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\*NOT ADMITTED IN D. C.

September 14, 1979

Mr. Harold R. Denton  
Director, Office of  
Nuclear Reactor Regulation  
U. S. Nuclear Regulatory Commission  
1717 H Street, N. W.  
Washington, D. C. 20005

Re: The Toledo Edison Company, et al.  
(Davis-Besse Nuclear Power Station,  
Units 1, 2 and 3), Docket Nos. 50-346A,  
50-500A, 50-501A, and  
The Cleveland Electric Illuminating  
Company, et al. (Perry Nuclear Power  
Plants, Units 1 and 2), Docket Nos.  
50-440A, 50-441A

Dear Mr. Denton:

On September 6, 1979, the City of Cleveland ("City") submitted to you a response in opposition to the request of The Cleveland Electric Illuminating Company ("CEI") for modification of your June 25, 1979 Order, insofar as that Order required the immediate filing of an amended transmission services tariff with the Federal Energy Regulatory Commission ("FERC").

The City's objection to a deferral of the filing requirement seems to be based upon a misconception of the applicability in these circumstances of the review standard announced in Virginia Petroleum Jobbers Association v. FPC, 295 F.2d 921, 925 (D.C. Cir. 1958), and its progeny. The four criteria set forth in that case -- to be used to determine whether or not to grant extraordinary relief prior to affording all parties an opportunity to be heard on the merits of a controverted issue -- would obviously pertain, if at all, to the Director's initial decision to make his Order "immediately effective", not to CEI's request for modification.

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As stated in our letter to you of August 2, 1979, if CEI were required to file immediately with FERC the transmission services tariff recommended in your June 25 Order, such action would effectively moot CIE's appeal currently pending before the Federal Energy Regulatory Commission in FERC Docket No. ER78-194. The City does not suggest otherwise. Nor, understandably, does it dispute that such interference with the ongoing appellate process at FERC runs counter to the NRC's own directive in antitrust license condition 11.\*

No reasonable basis has been advanced for compelling such a result. At the present time, no agency finding has been made that CEI is in violation of the NRC antitrust license conditions. Charges to this effect have been categorically denied and a hearing thereon has been requested by CEI. The injury to CEI by requiring, prior to said hearing, that it immediately file with FERC a revised transmission services tariff is apparent and uncontested. On the other hand, neither the City nor any other entity will suffer injury if, as requested, the designated FERC filing is deferred pending the outcome of the appeal in FERC Docket No. ER 78-194. Indeed, the public interest in insuring to all persons a full and fair opportunity to be heard on allegations of possible misconduct prior to the imposition of any sanctions argues overwhelmingly for modification of the "immediate effectiveness" ruling as we have requested.

We would add only that CEI's position in this regard is certainly not one of "playing games with the NRC", as the City claims. CEI properly opposed the City's request to reopen the FERC record for purposes of introducing therein the June 25 Order. The statements contained in the Director's Order do not constitute Commission findings of noncompliance. They represent, at most, disputed allegations by the NRC staff for which no opportunity has yet been provided to CEI to respond. As such, they are, as stated by CEI in the quoted portion of the Answer filed in FERC Docket No. ER 78-194, "irrelevant and immaterial" to the review proceeding before the Federal Energy Commission (City Oppos., p. 12).

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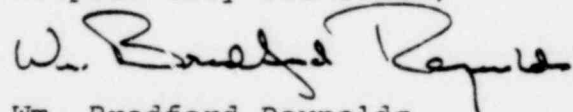
\*Antitrust license condition 11 is renumbered antitrust license condition 10 referenced in our earlier letter of August 2, 1979. The renumbering resulted from a modification by the Appeal Board of the antitrust license conditions originally imposed by the Licensing Board. See Appeal Board Antitrust Decision in above captioned proceeding, dated September 6, 1979, at p. 64.

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In the circumstances, modification of the "immediate effectiveness" aspect of the Director's June 25 Order until 25 days after the effective date of the final opinion and order by the Federal Energy Regulatory Commission in FERC Docket No. ER 78-194 is plainly warranted. Such a result permits CEI to pursue its appellate opportunity to be heard on the merits of the NRC's allegations of possible noncompliance with specified antitrust license conditions. No injury will occur to the City or any other entity while the administrative processes are allowed to proceed in an orderly fashion. Nor will there be any compromise of the public interest.

Indeed, for all its protestations, the City does not suggest otherwise. Nor, for that matter, has any complaint been registered by the Department of Justice. Accordingly, the Director's Order, as reflected in its supplemental Order of August 6, 1979, should stand.

Respectfully submitted,



Wm. Bradford Reynolds  
Counsel for the Cleveland Electric  
Illuminating Company

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