

50-346/440



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 17, 1996

David R. Straus  
Spiegel & McDiarmid  
Suite 1000  
1350 New York Avenue, NW.  
Washington, DC 20005-4798

Dear Mr. Straus:

The City of Cleveland, Ohio, which owns and operates Cleveland Public Power (CPP or the City) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) in a letter dated January 23, 1996. The Petition requests that the NRC, pursuant to 10 CFR §§ 2.201, 2.202, 2.205 and 2.206, find that the Cleveland Electric Illuminating Company (CEI) is obligated to provide the wheeling and interconnection services as specified in the Petition and allegedly required by the Antitrust License Conditions that are a part of CEI's license for the Davis-Besse Nuclear Power Plant, Unit 1 and Perry Nuclear Power Plant, Unit 1, enforce the Antitrust License Conditions, and impose "appropriate fines." Supplements to the Petition were filed on May 31 and August 13, 1996.

Four specific violations of the Antitrust License Conditions are alleged in the City's § 2.206 petition. The first allegation is that CEI has violated License Condition Number 3, concerning wheeling service, by refusing to provide 40 MW of firm wheeling service from Ohio Power Company to CPP to provide electrical service to Medical Center Company, a former CEI retail customer. The second allegation is that CEI has violated License Condition Number 6 and 11, concerning the sale of emergency power, by contracting in the 1987 "Centerior Dispatch Operating Agreement" to provide Toledo Edison Company emergency power on a preferential basis. The third allegation is that CEI has violated License Condition Number 2, concerning the offering of interconnections upon reasonable terms and conditions, by failing to offer CPP a fourth interconnection point. The fourth allegation is that CEI has violated License Condition Number 2 by imposing unreasonable deviation charges for unscheduled power delivered over existing interconnections in excess of the amount scheduled for delivery.

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After consideration and careful review of the facts available to the staff, and the decisions reached in parallel proceedings involving the same parties and similar issues before the Federal Energy Regulatory Commission (FERC), I have concluded that the issues raised by the petitioner that could be remedied by the NRC have been addressed and resolved in the FERC proceedings so as to require no further action by the NRC. As a result, I have determined that no proceeding should be instituted and no further regulatory action by the NRC is required. The reasons for my decision are explained in the enclosed "Director's Decision under 10 CFR § 2.206." This Decision and the enclosed Notice will be filed with the Office of the Federal Register for publication.

Sincerely,  
Original signed by  
Frank J. Miraglia  
Frank J. Miraglia, Acting Director  
Office of Nuclear Reactor Regulation

Docket Nos. 50-346  
and 50-440  
(10 CFR § 2.206)

Enclosures: As stated (2)

cc w/encls: Sharon Sobol Jordan  
Director of Law  
William T. Zigli  
Chief Assistant Director of Law  
City of Cleveland, Ohio  
106 City Hall  
601 Lakeside Avenue  
Cleveland, Ohio 44114

Glenn S. Krassen  
Climaco, Climaco, Seminatore,  
Lefkowitz and Garofoli, Co., L.P.A.  
The Halle Building, Suite 900  
1228 Euclid Avenue  
Cleveland, Ohio 44115

See next page

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NAME	MYoung*	TMartin	FMiraglia
DATE	10/2/96	10/11/96	10/16/96

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Davis-Besse Nuclear Power Station  
Toledo Edison Company

cc:

Mary E. O'Reilly  
Centerior Energy Corporation  
300 Madison Avenue  
Toledo, Ohio 43652

Mr. James L. Freels  
Manager - Regulatory Affairs  
Toledo Edison Company  
Davis-Besse Nuclear Power Station  
5501 North State - Route 2  
Oak Harbor, Ohio 43449-9760

Gerald Charnoff, Esq.  
Shaw, Pittman, Potts  
& Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

Regional Administrator  
U.S. NRC, Region III  
801 Warrenville Road  
Lisle, Illinois 60523-4351

Mr. Robert B. Borsum  
Babcock & Wilcox  
Nuclear Power Generation Division  
1700 Rockville Pike, Suite 525  
Rockville, Maryland 20852

Resident Inspector  
U. S. Nuclear Regulatory Commission  
5503 N. State Route 2  
Oak Harbor, Ohio 43449

Mr. James H. Lash, Plant Manager  
Toledo Edison Company  
Davis-Besse Nuclear Power Station  
5501 North State Route 2  
Oak Harbor, Ohio 43449-9760

President, Board of County  
Commissioners of Ottawa County  
Port Clinton, Ohio 43452

Unit No. 1

Robert E. Owen, Chief  
Bureau of Radiological Health  
Service  
Ohio Department of Health  
P. O. Box 118  
Columbus, Ohio 43266-0118

Attorney General  
Department of Attorney  
General  
30 East Broad Street  
Columbus, Ohio 43216

Mr. James W. Harris, Director  
Division of Power Generation  
Ohio Department of Industrial  
Regulations  
P. O. Box 825  
Columbus, Ohio 43216

Ohio Environmental Protection Agency  
DERR--Compliance Unit  
ATTN: Zack A. Clayton  
P. O. Box 1049  
Columbus, Ohio 43266-0149

State of Ohio  
Public Utilities Commission  
180 East Broad Street  
Columbus, Ohio 43266-0573

Mr. James R. Williams  
Chief of Staff  
Ohio Emergency Management Agency  
2855 West Dublin Granville Road  
Columbus, Ohio 43235-2206

Mr. John K. Wood  
Vice President-Nuclear, Davis-Besse  
Centerior Service Company  
c/o Toledo Edison Company  
Davis-Besse Nuclear Power Station  
5501 North State Route 2  
Oak Harbor, Ohio 43449-9760

Perry Nuclear Power Plant  
Centerior Service Company

Unit Nos. 1 and 2

cc:

Mr. James D. Kloosterman  
Regulatory Affairs Manager  
Cleveland Electric Illuminating Co.  
Perry Nuclear Plant  
P.O. Box 97, E-210  
Perry, Ohio 44081

Mr. Richard D. Brandt, Plant Manager  
Cleveland Electric Illuminating Co.  
Perry Nuclear Power Plant  
P.O. Box 97, SB306  
Perry, Ohio 44081

Jay E. Silberg, Esq.  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

Mr. James W. Harris, Director  
Division of Power Generation  
Ohio Dept. of Industrial Relations  
P.O. Box 825  
Columbus, Ohio 43216

Ms. Mary E. O'Reilly  
Centerior Energy Corporation  
300 Madison Avenue  
Toledo, Ohio 43652

The Honorable Lawrence Logan  
Mayor, Village of Perry  
4203 Harper Street  
Perry, Ohio 44081

Resident Inspector's Office  
U.S. Nuclear Regulatory Commission  
Parmly at Center Road  
Perry, Ohio 44081

The Honorable Robert V. Oresz  
Mayor, Village of North Perry  
North Perry Village Hall  
4778 Lockwood Road  
North Perry Village, Ohio 44081

Regional Administrator  
U.S. NRC, Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4531

Attorney General  
Department of Attorney General  
30 East Broad Street  
Columbus, Ohio 43216

Lake County Prosecutor  
Lake County Administration Bldg.  
105 Main Street  
Painesville, Ohio 44077

Radiological Health Program  
Ohio Department of Health  
P. O. Box 118  
Columbus, Ohio 43266-0118

Ms. Sue Hiatt  
OCRE Interim Representative  
8275 Munson  
Memtor, Ohio 44060

Ohio Environmental Protection Agency  
DERR--Compliance Unit  
ATTN: Mr. Zack A. Clayton  
P.O. Box 1049  
Columbus, Ohio 43266-0149

Terry J. Lodge, Esq.  
618 N. Michigan Street, Suite 105  
Toledo, Ohio 43624

Mr. Thomas Haas, Chairman  
Perry Township Board of Trustees  
3750 Center Rd., Box 65  
Perry, Ohio 44081

Ashtabula County Prosecutor  
25 West Jefferson Street  
Jefferson, Ohio 44047

Mr. Donald C. Shelton  
Acting Vice President  
Nuclear - Perry  
Centerior Service Company  
P.O. Box 97, A200  
Perry, Ohio 44081

State of Ohio  
Public Utilities Commission  
East Broad Street  
Columbus, Ohio 43266-0573

James R. Williams, Chief of Staff  
Ohio Emergency Management Agency  
2855 West Dublin Granville Road  
Columbus, Ohio 43235-2206

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DATED October 17, 1996

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J. Taylor

F. Miraglia/A. Thadani

R. Zimmerman

J. Roe

E. Adensam (EGA1)

T. Martin

P. Milano

D. Foster-Curseen

J. Hopkins

L. Gundrum

OPA

OCA

NRR Mailroom (EDO 0000972) (w/incoming)

T. Harris

J. Goldberg

ASLBP

Director, OCAA

ACRS

J. Caldwell, RIII

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