

UNITED STATES NUCLEAR REGULATORY COMMISSION
CENTERIOR ENERGY, ET AL.
DOCKET NOS. 50-346 AND 50-440
NOTICE OF LICENSE AMENDMENT REQUESTS
PROPOSED MERGER OF TOLEDO EDISON COMPANY AND
CLEVELAND ELECTRIC ILLUMINATING COMPANY
ANTITRUST DETERMINATION

Pursuant to two separate license amendment requests from licensee Centerior Energy (Centerior) dated June 2, 1994 and June 6, 1994, the staff hereby notices the request by Centerior to amend the Perry Nuclear Power Plant (Perry) and Davis-Besse Nuclear Power Station (Davis-Besse) operating licenses to reflect a new owner-operator of Perry and Davis-Besse. The new owner-operator, temporarily named "NEWCO" by Centerior, will result from the proposed merger between the Toledo Edison Company (TE) and the Cleveland Electric Illuminating Company (CEI) -- both existing licensees and owners of the Perry and Davis-Besse facilities.

The staff has interpreted the Atomic Energy Act of 1954, as amended and the Commission's regulations, to require an antitrust review of an owner or operator prior to the proposed new owner taking possession of the facility or prior to the proposed new operator assuming responsibility for operating the facility in question. Where the new operator is a non-owner, the staff has developed, with the Commission's approval, an antitrust license condition that

prohibits the new operator from marketing or brokering power or energy from the facility. (This type of license condition would not apply in the instant case because NEWCO will be both an owner and an operator of Perry and Davis-Besse.) The intent of the staff in developing the non-owner operator license condition is to forego the need for an extended review of the operator's competitive practices and any accompanying analysis of how any practices impact or could impact the electric bulk power services market. By agreeing not to be involved in the facility's marketing or brokering of bulk power services, the staff believes the new non-owner operator will not possess enough market power to significantly impact the market.

The instant amendment requests involve two licensees, TE and CEI, that have undergone antitrust reviews by the staff at the construction permit and operating license stages of the licensing process. The construction permit antitrust review in the combined Perry/Davis-Besse proceeding resulted in extensive antitrust license conditions obligating TE and CEI to cease certain anticompetitive practices and make available certain bulk power services to other entities in the affected bulk power services market. This review analyzed the practices of the power pooling group known as CAPCO, i.e., Central Area Power Coordination Group, as a whole and also the practices of the five individual utility operating companies, including TE and CEI, that made up CAPCO. The staff believes the construction permit antitrust review and the operating license review, which found no significant antitrust changes since the previous review, adequately defined the problems associated with TE's and CEI's competitive practices and addressed these problems during

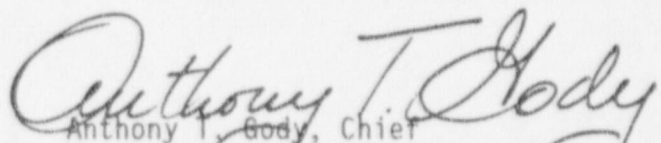
the review process.

The license conditions that evolved from the Commission's antitrust review process are extensive and procompetitive. The licensee has agreed that the new owner-operator will be bound by the existing antitrust license conditions now binding TE and CEI -- by doing so, the staff believes that there is no need to conduct another antitrust review as a result of the proposed merger nor is there any need to seek public comment on the proposed merger.

For further details with respect to this action, see the applications for amendment dated June 2, 1994 (Perry) and June 6, 1994 (Davis-Besse), which are available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Rooms: for Perry, at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081; for Davis-Besse, at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 2nd day of August, 1994 .

FOR THE NUCLEAR REGULATORY COMMISSION



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