrary to good utility practice.

In sum, CEI has taken reasonable steps in response to the City's request for a fourth interconnection, and since the matter is before FERC, there is no need for NRC intercession. And, while the City attempts to distinguish this case from the NRC's deference to a FERC proceeding in St. Lucie, there is no legitimate distinction. The matter of a fourth interconnection is squarely before FERC. Moreover, the City's argument that the NRC should inject itself into this proceeding and

impose a significant financial penalty on CEI because "FERC lacks authority to impose one" is baseless. FERC has authority to enforce its orders, including the authority to issue civil penalties of up to $10,000 per day for violations of its orders pursuant to Sections 316 and 316A of the Federal Power Act, 16 USC §§ 825o and 825o-1.

D. Power Flow Control

The City's last allegation is that a deviation charge under the CEI/CPP Interconnection Agreement violates Antitrust Condition No. 2, quoted above. The City claims that this charge violates CPP's "right under the Antitrust Condition No. 2 to obtain interconnections with CEI 'upon reasonable terms and conditions'". Petition at 31-32.

CEI believes that the City's allegation distorts the meaning of Antitrust Condition No. 2. The license condition relates to the installation of interconnections upon reasonable terms and conditions, not incentives that CEI proposed to the FERC to encourage the City to minimize unscheduled power deliveries from CEI to the City.

The deviation charge is not an anti-competitive term. As testified to by the FERC staff and found by the Administrative Law Judge, the deviation charge provides the City with an incentive to operate in a manner which minimizes unscheduled power flow between CEI and the City. Further, the proposed charge is less than the prior firm power rate schedule approved by FERC, which obligated the City to pay CEI a total of $83.93/kW-month should a 1kW deviation occur. In fact, the deviation charge is comparable to the 100 mills/kWh emergency energy rate that the City cites on

page 33 of its Petition as having been found reasonable by FERC. (100 mills/kWh corresponds to $72/kW-month.)[8]

The City's arguments opposing CEI's compensation proposal of one-half of its then-current month's fuel charge and the City's proposal for energy return-in-kind was rejected by the FERC. The City does not bring to the NRC any arguments different from or more compelling than those brought before the FERC.

In any event, the reasonableness of the currently proposed positive and negative deviation charge is before FERC. Evidentiary hearings have been held before an Administrative Law Judge, who has determined that a $25/kW-month deviation charge should be imposed (still exorbitant, according to the City[9]). If FERC adopts this decision, any excess amounts paid by the City will be refunded with interest in accordance with the FERC's regulations, 18 CFR § 35.19a.

V. Conclusion

For all of the reasons stated herein, the NRC should deny the City of Cleveland's petition.

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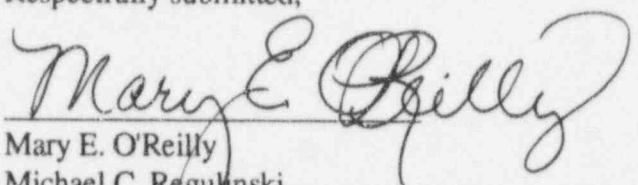
[8] The City is inaccurate in representing that the Company's deviation charge applied to a single unscheduled delivery of 1,500 kW in one hour of a month would produce a higher payment to CEI than if it assesses a 100 mill/kWh rate for 1,500 kWh of emergency energy in each and every hour of the month. The City is comparing hourly rates with monthly rates. Applying the deviation charge to a single unscheduled delivery of 1,500 kW in one hour would produce a charge of about $156, while assessing a 100 mill/kWh for that same hour would produce a charge of over $150.

[9] See Petition at 31.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Office of Nuclear Reactor Regulation

In the Matter of	)	
	)	Docket Nos. 50-440
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY	)	50-346
	)	
	)	(City of Cleveland's 2.206 Petition
(Perry Nuclear Power Plant, Unit 1, and Davis-Besse Nuclear Power Station, Unit 1)	)	to enforce antitrust conditions)

Affidavit of John P. Wack, William T. Beutler, Stanley F. Szwed, Charles V. Fullem, Gwendolyn K. Luciano and Anthony N. Discenza

County of Cuyahoga)
) SS:
State of Ohio)

1. John P. Wack, William T. Beutler, Stanley F. Szwed, Charles V. Fullem, Gwendolyn K. Luciano and Anthony N. Discenza, being duly sworn according to law, hereby depose and state as follows:

2. We are submitting this affidavit in support of Cleveland Electric Illuminating Company's Response to the City of Cleveland's 2.206 Petition. We have personal knowledge of the matters set forth in the paragraphs noted below and state that they are true and correct to the best of our information and belief.

3. This affidavit addresses four principle allegations made by the City of Cleveland: (1) that CEI has violated Antitrust Condition No. 3 by refusing to provide firm wheeling service to its municipal electric system, Cleveland Public Power ("CPP"); (2) that CEI has violated Antitrust Condition Nos. 6 and 11 by entering into a contract to p.ovide Toledo Edison Company with emergency power on a preferential basis; (3) that CEI violated Antitrust Condition No. 2 by failing to offer the City a fourth "interconnection [point] upon reasonable terms and conditions; and (4) that CEI violated Antitrust Condition No. 2 by unreasonably burdening use of the existing interconnections through unilateral imposition of a $75.00/kW-month deviation charge. Petition at 12. Each of these allegations is addressed in turn below.

I. Wheeling

4. CEI presently provides the City with firm transmission service under its FERC Electric Tariff, First Revised Volume No. 1. Ir 1993, 60% of the deliveries that CEI provided to the City were under the transmission tariff. This figure increased to 68% in 1994 and 93% in 1995. The remainder of the service provided by CEI to the City was short-term non-firm power sales and emergency transactions.

5. In addition, on May 25, 1995, CEI and Toledo Edison jointly filed open-access non-discriminatory transmission tariffs. The CEI transmission tariff included an open-access point-to-point transmission tariff which provides firm and non-firm transmission service for all eligible entities, including the City of Cleveland. On December 20, 1995, the FERC directed CEI to revise its tariffs and file additional information in support of its revised tariffs. On February 29,

1996, CEI filed revised open access tariffs for point-to-point transmission service and for network integration service that are to be implemented by Centerior Electric Company (Centerior), the surviving electric utility upon the merger of CEI and Toledo Edison, and service agreements for service to be rendered under the point-to-point transmission service to the City.

6. The CEI open-access tariff complies in all material respects with the pro forma point-to-point tariffs set forth by the FERC and the Notice of Proposed Rulemaking in Docket Nos. RM95-8-000 and RM94-7-001 Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities. FERC States and Regulations, ¶ 35,514 (1995). Furthermore, the proposed rates for CEI transmission services are conforming rates in accordance the Commission's Policy Statement established in its Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities under the Federal Power Act, FERC Regulations Preamble, ¶ 31,005 (1994).

7. The filed tariffs would (a) expand the availability of point-to-point transmission over the CEI and Toledo Edison electric systems, (b) provide network transmission service under which power may be transmitted between and among multiple receipt points and multiple wholesale delivery points, and (c) enable entities desiring to do so to reserve transmission service over the combined Centerior transmission system for a system-wide rate. Moreover, the tariffs establish a basis under which rates, terms and conditions applicable to third party users of Centerior's transmission system will be comparable to Centerior's own uses of its transmission system for wholesale power transactions.

8. On April 24, 1996, the FERC issued its Final Order on the Open-Access NOPR in Rule No. 888. The Final Order also contains a single *pro forma* tariff describing the minimum terms and conditions of service to provide non-discriminatory open access transmission service. CEI and Toledo Edison will make the mandatory compliance filing providing such non-discriminatory open access transmission service.

A. The Ohio Power - Medical Center Transaction

9. The City of Cleveland alleges that CEI has violated antitrust conditions in the NRC licenses for the Davis-Besse Nuclear Power Station and the Perry Nuclear Power Plant by refusing a request by Cleveland Public Power (CPP) for wheeling of 40 MW from Ohio Power Company. Petition at 13-14. As discussed below, CEI believes that this request in effect seeks retail wheeling between Ohio Power and one of CEI's customers, the Medical Center Company, in CEI's service territory. As such, Centerior has challenged it as a "sham wholesale transaction" prohibited by the Federal Power Act, and is awaiting FERC's ruling.

10. Medical Center is a non-profit corporation owned and controlled by nine institutions[1] located within CEI's service territory. CEI has provided retail service to Medical Center for approximately 60 years. Currently, Medical Center purchases power from CEI pursuant to an agreement approved by the Public Utilities Commission of Ohio (PUCO). Medical Center

[1] The institutions owning Medical Center are: University Hospitals of Cleveland, Case Western Reserve University, The Cleveland Museum of Art, the Church of the Covenant, the Musical Arts Association, the Cleveland Botanical Garden, the Cleveland Hearing and Speech Center, the Cleveland Medical Library Association, and the Cleveland Institute of Art.

constitutes approximately a 50 MW retail load on the CEI system. Ohio Power is owned by American Electric Power Company, an electric utility holding company.[2]

11. Medical Center has informed CEI that Medical Center will terminate services from CEI effective September 1, 1996. Commencing September 1, 1996, Ohio Power will supply CPP with approximately 50 MW of power energy, which will be passed directly through to Medical Center. As described below, the monthly charges that Medical Center will owe CPP are directly tied to the cost of the power and energy that Ohio Power (and/or the AEP system as a whole) will supply to serve the Medical Center loads.

12. Because Ohio Power and Medical Center are not directly connected, and because Medical Center lies well inside CEI's certified service territory under Ohio law, Ohio Power needs CEI to transmit the power and energy from CEI's interface with Ohio Power to delivery points within the City of Cleveland. Because CEI is not required to engage in retail wheeling under the Federal Power Act, Ohio Power and the Medical Center have entered into contracts with CPP in order to characterize the sale as a wholesale transaction. As a result, on August 11, 1995, CPP requested 40 MW of transmission service from "CEI's existing interconnection with Ohio Power" to begin September 1, 1996.[3] A copy of CPP's letter requesting the transmission service, which

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[2] AEP has four other generating subsidiaries: Appalachian Power Company, Columbus Southern Power Company, Indiana-Michigan Power Company, and Kentucky Power Company.

[3] CPP made its request for this service pursuant to the terms of CEI's currently-effective FERC Electric Tariff, First Revised Volume No. 1, which provides firm point-to-point transmission service.

includes service not associated with the proposed transaction and agreed to be supplied, is attached as Attachment A.

13. CEI believes that the proposed transaction is based upon an oral agreement which was reached (probably in the spring of 1995) during face-to-face negotiations between Ohio Power (as power supplier) and Medical Center (the retail load). On behalf of CPP, an official of the City of Cleveland subsequently stated in a private letter or memorandum that "we are given to understand that (AEP) was Medical Center's preferred source" (Attachment B). Furthermore, an officer of CEI was informed by Medical Center that CEI's "true competitor" was Ohio Power, and not CPP.

14. To implement the oral agreement, Ohio Power, Medical Center and CPP entered into two separate contracts: (1) On July 31, 1995, Ohio Power entered into a "Power Supply Contract" with CPP, which Ohio Power filed with the FERC in Docket No. ER96-501-000 (Attachment C); and (2) Earlier in the year, Medical Center and CPP entered into an Electric Power Service Agreement (Attachment D). Consistent with the true nature of the proposed transaction, this agreement provides that Medical Center charges would reflect a direct pass-through of CPP payments to Ohio Power. Specifically, Medical Center agrees to pay a charge to CPP "based upon a fixed AEP demand charge of $6.50 per kilowatt month, AEP's actual energy and emission charges (the current estimates of which are shown in Exhibit B thereto), plus an actual cost incurred by [CPP] for transmission and taxes of any kind, however measured, paid directly or indirectly by [CPP]."

15. By letter dated November 2, 1995 (Attachment E), CEI informed CPP that CEI would not agree to provide transmission services associated with the Proposed Transaction (although CEI agreed to provide all other transmission service requested included in CPP's August 11, 1995 request).

16. Also on November 2, 1995, CEI filed with the FERC a Petition for Declaratory Order that CEI is not required to transmit power and energy generated by Ohio Power to retail loads that are currently served at retail by CEI in the City of Cleveland, Ohio. (Attachment F) CEI alleged that the proposed transaction, although contractually disguised as a wholesale sale from Ohio Power to CPP, will be the functional equivalent of a sale "directly to an ultimate consumer." CEI further alleged that an oral agreement between Ohio Power and the retail loads underlies the Proposed Transaction. Therefore, in accordance with Section 212 of the Federal Power Act (the "FPA") as amended by the Energy Policy Act of 1992 (the "EPAct"), CEI is not required to provide the transmission service with respect to the Proposed Transaction.[4]

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[4] CEI had previously (in May 1995) filed with the PUCO a complaint alleging that the proposed transaction between Ohio Power, Medical Center and CPP violated the Ohio Certified Territory Act. In the alternative, this complaint requested that if the Commission did not prohibit retail sales within CEI's certified territory by Medical Center or Ohio Power, the Commission should allow CEI to recover from Medical Center stranded investment for generation distribution facilities built by CEI to serve Medical Center.

On August 10, 1995, the PUCO dismissed CEI's complaint on jurisdictional grounds. On November 30, 1995, CEI instituted an appeal before the Ohio Supreme Court. The matter has been briefed before the Ohio Supreme Court and is currently awaiting a decision from that court.

17. On December 13, 1995, CPP filed a protest to CEI's Petition for a Declaratory Order and Motion to Intervene and For Summary Disposition.[5] CPP argued the proposed transaction is not a sham designed to circumvent the Section 212 prohibition against retail wheeling.

18. While CEI did not oppose the intervention of CPP in its proceeding, CEI has opposed its Motion for Summary Disposition. CEI has taken the position that either CEI's petition should be granted as a matter of law, or that a full trial-type hearing should be held before the FERC regarding the issues.

19. On December 12, 1995 and on December 19, 1995, the Southern California Edison Company and the Long Island Lighting Company filed motions to intervene. Both of these parties intervened because they asserted that CEI's petition presents novel issues, the resolution of which may affect all utilities. Both parties asserted that the FERC's decision on the issues presented by the petition ultimately may affect every transmitting utility in the United States. The requested order, for example, may provide guidance concerning the eligibility of entities for wholesale transmission service, and the concept of what constitutes a sham transaction may be clarified as a result of CEI's petition.

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[5] On November 29, 1995, CPP also initiated its own FERC proceeding by filing a complaint against CEI in Docket No. EL96-21-000. The complaint seeks an order requiring CEI to provide transmission service to CPP for a 40 MW purchase of power by CPP from Ohio Power Company and asserts that such transmission is required independently by: (1) CEI's Tariff No. 1 on file with the FERC, and (2) Antitrust Licensing Condition No. 3 imposed upon CEI by the NRC. CPP requested that this complaint be consolidated with CEI's proceedings in FERC Docket No. EL96-9-000.

B. Other Wheeling Allegations

20. On May 11, 1995, the City requested 62 MW of additional firm transmission service under the tariff on file with the FERC (which request was increased to 64 MW on or about May 24) to start June 1, 1995. At that time, the City had requested, and CEI had committed to provide, 125 MW of firm transmission service from CEI pursuant to CEI's Electric Tariff, First Revised Volume No. 1.[6] The requested 187 MW total of firm transmission service greatly exceeded the 72 MW which had been reserved by the City in June of 1994.

21. CEI promptly evaluated the City's request for additional firm transmission service under the tariff pursuant to an established planning criteria contained in CEI's Annual Transmission Planning and Evaluation Report (FERC Form 715) on file with the FERC. Upon careful study of the request and the foreseen conditions, CEI offered to provide 25 MW of the requested 62 MW as firm service (for a total of 150 MW firm) and the remaining 37 MW on a non-firm basis. CEI advised the City the additional power needs could be scheduled under the CEI/CPP Interconnection Agreement on file with the FERC.

22. CPP can generate 48 MW of power, 11 MW more than the subject 37 denied on a firm basis. CPP's Mr. Salko testified before the common pleas court that CPP's 48 MW of generation

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[6] Generally, firm transmission service is a firm or constant obligation to be met by the utility rendering such service, whereas non-firm service is subject to interruption if the service providing utility's firm obligations exhausts its resource to provide the service. Obviously, it is improper to schedule firm transmission services beyond a utility's foreseeable available facilities. Before a utility can commit to firm transmission service, a number of technical considerations must be made with respect to the firm transmission availability.

is mainly held in reserve for peak loads and emergencies. CPP had enough internal generation in reserve to make up any loss of the offered non-firm 37 MW of transmission service.

23. CEI's denial of the City's request was not absolute. CEI offered to provide all the transmission capacity requested, but the last 37 MW of the requested increase was to be on a non-firm basis. To the extent CPP's request was denied, the denial was for only approximately five weeks, due to CEI's operational considerations, until its Ashtabula No. 5 unit returned to service. Additionally, CEI offered to provide all the service on a firm basis conditioned upon CPP's ability to meet its own reactive power needs.[7] Finally, CEI stated that it anticipated that firm service could be provided starting July 5, 1995, and firm service was provided on that date.

24. On May 31, 1995, CPP filed a verified complaint for declaratory injunctive relief and a motion for temporary restraining order before the Court of Common Pleas of Cuyahoga County, Ohio. The complaint sought an order requiring CEI to transmit CPP's purchase power requests on a firm basis to CPP through CEI's transmission lines.

25. On May 31, 1995, a hearing was held before Judge Clearly of the Court of Common Pleas of Cuyahoga County on CPP's Motion for a Temporary Restraining Order. CEI objected to the need for any injunctive relief as well as the court's subject matter jurisdiction to grant the relief

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[7] On July 11, 1994, CEI filed a complaint before the FERC in Docket No. EL94-75-000 pursuant to the CEI/CPP Interconnection Agreement and pursuant to Federal Power Commission Opinion No. 644. CEI's complaint sought to require CPP to install facilities to supply all of the reactive power requirements imposed by CPP on CEI's system, and other related actions. Pursuant to a July 14, 1995 FERC order, CPP was directed to install facilities necessary to meet its own reactive power needs. CEI v. City of Cleveland, 71 FERC ¶ 61,040 at p. 61,255-61,256.

sought. At the conclusion of the hearing that day, the court declined to issue a temporary restraining order and thereafter dismissed the complaint for lack of jurisdiction. The City has appealed both decisions.

26. Upon the City's request, the FERC investigated CEI's May 19, 1995 response to the City's May 11, 1995 request for firm transmission service. CEI was contacted by J. Steven Herod, Director of the FERC's Office of Electric Power Regulation, through a series of telephone calls. CEI responded to his questions and advised him of the events and circumstances. CEI advised Director Herod that, absent unplanned circumstances, there would be no power interruptions to the City's firm and non-firm wholesale power services, and that such schedules were already available for any such service to CPP. The FERC declined to take any action on the City's complaint. Moreover, no interruption of service occurred.

II. Provision of Emergency and Short-Term Power

27. Prior to 1986, and in particular in the late 1970s when the antitrust conditions were formulated, CEI and Toledo Edison were separate, unaffiliated utilities. On April 29, 1986, the Securities and Exchange Commission (SEC) issued an order approving Centerior's acquisition of Cleveland and Toledo affiliation. In that order, the SEC required that Centerior file an operating agreement describing the manner in which Centerior will sustain the development of the integrated utility system.

28. To comply with the requirement to maintain an integrated utility system and satisfy the SEC, Centerior filed with the SEC on April 28, 1987, Centerior Dispatch Operating Agreement, governing the interchange of power between CEI and Toledo Edison. No modifications or supplements to the Agreement have been filed with the SEC.

29. In order to maximize savings from scheduling generation dispatch between the utilities, Centerior conducts interchange power transactions between the control areas for the maximum benefit of both companies and their ratepayers. The Agreement provides for coordinated dispatch of electric facilities of CEI and Toledo Edison in order to minimize generation costs and maximize savings resulting from the combined economic dispatch.[8]

30. CEI and Toledo Edison coordinate outage scheduling and depend upon each other to satisfy power needs of the Centerior system, including operating margins and emergency requirements.

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[8] The power flow between the control areas which is expected to achieve an equalization of generation costs within each control area in any hour is scheduled in advance of the hour in which power is to be delivered through appropriate communications between Centerior and Ohio Edison's system dispatch centers in accordance with the CAPCO Basic Operating Agreement. For example, if Centerior anticipates that for the next hour the incremental cost of power generation will be lower in Toledo Edison's control area than in CEI's control area, then Centerior calculates how much of a scheduled power flow can be effected to equalize the incremental production cost rate in the two areas. By calculating how much the incremental cost for generation can be expected to increase in Toledo Edison's control area by generating the extra power, and by calculating how much the incremental cost of generation can be expected to decrease in CEI's area by generating less power, Centerior finds the optimal schedule interchange of powerflow from Toledo to CEI. This flow permits the incremental cost rate of power to become equalized in both control areas, and the total incremental cost of power production to Centerior and to its rate payers to be minimized.

31. Centerior's Dispatch Operating Agreement includes the following provision challenged by CPP:

> The operating companies will assign a highest priority to provide each other power. An operating company will terminate an existing emergency supply to an outside utility in order to honor requests for emergency power from an operating company. Operating companies will assign the highest priority to provide each other short-term power. In particular, an operating company will terminate short term sales to other utilities before terminating such sales to the other operating company.

This provision in the Dispatch Operating Agreement is necessary for an integrated utility system. The operation of Toledo Edison and CEI as an integrated system, and the associated power interchange and economic dispatch, necessarily require CEI and Toledo Edison to provide power to each other under an internal system.

32. While CEI and Toledo Edison operate as an integrated utility system pursuant to SEC requirements, sales of emergency and short-term power to CPP are not treated differently from sales to any other outside entity. CEI has on file with the FERC a schedule by which CPP can purchase emergency power pursuant to the CEI/CPP Interconnection Agreement. In fact, CPP has purchased emergency power from CEI and Toledo Edison from time to time. In 1993, 1994 and 1995, the City requested and received emergency service on one or more occasions for 69 days, 27 days and 24 days, respectively. CEI has and will continue to sell emergency power to CPP on an as-needed basis and has never refused to provide emergency service when it had it available on its system. Additionally, CEI has procured emergency power as necessary in order to provide emergency service to the City. CEI cannot recall a single instance where CPP has

requested emergency service from it and CEI or Toledo Edison were unable to provide such service to CPP. Nor is CEI aware of any instance where short-term or emergency power was provided to CPP under terms or conditions less favorable than those available to other utilities outside the Centerior system for a comparable transaction. Therefore, CEI believes that it has honored both the letter and spirit of Condition No. 6.

33. On May 2, 1994, as supplemented on July 15, 1994, CEI and Toledo Edison submitted before the FERC a joint application for Commission authorization pursuant to Section 203 of the Federal Power Act to merge Toledo Edison into CEI, thereby forming a single utility company. The merger will achieve benefits and administrative operating efficiencies.

34. The City has challenged the emergency and short term power provision of Centerior's Dispatch Operating Agreement in its June 20, 1995 Protest, Motion to Intervene, Opposition to Request for Blanket Waiver of Commission Regulations and Motion for Summary Rejection, as supplemented in its Renewed Protest, Motion to Intervene, Opposition to Request for Blanket Waivers of Regulations and Motion for Summary Rejection filed with the FERC April 12, 1996 in Docket No. ER95-1104-000 concerning Centerior's open access tariff filing. The City asserts: "NRC Licensing Conditions Nos. 5 and 6, reprinted in 10 NRC 298, require CEI (and Toledo Edison) to sell maintenance and emergency power, respectively, to "requesting entities" on "terms and conditions no less favorable" than those on which the companies make these services available to each other and to other entities. That obligation should be reiterated here, not

avoided." Additionally, CPP inserted the following footnote in its protest to the licensing conditions:

> CPP's willingness to discriminate and its past violations of licensing conditions are reflected in the April, 1987 Centerior's "operating agreement" appended to the May 9, 1995 filing in (FERC) Docket No. EC94-14-000. There, under the heading "emergency power/reliability of short term power," CEI and Toledo Edison agree that, with respect to both emergency power and short-term power, they will each assign to the other the "highest priority" and will terminate a sale of either emergency power or short-term power to another utility in order to provide service provided to the other. This agreement is in blatant violation of Licensing Condition No. 6.

FERC has not yet ruled on the City's protest.

III. The Fourth Interconnection

35. The three existing interconnections between CEI and the City are built and operated pursuant to an agreement for installation and operation of a 138kV synchronous interconnection dated April 17, 1975, as amended (CEI Rate Schedule No. 12) (the "CEI/CPP Interconnection Agreement"). The existing interconnections are sufficient to serve the maximum loads imposed by the City upon CEI over those interconnections in a reliable manner. The total transfer capability of those interconnections as specified in the CEI/CPP Interconnection Agreement is 300 MVA. CPP's peak transfers over the interconnections in 1994 were approximately 204 MW, approximately 218 MW in 1995 and CPP has reserved 252 MW of firm transmission for 1996.

36. As a result of certain settlement discussions resolving the City's objection to the CEI/TE affiliation and other matters, CEI and the City reached an understanding that CEI would install a fourth interconnection upon the City's construction of certain transmission lines. This understanding was reflected in a September 19, 1985 letter from CEI's chief executive to the mayor of Cleveland. During the 1988-1989 negotiations for the third interconnection, the fourth interconnection proposed by the City was located in southeast Cleveland (not at Fox substation). In 1993, CPP led CEI to believe that instead of a fourth interconnection, the City might internally loop their system and relocate their existing west side interconnection which would eliminate their need for the fourth interconnection.

37. CEI has also become increasingly concerned with the safety and reliability of CPP's expansion program. CPP's system construction and engineering is below generally-accepted engineering and utility standards, and as a result, service to CEI's customers has been interrupted, one CEI employee has been injured, and CEI's and its customers' equipment has been damaged. CEI has brought suit in the Ohio Court of Common Pleas to require CPP to comply with applicable engineering and utility standards. CEI v. City of Cleveland, et al., No. 265008. In a separate lawsuit in which contractors sued the City for nonpayment of costs associated with the construction of the City's distribution system, the City admitted that its system does not meet applicable engineering and utility codes and standards. Guarantee Company of North America, et al. v. City of Cleveland, et al., No. 1:95CV1936 (ND Ohio).

38. In 1993, CEI initiated negotiations to amend the CEI/CPP Interconnection Agreement. During one negotiating meeting, the City requested that CEI proceed with negotiations over terms and conditions of the installation of a fourth interconnection at the Fox substation, and CEI merely responded that it wished to reach agreement on its proposed amendments to the interconnection agreement before turning to the matter of the fourth interconnection.

39. On April 22, 1993, the City filed a complaint against CEI requesting that FERC order CEI to establish the fourth interconnection. On June 9, 1995, FERC ordered CEI to provide this interconnection. FERC declined to order the interconnection under Section 202(b) and 210 of the act, but found that such an order was supported by the September 19, 1985 letter, a 1985 contract between CEI, Toledo Edison and American Municipal Power-Ohio (AMP-Ohio Agreement) and NRC License Condition No. 2. 71 FERC ¶ 61,324 at 62,267. On July 7, 1995, CEI applied for rehearing of the order on the grounds that FERC should not have ordered the interconnection unless such interconnection was warranted under Sections 202(b) and 210 of the Federal Power Act, and that there are a number of essential issues that need to be decided before the interconnection can be installed. FERC granted rehearing on August 1, 1995 for the purpose of affording itself additional time to consider the issues raised in CEI's application for rehearing.

40. There are many essential details pertinent to establish the additional point of interconnection that have not yet been resolved. Specifically, there is no specification of the capacity of the interconnection to be installed, the voltage at which the interconnection will operate, the facilities to be installed by each of the parties, the date on which the interconnection

is to be completed, metering arrangements, the payments to be made by the City to compensate CEI for the establishment of the interconnection, and modification of the existing facilities that may become necessary as the result of the additional interconnection. These essential provisions will have to be determined by substantive negotiations of the parties.

41. On June 30, 1995, CEI suggested to the City that it would be more practical and efficient to incorporate the evaluation of a potential fourth interconnection into a closely related study which CEI was already performing with regard to a request for transmission services for a 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 proposed by the City. Furthermore, the City asked CEI to perform this study separately and distinctly from the transmission service study under way. In response, on July 21, 1995, CEI issued an engineering studies agreement to perform an evaluation of a fourth interconnection as proposed by the City. CEI also requested that the City provide electrical diagrams and additional engineering information necessary to perform the study.

42. On January 12, 1996, CEI provided a "Cost and Capability Analysis of The Proposed Fourth CEI/CPP Interconnection" to the City. Pursuant to the engineering service studies agreement, Centerior evaluated the engineering feasibility of a fourth point of interconnection as proposed by CPP at CEI's Fox Substation. The study incorporated all assumptions provided by CPP to Centerior, and CPP's responses to supplemental data requests. The relevant data and

materials used to perform the study were enclosed with the study, and Centerior instructed CPP on the manner in which to replicate the study using ECAR models and specific CEI data.

43. In the absence of further guidance from the Commission prior to the deadline established in the June 9 Order, CEI submitted a letter to the Commission on October 9 which detailed many issues necessary to be resolved by agreement of CEI and the City before a fourth point of interconnection could be safely and reliably established.

44. On November 14, 1995, CPP filed a motion with the FERC in which it asserted that the October 9 filing was not responsive to the Commission's order. CEI filed a response on December 8 to CPP's November 14 motion in which it discussed in detail many of the instances in which CPP had engaged in unsafe practices in the manner in which they had jeopardized the integrity of CEI's electric system and the safety of CEI's employees. CEI further explained in its response that it was essential to address those safety violations in any agreement to establish a fourth interconnection point because the greater load and expanding transfer capabilities (expected to result from the establishment of a fourth point of interconnection between CEI and CPP) will result in an increase in the risks to the safety and reliability of CEI's system resulting from the City's construction activities that are unsafe or otherwise contrary to good utility practice. It is, therefore, essential that CEI and CPP negotiate a mutually satisfactory understanding regarding the obligation to maintain safe practices affecting the operation of the interconnected systems.

IV. Deviation Charge

45. On March 22, 1993, CEI filed with the FERC changes to the CEI/CPP Interconnection Agreement (FERC Rate Schedule No. 12). As noted above, the CEI/CPP Interconnection Agreement provides electric service to the City pursuant to service schedules appended to the agreement for emergency service, firm and non-firm power sales and other services. In its filing with the FERC, CEI noted that the existing arrangement between CEI and the City imposed substantial costs on CEI, that it was not being adequately compensated by the City and, therefore, CEI sought certain changes to the agreement. CEI stated that the changes to the agreement being proposed are designed to establish a more rational operating relationship between CEI and the City and to facilitate more efficient utilization of CEI's facilities when they are not being needed to serve the City.

46. CEI proposed the following changes to the agreement:

A. Firm Power Service At Cost-Based Rates.

CEI proposed changes to Service Schedule B -- Firm Power Service -- to the Agreement so as to increase the maximum rate for firm power sales by CEI to the City, provide for a reservation period for firm power sales, and to clarify CEI's obligation to plan for sales of firm power to the City. Mr. Fullem submitted testimony noting that CEI was not selling any firm power to the City currently, but wished to restructure the firm power schedule so that CEI will no longer be obligated to sell firm power to the City without requisite notice, that the sale would be made at no more than cost-based rates, and make other changes necessary to plan for firm power sales to the City.

B. Coordination Services

CEI also proposed to provide the City with a wide array of coordination services designed to facilitate economic operation of the City's electric system. Thus, CEI proposed to provide short-term power service, limited powe- vice and economy power service, which could be provided under mutually-

advantageous situations under rates which are "not to exceed" costs of the service. Additionally, CEI proposed both spinning and supplemental reserve capacity services, which may be utilized by the City to provide adequate reserves required by ECAR.

C. Power Flow Control

Mr. Fullem testified that the major share of the City's bulk power supply is generated by others and transmitted to the City over CEI's transmission lines, or sold by CEI to the City as short-term or limited term (non-firm) power. Energy associated with such capacity is delivered to the City in accordance with hourly schedules established in advance by the City. Where the City fails to schedule deliveries of energy accurately, CEI is required to adjust operation of its own generation, or to compensate for the differences between the amount of energy scheduled and the amount actually taken by the City. The need to adjust the generation facilities in this manner imposes operational burdens upon CEI.

47. Thus, CEI proposed revisions to Section 4.3 of the Interconnection Agreement to establish reasonable incentives to the City to accurately schedule delivery of energy. The City has alternatives available, including its own generation, which could eliminate deviations from scheduled deliveries to the City by CEI. CEI proposed a deviation charge, which included the cost basis as testified to by Mr. Fullem, designed not to be punitive but, rather, to provide the City with incentive to operate in a manner which minimizes unscheduled power flows between CEI and the City, rather than requiring CEI to adjust for any errors which the City may make in planning and operating its resources.

48. It must be emphasized that the deviation charge is an incentive and not a rate for service rendered by CEI. CEI was not obligating itself to accept excess energy from the City or to

provide power to the City without CEI's prior agreement. CEI was simply attempting to discourage the City's extracontractual and unauthorized reliance on CEI's generation facilities.

49. In order to adapt its schedule to the conditions existing on the system, the City may advise CEI dispatchers of desired changes in the amount of energy to be delivered by CEI. However, where the City actually takes more energy from CEI and any power than it has scheduled to be delivered, it must pay the fuel cost of the energy provided by CEI, plus a demand charge of $75.00/kW-month for capacity used by CEI to make up the difference. If the City takes less energy from CEI than it has scheduled, CEI will retain the excess energy and compensate the City at a rate based on one-half of the CEI average fuel cost during the month. CEI believes that the City will be able to schedule its receipt and operate its internal generation in a manner which minimizes the payment of charges for overscheduling or underscheduling of energy receipts.

50. CEI requested an effective date of June 1, 1993 for all the changes filed in the docket.

51. On April 9, 1993, CPP filed before the FERC in Docket No. EL93-31-000 a complaint against CEI concerning the proposed changes to the Interconnection Agreement. On April 9, 1993, CPP also filed a protest to the changes and requested summary rejection or, in the alternative, a request for a five month suspension of the proposed changes to the Interconnection Agreement. CPP argued that a deviation charge was excessive and allowed for no margin of error to account for inadvertent energy flows. On May 28, 1993, the FERC acted on CEI's application. With regard to the deviation charge, the FERC rejected the City's request for

summary disposition. Cleveland Electric Illuminating Company, 63 FERC ¶61,244, at 62,677. The Commission determined:

> "In our judgment, the reasonableness of CEI's proposed deviation charge, in comparison to its firm power rate and in light of CEI's legitimate desire to encourage accurate scheduling of City resources, presents a factual issue that is best resolved at a hearing we will order in this proceeding. Similarly, the reasonableness of the rates, terms and conditions of CEI's proposed spinning reserve and operational reserve services also presents a factual issue that can best result at a hearing. Accordingly, we will deny [CPP's] request for summary disposition."

63 FERC ¶ 61,244 at 62,677

52. The FERC also dismissed the City's complaint determining that the complaint was moot in light of the action taken on CEI's filing. 63 FERC ¶ 61,244 at 62,678. Additionally, the FERC accepted CEI's proposed rates for filing and suspended them for five months from sixty days after the date of CEI's filing, to become effective, subject to refund, including interest, on November 1, 1993, and set the rates for hearing. 63 FERC ¶61,244 at 62,678.

53. Evidentiary hearings were held before the FERC on February 1, 1994, and concluded on February 4, 1994. The record consisted of 125 admitted exhibits and a transcript of 520 pages. The case was submitted upon the filing of briefs and reply briefs by CEI, the City and the FERC commission staff. The City's position on the issue of power flow control was presented by testimony of Paul B. Reising. Mr. Reising testified that the provisions for positive and negative deviations should at least be offset over a period of one month so that the provisions for settlement of unscheduled inadvertent delivery of electric energy in the existing interconnection

agreement be retained and implemented. Mr. Reising testified that unscheduled inadvertent energy deliveries should be settled for either by the return of equivalent energy or by the payment of out-of-pocket costs, plus 10% of such costs. In the alternative, Mr. Reising testified that it would be appropriate to establish a symmetrical "deadband" applicable to positive and negative deviations. Specifically, Mr. Reising testified that a deadband equivalent to plus-or-minus 6% of CPP's actual load be established and that for positive or negative deviations within this deadband, either a return of equivalent energy (a return in kind) or a cash settlement based upon the supplier's out-of-pocket costs. Outside of the deadband, Mr. Reising testified that the cost of positive deviations would be charged at an emergency rate of 100 mills per kilowatthour (or $100/MW-hour). For negative deviations outside of the deadband, Mr. Reising testified CEI would pay for energy supplied by CPP at 90% of CEI's out-of-pocket costs applicable during that hour.

54. The FERC's witness, David J. Reich, testified that CEI's proposed additions to the power flow control would become reasonable with modifications. He testified that CEI's proposed deviation charge of $75.00/kW-month is excessive to achieve the appropriate goal to discourage the City from using deviation power as a substitute for purchasing firm power, or conversely, to encourage the City to institute internal controls to balance its loads with its schedules. Instead, the Staff testified that a charge of $25.00/kW-month for positive deviations would be appropriate.

55. In the alternative, Mr. Reich testified that a deadband would be appropriate where actual power flow may deviate positively by 1.5 MW or negatively by 1.5 MW beyond the scheduled power flow. Within this plus-or-minus 1.5 MW band width, power deviations would be returned in-kind or at 110% of out-of-pocket costs and that outside the deadband, a positive deviation charge of $25.00/kW-month would be appropriate. The negative deviation charge would follow CEI's proposal of one-half of CEI's fuel cost.

56. Mr. Reich concluded that CPP had been over-scheduling energy on the CEI system and that the magnitude of such over-scheduled energy did not warrant treatment nor compensation as inadvertent energy as proposed by the City. Mr. Reich also concluded that it had been cheaper for CPP to rely on CEI for load following than to provide the service from its own generation or more precise scheduling. Therefore, Mr. Reich testified that changes to the interconnection agreement to encourage accurate scheduling were just and reasonable.

57. CEI witness Charles V. Fullem proffered cost support for the positive deviation charge of $75.00/kW-month. Mr. Fullem testified that the CEI/CPP Interconnection Agreement provides for a Minimum Billing Demand defined as follows in Service Schedule B as in effect prior to November 1, 1993:

> For billing purposes, the Minimum Kilowatt Billing Demand in any month shall not be less than 50 Percent of the highest Firm Kilowatt Billing Demand incurred during the previous twelve months.

The Demand Charge for Firm Power Service prior to CEI's proposed changes was $11.99/kW-month. Therefore, under the existing Interconnection Agreement, if CPP's scheduled resources were less than its load over a sixty-minute period and CPP chose not to take additional firm power over the succeeding twelve months, the cost to CPP for that one-hour schedule deviation would be $83.93/kW. Taking into account the proposed cost-based rate for firm power of $25.00/kW-month, the cost to CPP for that one-hour schedule deviation would be $175.00 per kW, absent further changes in the Firm Power Schedule proposed by CEI.

58. Mr. Fullem also testified that compensating the City at one-half of its then-current month's fuel charge to CPP where CPP overschedules its energy was a practice that CEI and the City agreed to in 1983. CEI has adhered to this practice for all excess power scheduled by the City since 1983 and that prior to the hearing, the City has never sought to renegotiate this arrangement. Mr. Fullem testified that this arrangement was reasonable given that the power was unscheduled and might cause CEI minimum loading problems.

59. On November 28, 1994, the administrative law judge assigned to the case issued its initial decision. In the initial decision, the ALJ determined:

> "The positive deviation charge of $25.00/kW-month is to be imposed for the purposes of this decision as a means to effectively 'encourage CPP to provide capacity to follow CPP's load, in order to not incur the positive deviation charge'". 69 FERC ¶63,008 at 65,048.

The ALJ also declined to adopt the City's deadband proposal which provided for energy returned-in-kind for unscheduled power deliveries, and thereby adpoted CEI's proposal to

continue the parties' previous agreement for compensation at one-half CEI's fuel costs. Exceptions to the decision of the ALJ were filed with the FERC, and such exceptions are pending before the FERC.

s/mike/nrcaff2.doc

STATE OF OHIO)
) SS: **AFFIDAVIT OF JOHN P. WACK**
COUNTY OF CUYAHOGA)

John P. Wack, being first duly sworn, deposes and says that he is Manager, Rates and Contract Administration of Centerior Energy Corporation; that he has read the foregoing document; and that he has personal knowledge of the matters set forth in paragraph numbers 1-3, 9-19, and they are true and correct to the best of his information and belief.

John P. Wack

Sworn to before me and subscribed in my presence by the said John P. Wack this 3rd day of MAY, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration data.
Section 147.03 R.C.

STATE OF OHIO)
) **SS:** **AFFIDAVIT OF WILLIAM T. BEUTLER**
COUNTY OF CUYAHOGA)

William T. Beutler, being first duly sworn, deposes and says that he is Senior Engineer, Customer Engineering, of Centerior Energy Corporation; that he has read the foregoing document; and that he has personal knowledge of the matters set forth in paragraph numbers 1-3, 37 and they are true and correct to the best of his information and belief.

William T. Beutler

Sworn to before me and subscribed in my presence by the said William T. Beutler this 3rd day of MAY, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC – STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

STATE OF OHIO)
) SS: **AFFIDAVIT OF STANLEY F. SZWED**
COUNTY OF CUYAHOGA)

Stanley F. Szwed, being first duly sworn, deposes and says that he is Vice President, Engineering and Planning, of Centerior Energy Corporation; that he has read the foregoing document; and that he has personal knowledge of the matters set forth in paragraph numbers 1-3, 4, 20-26, 27-34 and they are true and correct to the best of his information and belief.

Stanley F. Szwed

Sworn to before me and subscribed in my presence by the said Stanley F. Szwed this 3rd day of May, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC – STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE OF OHIO)
) SS: **AFFIDAVIT OF CHARLES V. FULLEM**
COUNTY OF CUYAHOGA)

Charles V. Fullem, being first duly sworn, deposes and says that he is Principal Advisor, Competitive Analysis, of Centerior Energy Corporation; that he has read the foregoing document; and that he has personal knowledge of the matters set forth in paragraph numbers 1-3, 45-59, 36, 38 and they are true and correct to the best of his information and belief.

Charles V. Fullem

Sworn to before me and subscribed in my presence by the said Charles V. Fullem this 3rd day of MAY, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC – STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE OF OHIO)
) SS: **AFFIDAVIT OF GWENDOLYN K. LUCIANO**
COUNTY OF CUYAHOGA)

Gwendolyn K. Luciano, being first duly sworn, deposes and says that she is Manager, Federal Regulation and Pricing, of Centerior Energy Corporation; that she has read the foregoing document; and that she has personal knowledge of the matters set forth in paragraph numbers 1-3, 5-8, 39-44 and they are true and correct to the best of her information and belief.

Gwendolyn K. Luciano

Sworn to before me and subscribed in my presence by the said Gwendolyn K. Luciano this 3rd day of MAY, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC – STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE OF OHIO)
) SS: **AFFIDAVIT OF ANTHONY N. DISCENZA**
COUNTY OF CUYAHOGA)

Anthony N. Discenza, being first duly sworn, deposes and says that he is Manager, Large Commercial Segment Sales, of Centerior Energy Corporation; that he has read the foregoing document; and that he has personal knowledge of the matters set forth in paragraph numbers 1-3, 13 and they are true and correct to the best of his information and belief.

Anthony N. Discenza

Sworn to before me and subscribed in my presence by the said Anthony N. Discenza this 3rd day of MAY, 1996.

MICHAEL C. REGULINSKI, Attorney
NOTARY PUBLIC – STATE OF OHIO
My commission has no expiration date.
Section 147.03 R. C.

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

Cleveland Public Power

RECEIVED
AUG 16 1995
STANLEY F. SZWED

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 "A"

As you know, Cleveland Public Power has been in ongoing negotiations with the Medical Center Company relative to providing service to MCC's distribution system. We had made what we felt was an attractive proposal based on information we received from Michael B. Danzig, the General Manager of the Medical Center Company. In discussions with Mr. Danzig, it was our understanding that our offer was to include a wholesale power purchase from American Electric Power (AEP). On Friday, we learned that the Board of Trustees had made a recommendation relative to the service for the Medical Center Company. We also learned from Mr. Danzig that his feelings regarding the source of power were not unchangeable and that he would accept other power suppliers as part of our overall package.

Cleveland Public Power has other sources of power from large established companies which is priced substantially lower than power from American Electric Power. We used that power source because we were given to understand that it was MCC's preferred source. In light of this new information, we are prepared to submit a proposal to the Medical Center Company which will meet the energy requirements of MCC at a substantially lower cost than our previous proposal. I would ask that the Board not finalize its decision until it has had an opportunity to examine our new proposal which has an additional savings to the Medical Center Company of $1.44 million per year, or $10 million over the seven year term. This proposal will be delivered to Mr. Danzig today, January 10, 1995.

Sincerely,

Michael G. Konicek
Director

ATTACHMENT "B"

POWER SUPPLY AGREEMENT

between

CLEVELAND PUBLIC POWER

and

OHIO POWER COMPANY

JULY 31, 1995

ATTACHMENT "C"

CONTENTS

THIS AGREEMENT, entered into as of the 21st day of July, 1995, between Ohio Power Company (OPCO) and the City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power (CPP), OPCO and CPP being sometimes herein referred to collectively as the "Parties", or separately, as a "Party";

WITNESSETH:

0.1 WHEREAS, CPP is a municipal electric system organized and existing under the laws of Ohio and is owned by the City of Cleveland;

0.2 WHEREAS, OPCO owns and operates, inter alia, facilities for the generation, transmission, and distribution of electric power and energy in the state of Ohio;

0.3 WHEREAS, OPCO is an operating subsidiary of American Electric Power Company, Inc. and operates as a part of the integrated electric utility system control area known as the American Electric Power System (AEP System);

0.4 WHEREAS, OPCO coordinates the operation of its electric supply facilities with other AEP System operating subsidiaries pursuant to the Interconnection Agreement dated July 6, 1951, as amended, between Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, and with American Electric Service Corporation as Agent;

0.5 WHEREAS, the Parties have determined that they will each benefit from the sale of capacity and energy by the AEP System to CPP;

0.6 WHEREAS, pursuant to an agreement dated June 14, 1962, as amended, the system of OPCO is interconnected with the system of Cleveland Electric Illuminating Company (CEI);

0.7 WHEREAS, pursuant to the CEI FERC filed Transmission Service Tariff with an original date of February 28, 1978, CPP may arrange for CEI to provide transmission service between CEI's interconnections with OPCO and other electric utility systems and CPP's system; and

0.8 WHEREAS, the systems of OPCO and CPP are not presently interconnected, and delivery of power and energy from the AEP System to CPP will require that transmission service be arranged with CEI and/or other electric utility systems to which the Parties' systems are or may be connected (Transmitting System(s));

0.9 NOW, THEREFORE, in consideration of the promises and mutual covenants herein set forth, the Parties hereby agree as follows:

ARTICLE 1 - SERVICE CONDITIONS

1.1 Prudent Utility Practice

Each Party shall exercise reasonable and prudent care to design, construct, maintain, and operate its facilities and arrange to meet its obligations in accordance with prudent utility operating practice. Consistent with such practices, any party may install and operate on its system such relays, disconnecting devices, and other equipment as it may deem appropriate for the protection of its system.

1.2 Delivery of Limited Term Power and Limited Term Energy

Throughout the period beginning September 1, 1996, and extending through August 31, 2001, or such period as is described in subsection 6.2, OPCO shall, upon call, make arrangements for and stand ready to supply power ("Limited Term Power") and associated energy ("Limited Term Energy"), to the Transmitting System(s) for delivery to CPP, and CPP shall in turn stand ready to receive and shall pay for such Limited Term Power and Limited Term Energy in accordance with the rates specified in Article 2 below.

1.3 Availability of Limited Term Power and Limited Term Energy

OPCO will consider the supply of Limited Term Power and Limited Term Energy under this Agreement to CPP to be a capacity commitment, but will not include this commitment in determining the amount of capacity necessary for the AEP System to meet its long term planning obligations.

The availability of Limited Term Power and Limited Term Energy, and OPCO's obligation to deliver same to the Transmitting System(s) for delivery to CPP in any hour, is contingent upon the ability of the AEP System to first meet its internal load and other firm load commitments. As new firm load commitments are made by the AEP System, CPP limited term power and energy will immediately follow those new firm load commitments.

OPCO will agree to employ the following action in order to provide service under this Agreement: arranging purchases from other systems, and to implement other prudent measures which OPCO may consider appropriate under the circumstances. At CPP's request, OPCO agrees to buy energy, including emergency energy, in the market for CPP when OPCO cannot deliver energy from AEP generation resources. (AEP will endeavor to notify CPP at least one hour in advance of anticipated emergency conditions or other conditions interfering with delivery of power and energy under this agreement.) Accordingly, CPP will reimburse OPCO for the energy costs incurred by OPCO on CPP's behalf. The AEP System shall be held harmless from any financial responsibilities or damages that may arise if capacity and/or energy is not available from OPCO to the Transmitting System(s).

1.4 Delivery Point

All electric energy delivered under this Agreement shall be of the character commonly known as three-phase 60 Hz energy and shall be delivered at nominal voltages at points where OPCO's system interconnects with the bulk transmission system of CEI, and/or other Transmitting Systems, and at such other delivery points and voltages as the Parties may establish (Delivery Points).

1.5 Operating Arrangements

Operating arrangements established under the Operating Committee pursuant to subsection 4.1 to effectuate supply and receipt of the Limited Term Power and Limited Term Energy shall be coordinated among personnel of the AEP System Control Center, CPP, and the Transmitting System(s).

1.6 Scheduling Limited Term Power

Unless otherwise mutually agreed by OPCO and CPP, the procedures described herein shall govern the scheduling of Limited Term power and energy deliveries. CPP shall, two working days prior to the end of each month, provide the AEP System Control Center the demand in MW of power to be supplied by OPCO for the next month. Weekly schedules for the amount of Limited Term Energy to be supplied by OPCO to the Transmitting System(s) during each hour of the next week shall be provided to the AEP System Control Center by 2:00 p.m., E.S.T., (or such other time as mutually agreed upon) each Tuesday for deliveries on Wednesday through Tuesday. Additional changes may be made up to 15 minutes (or less if mutually agreed upon) before the hour the change is to be effective. At no point will the amount scheduled exceed the Maximum Demand, as described in subsection 2.1.

1.7 Interruption of Service

Each party shall exercise reasonable care to maintain the continuity of all service provided under subsection 1.3 of this Agreement: however, service may be interrupted or reduced upon such notice as is reasonable under the circumstances (a) by operation of automatic equipment installed for power system protection, (b) after consultation among the Parties, if practicable, whenever consistent with prudent utility practice such action is desirable for installation, maintenance, inspection, repairs or replacement of equipment, (c) at any time that such action is necessary to preserve the integrity of, or to prevent or limit any instability on the AEP system, or (d) at any time that CPP is in default for more than 30 days in the payment of any bill rendered hereunder, and OPCO has, consistent with Federal Energy Regulatory Commission (FERC) policy, given appropriate advance notice of such non-payment and impending suspension of service.

In the event OPCO is unable to supply energy from its own generating resources or from other sources to CPP under this agreement, OPCO shall credit CPP for each day or portion thereof, a pro-rata reduction in the demand charge under subsection 2.1 equal to the demand charge for the month divided by the number of days in that month.

1.8 Extended Limited Term Power

If CPP desires to continue receiving service under this Agreement beyond the period specified in subsections 1.2 and 6.2, CPP shall provide OPCO written notice by August 31, 1999. The availability of such power shall be determined by OPCO. Mutual agreement between the Parties shall be required on the rates, terms, and conditions for the extension of Limited Term Power and Limited Term Energy.

ARTICLE 2 - COMPENSATION

2.1 Demand Charges

For the period September 1, 1996 through August 31, 2001, or such period as is described in subsection 6.2, CPP shall pay OPCO for each month of Limited Term Power a demand charge equal to $6,500 per MW times a monthly Billing Demand equal to the greater of (a) the highest hourly amount of Limited Term Power and Energy scheduled during such month, or (b) the minimum monthly demand agreed upon for such period, which in no case shall be less than 24 MW (Minimum Demand). The demand charges include charges for the transmission of Limited Term Power and Energy over the AEP System to the Delivery Points with the Transmitting System(s).

In August of each year of the contract term (eg. 1997, 1998, 1999 and 2000), CPP and OPCO will mutually determine the monthly Minimum Demand, the monthly maximum demand (Maximum Demand) and the minimum annual demand amount in MW-months (Annual Demand) for the following contract year; provided, however, that in no event shall the Annual Demand amount during the term hereof be less than 360 MW-months, nor shall the Maximum Demand exceed 50 MW, unless OPCO agrees to waive such limit.

The first-year demand reservation schedule will be based on a minimum Annual Demand amount of 360 MW months, with a monthly Minimum Demand of 24 MW and a monthly Maximum Demand of 44 MW.

If the sum of the monthly Billing Demands for the 12 months of any contract year is less than the Annual Demand agreed upon for such period, the difference between such sum and the Annual Demand shall be billed together with other charges for the last month of each contract year at the rate of $6,500/MW.

2.2 Energy Charges

For the period September 1, 1996 through August 31, 2001, or such period as described in subsection 6.2, CPP shall make monthly payments to OPCO for Limited Term Energy supplied by OPCO for delivery to CPP during the month covered by each monthly statement. The monthly energy charges will equal the out-of-pocket cost (as defined in subsection 3.8) of supplying the scheduled energy to the Delivery Points. Consistent with the provisions of subsection 3.8, CPP will have the option to supply SO_2 allowances to OPCO in lieu of having the AEP System's SO_2 allowance costs included in the Limited Term Energy charge. If the

actual average energy charges other than emission allowance charges (out-of-pocket costs as defined in subsection 3.8, excluding emission allowance charges) in any calendar year period exceed the estimated average energy costs, excluding emission allowance costs, as shown in subsection 3.9, by more than 10%, during the same one (1) year period, CPP shall have the option of terminating this Agreement. This provision to terminate the agreement cannot be enforced unless CPP purchased at least one-hundred thousand (100,000) MWH during the same calendar year under this contract, of which at least 40% must have been taken during times classified as off-peak hours. (Off-peak hours are defined as 11:00 p.m. to 7:00 a.m. EST Monday through Saturday and all day Sundays and holidays.)

2.3 Transmitting System Arrangements and Charges

CPP is solely responsible for arranging the delivery of the Limited Term Power and Limited Term Energy from the Delivery Points across the Transmitting System(s) to the point(s) where such systems interconnect with CPP's system. CPP shall make every reasonable effort to arrange such delivery, including taking any necessary judicial or regulatory actions to compel and/or obtain approval of such delivery. CPP is solely responsible for the timely payment of any charges imposed by the Transmitting System(s). The charges imposed by the Transmitting System(s) shall not affect the Parties' obligations hereunder. If CPP fails or refuses to arrange for such delivery by August 1, 1996, OPCO may, in its sole discretion, terminate this contract in its entirety.

ARTICLE 3 - RECORDS, BILLING AND PAYMENTS

3.1 Records

OPCO shall keep such records as may be needed under this Agreement, including any determination of charges. The originals of all such records shall be retained by OPCO in accordance with the FERC record retention requirements. Copies of such records or any records related to matters relative to this agreement shall be made available to CPP upon request.

3.2 Billing Period

Unless otherwise agreed upon, the calendar month shall be the standard period for all settlements under this Agreement. As soon as practicable after the end of each billing period, OPCO shall cause to be prepared a statement in such detail as may be needed for settlements under this Agreement.

3.3 Timeliness of Payment

Unless otherwise agreed upon, all bills under this Agreement shall be rendered as soon as practicable in the month following the calendar month in which they were incurred and shall be due and payable, unless otherwise agreed upon, as provided below. A bill is considered rendered on the day it is mailed or otherwise transmitted by OPCO to CPP. OPCO will fax the bill to the Manager of Operations-CPP on the day it is to be rendered. OPCO will telephone CPP to

confirm receipt. Payment of such bills shall be made by electronic transfer or such other means as shall cause the funds due to be available for the use of OPCO on or before the 12th day of the month in which the bill is rendered or ten (10) business days after receipt of the bill, whichever is later. Interest on unpaid amounts shall accrue daily from the date such unpaid amount became due and until the date paid, at the then current prime interest rate per annum as published in the Money and Investing section of the Wall Street Journal, or, if no longer so published, in any mutually agreeable publication, plus 2% per annum.

3.4 Defaults

In the event CPP fails to make timely payment in accordance with subsection 3.3, and such failure is not corrected within fifteen (15) calendar days after notification to cure such a failure, a default shall be deemed to exist. Upon the occurrence of a default, OPCO may immediately give notice of its intent to suspend service pursuant to subsection 1.7.

3.5 Disputed Bills

All bills shall be paid in full, pursuant to subsection 3.3 above, regardless of any dispute as to such bills. Disputes which cannot be resolved in the normal course of business will be brought before the Operating Committee for resolution. If the resolution procedure results in the return of an amount paid pursuant to subsection 3.3, then such amount shall be returned with interest at the rate specified in subsection 3.3 from the date paid until the date refunded.

3.6 Billing Adjustments

Other than as required by law or regulatory action, adjustments in bills must be made within six (6) months of the rendition of the initial bill.

3.7 Tax Reimbursement

It is expressly agreed by the Parties that, as part of the compensation to be paid under this Agreement, if at any time during the term hereof there should be levied and/or assessed against OPCO or any member of the AEP System any direct tax, including, but not limited to sales, excise or similar taxes (other than taxes based on or measured by net income), by any taxing authority on the power and/or energy manufactured, generated, produced, converted, sold, purchased, transmitted, interchanged, exchanged, exported or imported by OPCO, or any member of the AEP System, to CPP, OPCO shall be entitled to full compensation by CPP for such direct taxes. OPCO will charge such tax in its billings to CPP unless CPP warrants that it will pay such tax and hold OPCO harmless from such assessments. The Parties also agree that prior approval of any regulatory body having jurisdiction in such matter, if required, shall be obtained as a prerequisite to collection of such tax.

3.8 Out-Of-Pocket Costs

Unless otherwise specified, "out-of-pocket cost" shall mean all expenses incurred by the AEP System that would not otherwise have been incurred if such service had not been arranged. This cost relates to the actual energy generated to supply the hourly scheduled amount. Such expenses will include, but are not limited to, fuel, reactant, operation, maintenance, cost of emissions, transmission losses on the AEP System, charges for any energy purchased which is reasonably allocated by the AEP System to such service, and other expenses incurred which would not have been incurred if the service had not been arranged. Out-of-pocket cost shall not include opportunity cost. Emission allowance cost recovery will be governed by the following principles:

a) AEP will use the most current Market Price Index published by Cantor-Fitzgerald Environmental Brokerage Services to establish the replacement cost of emission allowances each month.

AEP intends to monitor the performance of the Cantor-Fitzgerald and other indicators of emission allowance market price, and reserves the right to change its selection of such indicator, subject to acceptance by the Commission.

b) CPP will be permitted to reimburse the AEP Operating Companies for emission allowances by paying in cash or by the in-kind transfer of allowances. The AEP Operating Companies may require the customer to declare, no later than the beginning of the coordination transaction, whether they will pay in cash or return allowances in-kind. If CPP chooses to provide emission allowances in-kind, CPP must deliver such allowances not later than a date sufficient to allow AEP to submit such allowances to the EPA.

c) The AEP generating unit(s) used to compute the number of emission allowances consumed for a transaction will be the same unit(s) used to price the out-of-pocket costs associated with the energy supplied pursuant to such transaction.

d) AEP will round fractional amounts of allowances as follows:

Between 0.001 - 0.499 will be rounded to 0
Between 0.500 - 0.999 will be rounded to 1

3.9 Estimated Out-Of-Pocket Costs

The estimated out-of-pocket costs, excluding emission allowances, are as follows:

YEAR	ENERGY/MWH	EMISSIONS/MWH
1996	$17.69	$0.52
1997	$19.18	$0.60
1998	$19.84	$0.60
1999	$21.26	$0.74
2000	$20.67	$1.62
2001	$21.06	$1.66

ARTICLE 4 - OPERATING COMMITTEE

4.1 Operating Committee

The operations of the Parties' systems as provided for in this Agreement shall be administered by an Operating Committee. Each Party shall appoint one member and an alternate to the Operating Committee. The principal duties of the Operating Committee shall be as follows:

a. to establish operating, scheduling and control procedures;

b. to establish accounting and billing procedures; and

c. to perform such other duties as may be specifically identified in this Agreement or may be required for the proper functioning of this Agreement.

ARTICLE 5 - INDEMNITY

5.1 Indemnity

To the extent permitted by law, the owning Party shall indemnify and save harmless the other Party from and against any loss, liability, cost, expenses, suits, actions, claims, and all other obligations arising out of injuries to persons or damage to property caused by or in any way attributable to the ownership or operation of the owning Party's facilities, except that the owning Party's obligation to indemnify the other Party shall not apply to any liabilities arising from the other Party's sole negligence or that portion of any liabilities that arise out of the other Party's contributing negligent acts or omissions. Further, to the extent that a Party's immunity as a complying employer, under the worker's compensation and occupational disease laws of their state, might serve to bar or affect recovery under or enforcement of the indemnification otherwise granted herein, each Party agrees to waive such immunity. With respect to the State

of Ohio, this waiver applies to Section 35 Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74. As respects this subsection 5.1 only, the term "Party" shall include the Party's directors, officers, employees, and agents.

ARTICLE 6- REGULATORY AUTHORITIES, TERM AND TERMINATION

6.1 Regulatory Authorities

This Agreement is made subject to the jurisdiction of any governmental authority or authorities having jurisdiction in the premises. Nothing contained in this Agreement shall be construed as affecting in any way, the right of a Party under this Agreement to unilaterally file with the Federal Energy Regulatory Commission for a change in rates, charges, classification, service or any rule, regulation or contract relating thereto under Section 205 or 206 of the Federal Power Act and pursuant to the Commission Rules and Regulations promulgated thereunder, except that the rates and charges under subsection 2.1 will not be subject to change.

6.2 Term and Termination

This Agreement shall be effective as of the date of execution, or such date as shall be specified by the regulatory authority having jurisdiction herein, and shall remain in effect through August 31, 2001. Service under this agreement shall commence on September 1, 1996 or as soon thereafter as practicable, but no later than January 1, 1997 and shall continue for a period of five (5) years. Except as provided for in subsection 2.2 cancellation or modification of this Agreement during the contract term is only allowed by mutual agreement. If the Parties extend this agreement, such extension shall include provisions for the termination of this agreement.

ARTICLE 7 - GENERAL

7.1 Force Majeure

No Party shall be in default with respect to any obligation hereunder, other than the payment of money, if prevented from fulfilling such obligation by reason of any cause beyond its reasonable control, including without limitation strikes and labor disputes. A Party unable to fulfill any obligation by reason of any cause beyond its control shall use diligence to remove such disability with reasonable dispatch.

7.2 Waivers

Any waiver at any time of any rights as to any default or other matter arising hereunder shall not be deemed a waiver as to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not be deemed a waiver of such right.

7.3 Liability

No Party shall be liable to any third party for any failure of a Party to perform its obligations hereunder.

7.4 Continuation of Agreement Provisions

It is understood and agreed by the Parties hereto that if any one or more provisions contained herein shall be finally determined by any regulatory authority or court of competent jurisdiction to contravene, or be invalid under, any applicable provision of law, such contravention or invalidity shall not invalidate this Agreement. The Parties will negotiate in good faith to provide a substitute for such provision or provisions, but no such substitute shall be binding on either Party unless stated expressly in a written document executed and delivered by each of the Parties to this Agreement and filed with and accepted for filing by such regulatory authorities as shall have jurisdiction.

7.5 Written Notices

Any written notice required or appropriate hereunder shall be deemed properly made, given to, or served on the party to which it is directed, when sent by United States mail, postage prepaid and addressed as follows:

If to CPP:

Director
Department of Public Utilities,
City of Cleveland
1201 Lakeside Avenue
Cleveland, OH 44114

and

Commissioner
Cleveland Public Power
City of Cleveland
1300 Lakeside Avenue
Cleveland, OH 44114

If to OPCO:

President
Ohio Power Company
215 North Front Street
Columbus, OH 43215

and

Senior Vice President - System Power Markets
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215

or at such other address as any Party shall have designated to the other.

Any written notice required or appropriate hereunder may be met by telex, telecopy or other electronic means of communicating written or printed material.

Notice of any change in the above addresses shall be given in the manner specified in this subsection.

7.6 Agreement Validity

The validity and meaning of this Agreement shall be governed by the laws of Ohio.

7.7 Assignment

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. This Agreement shall not be assigned by any Party without the written consent of the others except to a successor corporation to which substantially all the business and assets of such Party shall be transferred.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed.

OHIO POWER COMPANY

By _____
Gerald P. Maloney, Vice President

CITY OF CLEVELAND

By _____
Michael Konicek, Director

OPCO/CPP POWER SUPPLY AGREEMENT

A. Estimated Transactions and Revenues, based on maximum demand and 60% Load Factor Twelve Months Ended August 31, 1997

1996	Billing Demand (MW)	Demand Revenue ($)	Billing Energy (MWH)	Estimated Energy Revenue* $	Estimated Total Revenue $
SEPTEMBER	50	325,000	21,600	393,336	718,336
OCTOBER	50	325,000	22,320	406,447	731,447
NOVEMBER	50	325,000	21,600	393,336	718,336
DECEMBER	50	325,000	22,320	406,447	731,447
1997					
JANUARY	50	325,000	22,320	406,447	731,447
FEBRUARY	50	325,000	20,160	367,114	692,114
MARCH	50	325,000	22,320	406,447	731,447
APRIL	50	325,000	21,600	393,336	718,336
MAY	50	325,000	22,320	406,447	731,447
JUNE	50	325,000	21,600	393,336	718,336
JULY	50	325,000	22,320	406,447	731,447
AUGUST	50	325,000	22,320	406,447	731,447
12-MO. TOTAL	**600**	**3,900,000**	**262,800**	**4,785,587**	**8,685,587**

* Includes estimated emission allowance costs.

AEP System – Maximum Rates for System Sales
Stacking of Generating Units to Determine the Units Likely to Participate in Short Term Power Sales after Latest Units

Annual peak plus capacity of latest units (2930 MW): 21,015
Minimum monthly peak plus capacity of latest units (2930 MW): 16,817

Plant No.	(1) Plant	(2) Net Prod Capacity (Note 1) $/MW-year	(3) Fuel Expense (p.402-21)	(4) Generation (p.402-12)	(5) Fuel Cost M/KWH (3)/(4)	(6) Net Prod Capacity(MW) (p.402-9)	(7) Accum. N.P. Capacity (MW)	(8) Unit Participate (Note 2)	(9) Plant Factor (4)/[(6)*8760]	(10) Equivalent Availability Factor (1990 Data	(11) Available Capacity [(10)-(9)]*(6)	(12) Cumulative Avail. Cap.	(13) Expected Participation (11)/Max(12)	(14) Weighted Annual Cost [(2)*(13)]/(10)
1.	Hydro					271	271				0	0	0.0000	
2.	Cook	$183.53	$65,151	18,313,243	3.99	2,110	2,381		0.9828	0.9828	0	0	0.0000	$0.00
3.	Rckprt 1(I&M)	$158.96	$38,330	3,868,272	10.47	650	3,031		0.8427	0.7767	0	0	0.0000	$0.00
4.	Zimmer	$383.29	$24,219	2,295,566	10.55	330	3,361		0.7941	0.8623	0	0	0.0000	$0.00
5.	Rckprt 2(I&M)	$127.06	$43,437	4,102,183	10.59	650	4,011		0.7204	0.7767	0	0	0.0000	$0.00
6.	Rckprt 1(AEG)	$144.48	$45,779	4,323,328	10.59	650	4,661		0.7593	0.7767	0	0	0.0000	$0.00
7.	Rckprt 2(AEG)	$123.86	$43,436	4,095,826	10.60	650	5,311		0.7193	0.7767	0	0	0.0000	$0.00
8.	Big Sandy	$49.15	$81,758	5,748,373	10.75	1,060	6,371		0.6187	0.6585	0	0	0.0000	$0.00
9.	Clinch River	$52.81	$47,284	4,112,403	11.50	705	7,076		0.6659	0.7184	0	0	0.0000	$0.00
10.	Kammer	$71.78	$67,001	4,831,300	11.80	630	7,706		0.8754	0.8640	0	0	0.0000	$0.00
11.	Picway	$78.92	$5,731	449,730	12.74	100	7,806		0.8104	0.8009	0	0	0.0000	$0.00
12.	Smith Mtn.	$29.35	$5,333	390,113	13.67	565	8,371		0.0788	0.8935	0	0	0.0000	$0.00
13.	Stuart	$85.54	$47,780	3,478,571	13.74	608	8,979		0.6527	0.8107	0	0	0.0000	$0.00
14.	Cardinal	$72.66	$72,780	5,168,782	14.08	600	9,579		0.8834	0.8840	0	0	0.0000	$0.00
15.	Glen Lyn	$80.14	$21,780	1,533,276	14.18	335	9,914		0.8225	0.8780	0	0	0.0000	$0.00
16.	Mitchell	$53.62	$94,648	6,668,100	14.41	1,600	11,514		0.4888	0.8483	0	0	0.0000	$0.00
17.	Tanners Creek	$71.96	$72,557	4,853,545	18.29	995	12,509		0.5110	0.8757	0	0	0.0000	$0.00
18.	Conesville	$85.39	$101,114	6,167,486	16.39	1,504	14,013		0.4681	0.7111	0	0	0.0000	$0.00
19.	Gavin	$56.33	$228,836	13,911,035	16.44	2,800	16,813		0.8108	0.7747	0	0	0.0000	$0.00
20.	Mountaineer	$90.69	$90,959	5,450,685	18.69	1,300	17,913	1	0.4786	0.7861	374	374	0.2047	$24.21
21.	Musk River	$83.83	$114,970	6,788,196	16.94	1,428	19,338	1	0.5439	0.7118	240	613	0.1313	$11.27
22.	Sporn(OPCO)	$72.60	$40,481	2,368,534	17.06	742	20,080	1	0.3644	0.8719	228	842	0.1250	$10.54
23.	Sporn(APCO)	$59.09	$16,277	950,002	17.13	306	20,386	1	0.3521	0.8719	98	940	0.0540	$4.81
24.	Beckjord	$56.86	$4,699	273,239	17.20	63	20,441	1	0.5885	0.9170	17	957	0.0095	$0.59
25.	Kanawha River	$81.45	$19,086	994,682	19.19	400	20,841	1	0.2839	0.8248	136	1,094	0.0747	$7.34
26.	Amos(APCO)	$49.60	$165,148	8,548,333	19.33	2,000	22,874	1	0.4798	0.8397	732	1,825	0.4008	$23.63
27.	Amos(OPCO)	$51.18	$61,028	3,054,678	19.98	667	23,741		0.4022	0.8397	0	1,825	0.0000	$0.00
28.	Breed	$80.07	$727	20,656	34.85	925	24,066		0.0073	1.0000	0	1,825	0.0000	$0.00
												Total wtd prod cost		$85.90

Notes:

(1) Source of data is AEP's "Cost of Electric Production Capacity", Exhibit 2, Column 11.

(2) Enter 1 in this column next to the plants between the minimum and maximum monthly peak.

(3) $2.00/kW-month * 12 months.

	Non-Firm Rate	Firm Rate
Total wtd prod cost	$85.90	$85.90
Transmission(Note 3)	$24.00	$24.00
Reserves @ 20% of "Stacked" units		$17.18
	$109.90	$127.08
Losses @1/(1-.036)	$4.10	$4.75
Annual Cost	$114.01	$131.83
Monthly Cost	$9.50	$10.99
Weekly Cost	$2.19	$2.54
Daily Cost (w/wkly cap)	$0.44	$0.51
Hourly Cost – M/KWH (w/weekly & daily caps)	27.4	31.7

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

Cleveland Public Power

CERTIFICATE OF CONCURRENCE

This is to certify that Cleveland Public Power assents to and concurs in the Rate Schedule described below, which the Ohio Power Company has filed, and hereby files this certificate of concurrence in lieu of the filing of the initial Rate Schedule specified.

Power Supply Agreement dated July 31, 1995, between Ohio Power Company and Cleveland Public Power, OPCO FERC Rate Schedule No. _____

CLEVELAND PUBLIC POWER

By: _____
Michael G. Konicek

Title: Director of Public Utilities
City of Cleveland, Ohio

THE MEDICAL CENTER COMPANY
2250 CIRCLE DRIVE
CLEVELAND, OHIO 44106-4903

UNIVERSITY CIRCLE
(216) 368-4256
Fax (216) 368-4614

February 27, 1995

Nagah Ramadan, Commissioner
Cleveland Public Power
1300 Lakeside Avenue
Cleveland, Ohio 44114

Dear Mr. Ramadan:

Enclosed is the proposed Power Service Agreement between Cleveland Public Power and Medical Center Company.

We look forward to final approval of this contract by the Board of Control and City Council.

Thank you for your cooperation in this matter.

Sincerely,

Michael B. Danzig, P.E.
General Manager

MBD/vam

ATTACHMENT "D"

CLEVELAND PUBLIC POWER
1300 LAKESIDE AVENUE
CLEVELAND, OHIO 44114

ELECTRIC POWER SERVICE AGREEMENT

This Agreement is made and entered into by and between the City of Cleveland, Ohio ("the City"), acting by and through its Director of Public Utilities or his authorized representative(s), pursuant to Chapter 523, including Sections 523.048, 523.18, and 523.195, of the Codified Ordinances of the City of Cleveland, and the Medical Center Company, a tax-exempt entity under section 501(c)(3) of the United States Internal Revenue Code ("MCCo") and its signatory Members, dated as of _____, 1985.

Witnesseth: Now, therefore, in consideration of the agreements, promises and undertakings herein set forth, the City for itself and its successors and assigns, and MCCo for itself and its successors and assigns, hereby mutually agree as follows:

Article 1. 1.1 The City shall furnish to MCCo and the Member Facilities (as defined in Article 5.5), and MCCo and the Member Facilities shall take and purchase from the City, during the term of this Agreement, the firm electric power and energy requirements of MCCo and the Member Facilities, including such requirements for the Member Facilities and

facilities presently served by MCCo owned by Case Western Reserve University and University Hospitals. MCCo represents that the maximum demand or capacity required from the City's electric system is 50 MW. MCCo shall promptly notify City, with as much advance notice as is reasonably possible, of any anticipated increases or decreases in such demand. In the event that MCCo's demand exceeds 50 MW, City shall supply such additional demand and associated energy at City's Large Industrial rate.

1.2 All of the electric energy and power requirements to be furnished by the City pursuant to this Agreement shall be a native load of the City, and MCCo shall be a critical customer of the City which is entitled to priority of service in the event of any curtailment of power or repairs of damage by the City.

Article 2. MCCo shall promptly and diligently arrange for and pursue through completion the financing, construction, and energization of a new substation to be paid for and owned by MCCo (the "MCCo Substation"), located adjacent to the City's 138 KV transmission line between the City's East and Northeast substations, as is more fully described

in Exhibit A hereto; provided, however, that MCCo shall not be in default or breach of the foregoing obligation for any failure to perform this obligation in the event such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, actions or decrees of governmental authority, weather conditions, floods, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which are not within its reasonable control. In such event, MCCo shall have no further obligation or liability to the City, and the City shall have no obligation to furnish electric power and energy to MCCo under this Agreement. MCCo shall enter into a contract for the construction of the MCCo Substation within forty-five (45) days after the ordinance of the City's Council authorizing this Agreement takes effect.

Article 3. MCCo shall begin taking service from the City hereunder upon the last to occur of: (1) the termination of MCCo's existing service agreement with its current supplier, (2) the effective date of MCCo's cancellation notice to its current supplier, and (3) the completion of MCCo's Substation, which date shall be the Service Date.

MCCo shall give written notice of cancellation to its current supplier of electric power within forty-five (45) days after the ordinance of the City's Council authorizing this Agreement takes effect. As of the date of execution of this Agreement, the Parties anticipate a Service Date as of September 1, 1996. If a delay in the Service Date results in the term of this Agreement extending beyond December 31, 2001, the rates and charges described in Article 5.4 shall not be fixed after such date. The City agrees to use its best efforts to secure the most favorable rate available for any period of service occurring under this Agreement between January 1, 2002 and the expiration of this Agreement.

Article 4. 4.1 This Agreement shall become effective and in full force and effect upon due execution by the parties.

4.2 The City shall furnish and MCCo and the Member Facilities shall take and purchase electric power and energy under the terms of this Agreement for an initial fixed period of five (5) years, commencing on the Service Date.

4.3 MCCo will have the option to extend this Agreement for an additional five (5) year term, for rates, terms, and conditions acceptable to both the City and MCCo. Not less than one year prior to expiration of the initial term of this Agreement, the City will provide MCCo written notice of the rates, terms and conditions for the extended term of this Agreement. Within thirty (30) days thereafter, MCCo will notify the City whether or not it will extend the term of this Agreement on such terms and conditions.

Article 5.

5.1 The electric service to be provided under this Agreement shall be provided in accordance with the rules and regulations adopted by the Board of Control and approved by the City Council, as the same may from time to time be amended, except as otherwise provided in this Agreement. Such rules and regulations are made a part of this Agreement as if fully set forth herein to the extent that such rules and regulations are consistent with, and do not conflict with, the terms of this Agreement.

5.2 Subject to Article 5.3 of this Agreement, the rate for electric service provided to MCCo and the Member Facilities under this Agreement shall be

the rate set forth in the Optional Large Industrial rate schedule as fixed by the Board of Control and approved by the City Council in effect as of the date of this Agreement plus 4 mills per Kilowatt hour. The rates and charges to MCCo and the Member Facilities shall not be increased during the term of the Agreement, except pursuant to Article 5.4.

5.3 A facilities discount of $125,000.00 per month shall be applied against all kilowatt demand of MCCo during the initial 5-year term of this Agreement. Such discount shall be deducted from MCCo's monthly invoice and shown as a separate line item on each invoice. It is expressly understood that the calculation of such discount is based on the cost of service to MCCo, taking into account MCCo's ownership of the MCCo Substation and of its own distribution facilities.

5.4 Pursuant to Section 523.048(K) of the Codified Ordinances of the City of Cleveland, the incremental energy adjustment charge to MCCo shall be based on the City's purchase of up to 50 MW of limited term power and associated energy from American Electric Power Company ("AEP"). The energy adjustment charge shall be based on a fixed

AEP demand charge of $6.50 per KW/month, AEP's actual energy and emission charges (the current estimates of which are shown on Exhibit B hereto), plus the actual costs incurred by the City for transmission and taxes of any kind, however measured, paid directly or indirectly by the City.

5.5 The rates applicable to and payable by MCCo under this Agreement shall apply to the first full or partial billing period of the City occurring after the Service Date. MCCo's bill shall be calculated based on the combined coincident billing of MCCo and the following member facilities which shall be served directly served by the City: 11000 Cedar Ave. (UCR 1), 11001 Cedar Ave. (UCR 2), 2315 Murray Hill Rd. (South Dorms), and 10620 Cedar Ave. (Aquatech) (collectively the "Member Facilities" and individually a "Member Facility"). City shall render bills for service to MCCo monthly commencing with the first month following the Service Date. MCCo shall pay all such bills in full and on a timely basis, in accordance with the terms and conditions of the City's rate schedules, except as otherwise provided in this Agreement. The City, at its sole cost and expense, shall install all necessary

equipment and lines to serve the Member Facilities, and shall make the necessary hookups in order to begin delivering electric service to these facilities at the end of the July 1996 billing period of their existing electric service agreement. At the end of the term of this Agreement, the equipment installed by the City at each Member Facility shall be surplus property of the City and each member which owns each of the foregoing facilities may purchase such equipment for its depreciated value.

5.6 MCCo members The Cleveland Museum of Art (11150 East Blvd.), The Cleveland Botanical Garden (11030 East Blvd.), The Cleveland Institute of Art (11141 East Blvd. and 11610 Euclid Ave.), and The Church of the Covenant (11205 Euclid Ave.) each shall have the option, to be exercised within thirty (30) days after the execution of this Agreement, to enter into an electric service agreement with the City for a term of seven (7) years, commencing at the end of the current term of its existing electric service agreement with its current supplier, at the City's standard rate schedules. The City at the City's sole cost and expense, shall install all equipment and lines necessary to provide dual feed service for the

Cleveland Museum of Art and equipment and lines for all of the other facilities listed above and shall make the necessary hookups in order to begin delivering electric service to these facilities at the end of the July 1996 billing period of their existing electric service agreement. Services to the facilities shall be underground except above-ground lines may be used to provide service to 11610 Euclid Avenue. If The Cleveland Museum of Art does not exercise its option to obtain service from the City, the City shall use all reasonable efforts, to provide service to the Cleveland Botanical Garden and the Cleveland Institute of Art facility located at 11141 East Blvd. At the end of the term of this Agreement, the equipment installed by the City at each member's facility shall be surplus property of the City and each member which owns each of the foregoing facilities may purchase such equipment for its depreciated value.

5.7 The failure or refusal of any MCCo member to exercise its option to enter into an electric service agreement with the City as provided in Article 5.6 shall not constitute a breach of this Agreement and shall not result in any liability or obligation on the part of MCCo or any MCCo member.

In addition, such failure or refusal shall not relieve the City of any of its obligations under this Agreement, or release the City from its performance under this Agreement.

5.8 In the event that the City interconnects with a utility other than Cleveland Electric Illuminating Company and such new interconnection enables the City to reduce the costs of transmission service necessary for service to MCCo or any Member Facility, such cost reductions shall be included in the energy adjustment portion of the rate.

Article 6.

6.1 The City shall be the exclusive supplier of electric power and energy to MCCo and the Member Facilities, including the facilities presently serviced by MCCo owned by Case Western Reserve University, and University Hospitals. MCCo, Case Western Reserve University and University Hospitals shall take and purchase from the City their full electric requirements for the Member Facilities and all facilities presently served by MCCo.

6.2 The City and MCCo shall have the affirmative duty to act in good faith to achieve the purposes

of this Agreement. In the event that a legal challenge to the City's authority to enter into this Agreement or the City's performance for any reason of any obligation or covenant hereunder is asserted by any third party, the City shall diligently pursue all available legal and legislative remedies (including, without limitation, appeals) to defend and protect the rights of MCCo and the City under this Agreement. If MCCo or any member is named as a party in any such legal challenge, the City, at MCCo's sole option and upon the timely written request of MCCo, shall represents and defend MCCo in such legal challenge, if and to the extent that such legal challenge is related to the City's authority to enter into this Agreement or the City's performance for any reason of its obligations or covenants hereunder, at the City's sole expense, and the City shall pay all costs and expenses incurred by MCCo in connection with such representation and defense. In such event and upon the City's request, MCCo shall cooperate with and assist the City in the defense of or in opposition to any such legal challenge and in seeking legal and legislative remedies. If the final, non-appealable disposition of any such legal challenge increases the cost to MCCo for

City electric service, the City shall cure such cost increase within thirty (30) days.

6.3 If the final, non-appealable disposition of any such legal challenge or action increases the cost to MCCo under this Agreement, and the City does not cure such cost increase within thirty (30) days, or MCCo determines the cure proposed or implemented by the City is not satisfactory to reasonably assure MCCo that the City will be able to perform all of its obligations under this Agreement without any additional cost or expense to MCCo or any of its members, then MCCo may terminate this Agreement at any time without any further liability or obligation hereunder by giving the City thirty (30) days prior written notice of such termination.

6.4 In the event the MCCo installs cogeneration equipment tied to MCCo's distribution system, MCCo shall notify the City of the amount of and the periods when such equipment will be utilized. Such cogeneration shall not exceed 5 megawatts unless mutually agreed to be the parties.

Article 7. 7.1 The electric power delivered hereunder shall be three-phase, nominal 60 cycle alternating

current at approximately 138,000 volts, measured by suitable metering equipment installed, owned and maintained by the City. MCCo shall design and operate its circuits so that as far as practical, each phase will be balanced equally with respect to load. MCCo shall use electric power and energy furnished hereunder in a manner that shall not be harmful to the system and facilities owned or operated by or on behalf of the City.

7.2 The City shall furnish the equipment necessary to bring electric service to the MCCo Substation. All such equipment supplied by the City shall remain the property of the City and the City shall be permitted to remove the same upon termination of this Agreement.

7.3 MCCo and its members shall provide the City, at no charge to the City, such convenient and practical access, locations, and rights-of-way to and upon their property as the City may require to furnish and maintain service and equipment. The City shall have access to the MCCo Substation as long as such substation is physically interconnected with the City's transmission system.

Article 8. Except as otherwise provided in this Agreement, the City shall not be liable to MCCo or any of its members for any loss, injury, or damage resulting from use by MCCo or any member of the electric service provided by City, MCCo's or any member's connection to the City's electric system, temporary interruption of service, consequential damages, or any cause reasonably beyond the City's control. This Article 8 shall not apply to relieve the City of any liability for any loss, injury or damage incurred by MCCo or any of its members arising from a determination that the City lacks the authority to enter into this Agreement, any failure by the City for any reason to provide electric power at the rates stated in Article 5, any breach by the City of its covenant in Article 10.5 to maintain a sufficient power supply, or the City's failure to cure any default of its obligations under Article 6.2.

Article 9. 9.1 At such time as this contract has actually been approved and executed by all of the parties, the City and MCCo shall issue a mutually approved, joint press release announcing that they have entered into this contract and describing its major terms and the benefits for each party. The city and MCCo agree that in the event any public

statements or positions are necessary in connection with a legal challenge concerning the subject matter of this Agreement, the City and MCCo will cooperate to develop public statements and positions mutually satisfactory to both parties. Neither party shall issue any press release or other public statement concerning such legal challenge which is objectionable to the other party in such other party's reasonable judgement.

Article 10. 10.1 Neither the City nor MCCo or any of its members shall be deemed to be in default or breach of this Agreement by reason of its failure to perform any one or more of its obligations hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, actions or decrees of governmental authority (other than the City itself in the case of a failure by the City), weather conditions, flood, riots, rebellion, sabotage, or any other circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to the failure of any party to make money payments required under this Agreement, and said monetary obligations shall

continue in effect during any of the aforementioned events. This provision shall not apply to relieve the City from, or excuse any default or breach by the City of, any obligation to provide electric power at the rates stated in Article 5, its obligation to cure any default as set forth in Article 6.2, the City's warranty of authority under Article 10.4, or the City's covenant of supply under Article 10.5.

10.2 If any term or provision of this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, the invalidity, illegality or unenforceability shall not affect any other term or provision hereof. This Agreement shall be interpreted and construed as if such term or provision, to the extent it has been held invalid, illegal, or unenforceable, had never been contained herein.

10.3 The City and MCCo and its members hereby acknowledge that nothing contained in this Agreement and no act by any party shall be deemed or construed as creating any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other association or relationship involving

the City and MCCo or its members. The City, however, acknowledges and agrees that this Agreement is for the benefit of MCCo and its signatory members, except any member which does not enter into an electric service agreement as provided in Article 5.5.

10.4 The City warrants and represents to MCCo and its members that the City has full authority to enter into this Agreement and each and every one of its provisions under the Constitution and laws of the State of Ohio and the Charter and Ordinances of the City of Cleveland.

10.5 The City covenants to MCCo and its members that as of the Service Date, the City will have, and thereafter will continue to have at all times during the term of this Agreement, power supply resources (such as contracts to purchase power) sufficient to fulfil its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hand this _____ day of _____, 199___.

BY: _____

Title: _____
The Medical Center Company

BY: _____

Title: _____
The Case Western Reserve University

BY: _____

Title: _____
University Hospitals

BY: _____

Title: _____
The Cleveland Museum of Art

BY: _____

Title: _____
The Church of The Covenant

BY: _____

Title: _____
The Cleveland Botanical Garden

BY: _____

Title: _____
The Cleveland Institute of Art

BY: _____

Title: _____
The City of Cleveland

Account No. _____ Contract No. _____

Meter(s) No. _____ Date Service Starts: _____

Target Date: _____ Mail Bills To: The Medical Center Co.
2250 Circle Drive
Cleveland, Ohio 44106

Date Meter(s) Installed: _____

0227\31464\94002\MCCO-A
2241

ELECTRIC POWER SERVICE AGREEMENT
BETWEEN THE CITY OF CLEVELAND, OHIO AND
THE MEDICAL CENTER COMPANY

EXHIBIT A

MCCo SUBSTATION DESCRIPTION

MCCo shall install and own a 138,000 volt to 11,500 volt substation located adjacent to City's 138 kV transmission line between City's East and Northeast Substations. The City 138 kV line will be tapped by MCCo between City poles ENE-7 and ENE-8, located east of Adelbert Road and north of the Penn Central railroad tracks. The MCCo Substation will consist of one 138 kV circuit breaker, two 138 kV circuit switchers, two 75 MVA transformers with load tap changers, and associated relay and control equipment necessary for reliable operation of the City and MCCo systems. All such equipment, other than metering facilities, shall be installed as part of MCCO's construction of the MCCo Substation. City will install metering on the secondary side of the transformers and such metering will measure the actual demand and energy usage. No loss compensation will be added.

MCCo shall provide to City for City's approval, the preliminary design details, drawings and specifications for the MCCo Substation. MCCo shall supply City with the complete detailed design drawings and specifications for the substation and installation along with the final test data after installation. City personnel shall consult with MCCo personnel and its contractors during the installation and testing of the MCCo Substation to allow for expedited construction and energization of the substation. MCCo shall provide 24-hour access to the substation area and equipment to City personnel and representatives.

Once the MCCo Substation is in operation, City shall monitor and perform routine inspection of the substation and associated equipment, as well as periodic testing of the transformers, relays, metering and other equipment. In the event of failure or the need for repairs to the substation or related equipment, City, at the request of the MCCo, shall perform such repairs at MCCo's expense chargeable on a time and materials basis.

ELECTRIC POWER SERVICE AGREEMENT
BETWEEN THE CITY OF CLEVELAND, OHIO AND
THE MEDICAL CENTER COMPANY

EXHIBIT B

POWER SUPPLY ADJUSTMENT CHARGES AEP

	DEMAND	ENERGY	EMISSIONS	TOTAL ENERGY
1996	$6.500	$0.01780	$0.00054	$0.01834
1997	$6.500	$0.01840	$0.00059	$0.01899
1998	$6.500	$0.01910	$0.00065	$0.01975
1999	$6.500	$0.01970	$0.00070	$0.02040
2000	$6.500	$0.02040	$0.00128	$0.02168
2001	$6.500	$0.02110	$0.00140	$0.02250

ETORNEYS
ARY E. O'REILLY
EVIN P. MURPHY
ICHAEL C. REGULINSKI
RUCE T. ROSENBAUM
OUGLAS J. WEBER
ARK R. KEMPIC

ARALEGAL
MY B. McCABE

CENTERIOR ENERGY

OPERATING COMPANIES
CLEVELAND ELECTRIC ILLUMINATING
TOLEDO EDISON

CORPORATE/REGULATORY PRACTICE AREA

CLEVELAND OFFICE
6200 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

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

ATTACHMENT "E"

CENTERIOR ENERGY

6200 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 CEI.

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

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