

discovered some off-site areas that may require some remediation. Umetco will need to characterize those areas to determine volumes of materials affected and where necessary to generate a plan for their disposal. If the current A-9 design capacity is exceeded, a design change may be required. Based on review of Umetco's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of Umetco, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

**SUPPLEMENTARY INFORMATION:** Umetco's license, including an amended License Condition 59, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-6640.

Dated at Rockville, Maryland, this 29th day of February 1996.

Daniel M. Gillen,

*Acting Chief, Uranium Recovery Branch,  
Division of Waste Management, Office of  
Nuclear Material Safety and Safeguards.*

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[Docket Nos. 50-440 and 50-346]

**Perry Nuclear Power Plant, Unit 1;  
Davis-Besse Nuclear Power Station,  
Unit 1; Receipt of Petition for  
Director's Decision Under 10 CFR  
2.206**

Notice is hereby given that by Petition from the City of Cleveland, Ohio, for the "Expedited Issuance of Notice of Violation, Enforcement of License Conditions, and Imposition of Appropriate Fines" (Petition), dated January 23, 1996, the City of Cleveland (Petitioner) requests, *inter alia*, 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. In addition, the Petitioner has filed a Motion for Partial Summary Judgment on this issue, and has also requested in the alternative that if partial summary judgment is denied, the Commission sever the matter from the remainder of the Petitioner's other requests contained in the Petition and initiate "an expedited hearing procedure."

More specifically, the Petitioner requests the following NRC actions on an expedited schedule: (1) That the NRC issue a Notice of Violation against CEI for its failure to comply fully with the obligations under the Antitrust License Conditions; (2) that the NRC require CEI to submit a timely reply admitting or denying that CEI is in violation of these obligations, setting forth the steps it is taking to ensure compliance with the Antitrust License Conditions, and providing other compliance information required by the NRC; (3) that the NRC direct CEI to comply immediately with the portions of the Antitrust License Conditions at issue, including requiring CEI to withdraw immediately from the Federal Energy Regulatory Commission portions of its filings in Docket No. ER93-471-000 that are inconsistent with the Antitrust License Conditions, to withdraw the \$75.00/KW-month "deviation charge" from the rate schedules, and to withdraw that portion of the "Agreement" providing Toledo Edison "highest priority" treatment for its purchases of emergency power from CEI; (4) that the NRC impose the maximum appropriate fines for CEI's repeated violations of the Antitrust License Conditions; and (5) that the NRC direct CEI to provide firm wheeling service during 1996 in the amounts requested by the Petitioner in its August 11, 1995, letter to CEI and in accordance with CEI's obligation under Antitrust License Condition No. 3.

The Petition asserts the following as bases for the requests enumerated above: (1) That CEI violated Antitrust License Condition No. 3 by refusing to provide firm wheeling service to the Petitioner; (2) that CEI violated Antitrust License Condition Nos. 6 and 11 by entering into a contract to provide Toledo Edison Company with emergency power on a preferential basis; (3) that CEI violated Antitrust License Condition No. 2 by failing to offer the Petitioner a fourth interconnection point upon reasonable terms and conditions; and (4) that CEI violated Antitrust License Condition No. 2 by unreasonably burdening use of the existing interconnections through

unilateral imposition of a \$75.00/KW-month "deviation charge." The Petitioner asserts that expedited action is by the Commission appropriate and necessary because of the "ongoing, intensive, and unique door-to-door competition" in which the Petitioner and CEI are engaged and that CEI stands to gain enormously, and the Petitioner to lose by equal measure, for each day that CEI refuses to comply with its license condition obligations. The Petitioner also expresses concern that expedited action by the Commission is required by reason of the Petitioner's 40 MW power purchase from Ohio Power Company to be supplied to the Medical Center Company scheduled to begin by September 1, 1996, which will require wheeling by CEI.

The Petition has been referred to the Office of Nuclear Reactor Regulation for action in accordance with 10 CFR § 2.206. The request for partial summary judgment, the consideration of which is not provided for under 10 CFR § 2.206, is accordingly not being considered, as described in a letter dated March 4, 1996. The request for an expedited Director's Decision that would implement the requested actions was also denied in that letter.

As provided by 10 CFR § 2.206, the NRC will take appropriate action on the Petitioner's requests, other than Motion for Partial Summary Judgment, within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document rooms for: Perry Nuclear Power Plant—Perry Public Library, 3753 Main Street, Perry, Ohio; and Davis-Besse Nuclear Power Station—Government Documents Collection, William Carlson Library (Depository) University of Toledo, 2801 West Bancroft Avenue, Toledo, Ohio.

Dated at Rockville, Maryland this 4th day of March 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

*Director, Office of Nuclear Reactor  
Regulation.*

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