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September 10, 1979

\*NOT ADMITTED IN D.C.

Mr. Harold R. Denton  
Director, Office of  
Nuclear Reactor Regulation  
U.S. Nuclear Regulatory  
Commission  
1717 H Street, N.W.  
Washington, D. C. 20006

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:

We only recently received the Department of Justice's letter to you dated August 10, 1979, requesting the institution of a separate NRC proceeding to determine whether, as the Department alleges, The Cleveland Electric Illuminating Company ("CEI") has violated License Condition 3.

The charges made by the Department do not even begin to suggest a violation of License Condition 3. Contrary to the unsupported accusation of noncompliance, CEI has responsibly endeavored to negotiate a transmission services tariff acceptable to all interested parties, including the NRC. It has properly availed itself of the regulatory process in an effort to obtain approval of the proposed tariff, and, in so doing, has proceeded as expeditiously as possible.

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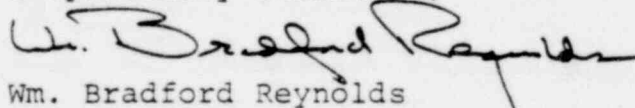
Mr. Harold R. Denton  
September 10, 1979  
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Significantly, the Department's letter makes no mention of a request of CEI by another entity to wheel power, let alone any refusal of such a request by CEI. Instead, the Department bases its position on an apparent disenchantment with certain terms of CEI's proposed transmission tariff, which is currently the subject of an appellate review proceeding before the Federal Energy Regulatory Commission ("FERC").

Whatever unfounded disagreement the Department may have with that tariff, such differences provide no legitimate basis for requesting the imposition of civil penalties against CEI for an alleged violation of License Condition 3. CEI is on record as agreeing to engage in wheeling at the request of other entities, as required by License Condition 3. Moreover, this agreement has been communicated to the Power Authority of the State of New York ("PASNY") in support of AMP-Ohio's application for PASNY power, and in that connection, PASNY has been advised that the necessary arrangements have already been made to wheel such power to the City of Cleveland when and if it becomes available.

There is absolutely no reason for the NRC to accede to the Department's request to initiate a proceeding pursuant to Section 234 of the Atomic Energy Act, 42 U.S.C. § 2282, and Section 2.205 of the NRC Rules of Practice, 10 C.F.R. § 2.205. CEI has heretofore requested a hearing in response to the NRC's Order Modifying Anti-trust License Condition No. 3 of Davis-Besse Unit 1, License No. NPF-3, and Perry Units 1 and 2, CPFR-148, CPFR-149. That hearing provides ample opportunity for the NRC to determine whether CEI has failed to comply with License Condition 3. In the unlikely event that it should thereafter be necessary to consider a possible imposition of civil penalties, appropriate notice to that effect can then be given under Section 2.205(a) of the Commission's Rules of Practice.

Respectfully submitted,



Wm. Bradford Reynolds  
Counsel for The Cleveland  
Electric Illuminating Company

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cc: Service List in this  
proceeding except for  
Members of the NRC  
Safety and Licensing  
Appeal Board

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