

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE DIRECTOR, NUCLEAR REACTOR REGULATION

In the Matter of)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
and) Docket Nos. 50-440A
THE TOLEDO EDISON COMPANY) and 50-346A
(Perry Nuclear Power Plant, Unit 1,)
and Davis-Besse Nuclear Power)
Station, Unit 1))

REQUEST FOR UNOPPOSED EXTENSION OF
TIME FOR FILING COMMENTS

Pursuant to 10 C.F.R. §2.711, the City of Cleveland, Ohio (Cleveland) requests a sixty day extension of the deadline for filing comments in this proceeding. The applicants, Toledo Edison Company and Cleveland Electric Illuminating Company (wholly-owned subsidiaries of Centerior Energy Corporation and jointly referred to here as Centerior) have authorized Cleveland to state that they do not oppose this motion. Likewise, the NRC's counsel has authorized Cleveland to make a similar representation on its behalf.

I. BACKGROUND

In its proceeding in Docket Nos. 50-440A, et al., the NRC issued construction permits and operating licenses for several nuclear power plants proposed by Centerior, Ohio Edison Company (Ohio Edison), Pennsylvania Power Company and Duquesne Light Company. The Commission imposed antitrust license condi-

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tions in the permits and licenses.

On September 18, 1987, Ohio Edison filed an application requesting the Director of Nuclear Reactor Regulation (NRR) to suspend the antitrust licenses conditions insofar as the conditions apply to Ohio Edison's ownership interest in Perry Nuclear Power Plant Unit 1 (Perry). On February 19, 1988, Cleveland submitted an answer to Ohio Edison's application. Ohio Edison, in turn, sought authorization to answer the answers of Cleveland, the City of Clyde, Ohio and American Municipal Power-Ohio. Ohio Edison received several extensions of time to file its answer. The answer was filed just a few days ago, on July 5, 1988.

On May 2, 1988, Centerior filed what is best viewed as a follow-up to Ohio Edison's application. Centerior seeks the same relief sought by Ohio Edison -- suspension of the antitrust license conditions -- but with respect to its ownership interest in both Perry Unit 1 and Davis-Besse Nuclear Power Station, Unit 1.

II. AN EXTENSION OF TIME IS WARRANTED

Other pressing matters have occupied Counsel for much of the time subsequent to receipt of Centerior's application. Preparation of an answer to Centerior's application requires analysis of the voluminous record compiled in this proceeding. In this regard, it is noteworthy that it took Ohio Edison 137 days to answer the answer filed by Cleveland in response to Ohio Edison's related application.

Ohio Edison's recent filing of its lengthy answer com-

pounds the burdens on Cleveland. In its application, Centerior repeatedly makes it clear that it is relying on the arguments in Ohio Edison's application. In order to provide a comprehensive response to the two pending applications, Counsel's preparation of Cleveland's answer was delayed until Ohio Edison filed its answer on July 5.

This extension will not be the cause of delay of these proceedings. The NRC only recently received the application by Centerior and the answer of Ohio Edison. In addition, Counsel's understanding is that comments of the Department of Justice will not be submitted to the NRC until all filings of the parties have been submitted. Hence, the NRC will probably need a considerable amount of time before it can take action on Centerior's application.

The NRC may also need to await clarification from the United States District Court for the District of Columbia in a proceeding recently initiated by Ohio Edison. In its application to the NRC, Ohio Edison argues, inter alia, that there is no statutory basis for continued imposition of the antitrust license conditions. Centerior, in its application (pp. 3-10), adopts this argument. On June 22, 1988, Ohio Edison filed a complaint for a declaratory judgment in the District Court in Ohio Edison Co. v. Zech, et al., No. 88-1695. The complaint seeks the same relief sought from the NRC--an order suspending the antitrust license conditions insofar as they apply to Ohio Edison. Alternatively, the complaint seeks, (1) an order directing the NRC to so suspend the antitrust license conditions, and (2) any further

relief the Court deems appropriate. In its July 5 answer, Ohio Edison refers to the complaint and requests (p. 3) that the NRC "hold this proceeding in abeyance until the court rules on [Ohio Edison's] Complaint."

Consequently, this proceeding may well be delayed during the pendency of the Court proceeding.

WHEREFORE, Cleveland requests that the deadline for filing of comments on Centerior's application be extended sixty days, until September 14, 1988.

Respectfully submitted,

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July 7, 1988

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the participants in this proceeding.

Dated at Washington, D.C., this 7th day of July, 1988.

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