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September 12, 1979

* MD BAR ONLY

Mr. Harold Denton,
Director
Office of Nuclear Reactor
Regulation
Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Mr. Denton:

By letter dated August 10, 1979, received by this office on August 31, 1979, the Department of Justice requested the Nuclear Regulatory Commission to institute proceedings to impose a civil penalty on The Cleveland Electric Illuminating Company ("CEI") for violating Antitrust License Condition No. 3, relating to wheeling services, attached to the operating license for Davis-Besse Nuclear Power Station Unit 1 and the construction permits issued for Perry Plant Units 1 and 2 (NRC Dockets No. 50-346A, 50-500A, 50-501A and NRC Dockets No. 50-440A and 50-441A).

The City of Cleveland, Ohio, supports the request of the Department of Justice.

The City of Cleveland agrees with the Department that CEI has willfully refused to comply with Antitrust License Condition No. 3. As was observed in the Order of June 25, 1979, of the Nuclear Regulatory Commission relating to CEI's violations of the wheeling license condition--

"CEI has approached its responsibility to file a wheeling schedule for the City as if it had not been required as a condition of its operating license and two construction permits to comply with Antitrust License Condition No. 3."

CEI's conduct in this regard was not inadvertent. It was knowing and deliberate, designed to thwart the license condition while hoping that its appeal of the Licensing Board's decision would rescue CEI from compliance with the license condition which the Licensing and Appeal Board had refused to stay pendents lite. A witness for the Staff of the Federal Energy Regulatory Commission, in that commission's hearing

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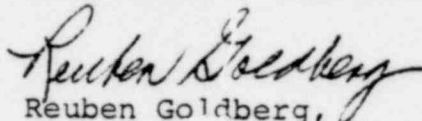
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Mr. Harold Denton
September 12, 1979
Page Two

on the transmission tariff filed by CEI in purported compliance with the license condition, put it succinctly (FERC Docket No. ER78-194, Transcript 431):

"My reading of the tariff is that it is a short-term stop-gap filing by CEI that makes no provision for the future except to abruptly terminate service if any legal means of doing so should materialize."

Respectfully submitted,



Reuben Goldberg,
Attorney for
The City of Cleveland, Ohio

RG/jat

cc: Service list excluding
members of the NRC Safety
and Licensing Appeal Board.

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