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August 13, 1996

U.S. Nuclear Regulatory Commission
Attn.: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Re: *In the Matter of Cleveland Electric Illuminating Company,*
Docket Nos. 50-440 and 50-346

Dear Sir or Madam:

On July 31, 1996, the Federal Energy Regulatory Commission ("FERC") issued an order directing Cleveland Electric Illuminating Company ("CEI") to provide the wheeling service at issue in Count 1 of the City of Cleveland, Ohio's January 23, 1996, Section 2.206 Petition in the above-referenced proceeding. Draft and final copies of the FERC's order were furnished to the NRC by CEI by letters dated August 2 and 8, 1996, respectively. (The FERC ruling can also be found at 76 FERC ¶ 61,115.)

Consistent with Cleveland's position in Count 1, the FERC ruled summarily that CEI's refusal to wheel Cleveland's proposed 40 MW purchase from Ohio Power Company was in violation of the Company's obligations under its Transmission Tariff No. 1 (Slip op. at 5-7), a tariff filed to comply with an NRC license condition. CEI ignores this holding in its August 2 letter, stating only that the FERC found that the transaction at issue in Count 1 was "not prohibited" under Federal Power Act Section 212(h). In fact, FERC's ruling with respect to the statute (*Id.* at 8) followed its finding that CEI "is obligated to provide the requested transmission service under [its] currently effective transmission service agreement." *Id.* at 5.

The FERC did not reach the issue of whether CEI's failure to wheel was also in violation of NRC Antitrust License Condition No. 3, stating that "Cleveland Electric's transmission service agreement [Tariff No. 1] provides a sufficient basis to decide this dispute." *Id.* at 12-13.

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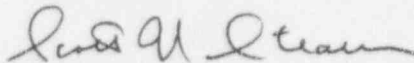
August 13, 1996

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In light of the FERC decision, Cleveland renews its request that the NRC rule expeditiously that CEI's refusal to provide the wheeling service at issue in Count 1 is a violation of Antitrust License Condition No. 3, and to impose appropriate sanctions. As CEI itself stated in its May 10 "Response" to the Cleveland Petition, the "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." CEI Response at 10 n.4. Assuming *arguendo* that CEI's statement is accurate, the Company cannot plausibly deny that FERC has now "determined" that CEI has refused to wheel power as required by its FERC tariff and the Federal Power Act. The NRC should now exercise its enforcement "responsibility."

Finally, CEI's expressed willingness (August 8 letter) to comply now with its wheeling obligations does not excuse the Company's unwarranted refusal to wheel absent a directive from a federal agency, and should not preclude the imposition of severe sanctions. As pointed out by Cleveland in its Petition (at 25), CEI is a "repeat offender" with respect to violations of its license conditions, and as such the Company "needs and should receive another effective and enforceable reminder that the Company must comply with its license condition obligations."

Sincerely,



David R. Straus

Scott H. Strauss

Attorneys for

THE CITY OF CLEVELAND, OHIO

cc: Service List

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