level, thereby representing a Severity Level III problem, if the violations reflect the same underlying cause or programmatic deficiency, or the violations contributed to or were unavoidable consequences of the underlying problem. In this case, the violations are related, and the lack of attention and carelessness toward licensed activities were the underlying causes of the three violations. Therefore, in accordance with the Enforcement Policy, the NRC aggregated the violations into a Severity Level III problem for which a $12,500 civil penalty was assessed.

As to the apportionment of the civil penalty, the violations individually would be characterized at Severity Level IV and, therefore, would not be subject to individual penalties. The regulatory significance of this Severity Level III problem is the collectiveness of the problem. Therefore, the penalty has not been allocated for each violation. Consequently, the civil penalty applies to the problem as a whole.

2. The Licensee argued that none of the violations ''has real safety significance.'' B&W Fuel stated that its safety analysis of the BW–2901 package, which was performed after deviations were found and prior to further use, was more than adequate. B&W Fuel added that the NRC does not have a basis in the regulations for requiring the use of incredible assumptions, such as an optimized volume fraction, in post accident assumptions.

The Licensee contended that the NRC staff's new assumptions imposed during the review of B&W Fuel's submittal under 10 CFR 71.95 make the analysis appear inadequate and that this is not the case. The Licensee stated that it considers some of the required assumptions to be not credible and therefore beyond the requirement of 10 CFR 71.55(b)(1) and (2), and that the NRC ultimately agreed with B&W Fuel's analysis and authorized it to use the containers with the deviations present.

NRC Evaluation

Safety significance, from an enforcement prospective, involves consideration of: (1) actual safety consequence; (2) potential safety consequence; and (3) regulatory significance. Violation A is of concern because of the potential criticality consequence of B&W Fuel's use of shipping packages that were not constructed as required and for which an adequate safety evaluation had not been performed. Violation B is of concern because the violation continued for over two years which demonstrates a lack of management oversight (i.e., B&W Fuel failed to identify the violation, although the cylinders were readily visible during that time). Violation C is of concern because, in each example of the violation, the NRC relied upon inaccurate information submitted by the Licensee to make a regulatory decision.

While the actual safety consequences of the violations fortunately turned out to be minimal in this case, the regulatory concerns are significant due to B&W Fuel's lack of attention to licensed activities. Specifically, the lack of attention to regulated activities was not isolated, but spanned several areas including licensing, transportation, quality assurance, and material control and accountability, and directly resulted in the three violations described in the Notice. Therefore, the NRC concludes that, taken collectively, the violations represent a significant regulatory concern.

The NRC disagrees with the Licensee's statements regarding the adequacy of its safety analysis. When B&W Fuel evaluated the safety significance of the larger containment vessel, the Licensee incorrectly considered the wooden boards (i.e., box) to be structural components that would confine the fissile material under accident conditions. This is not consistent with the safety basis of the package or previous B&W Fuel analyses. The NRC did not, and does not, agree with B&W Fuel's safety assessment dated July 7, 1995. Furthermore, the NRC did not authorize the Licensee to use the BW–2901 shipping packages with the deviations present unless certain conditions were met; specifically, installation of borated aluminum poison plates, or restricting shipments to large size pellets with a stainless steel separator plate. In view of the above, the NRC concludes that the Licensee's safety analysis of the BW–2901 shipping package was inadequate.

3. The Licensee stated that it does not understand why the NRC did not give B&W Fuel credit for its corrective actions or the cost of meeting the requirements imposed by the NRC assumptions in the analysis for the BW–2901 shipping containers. The Licensee argues that it has been very proactive in this case and took action which prevented any reduction in the protection of the public's health and safety. Specifically, when NRC management indicated that it considered that B&W Fuel's action was outside the NRC's interpretation of Part 71, B&W Fuel immediately stopped using the containers and submitted a request for modification of the COC.

The Licensee claimed that, despite its belief it acted entirely in accordance with its approved QAP, B&W Fuel agreed to comply with the NRC position on 10 CFR 71.12(c)(2) and did so voluntarily on July 20, 1995. B&W Fuel stated that it has operated in accordance with NRC's wishes and is not using the provisions of its QAP, which allows the Licensee to use containers with deviations that are shown by analysis to have no safety significance. The Licensee asserted that corrective action was taken to prevent recurrence in 1990 with a re-design of the procedures which govern shipping container manufacture and use, and that these procedures were demonstrated to be effective during the procurement of new Model 51032 containers in 1993. The Licensee, therefore, disagreed with the NRC's statement in the Notice that ''absent NRC action, FCF would have continued to use nonconforming packages without NRC approval and without performing an adequate safety analysis.''

NRC Evaluation

NRC did not give B&W Fuel credit for corrective actions because the NRC had to take action to focus the Licensee's evaluative and corrective process to obtain comprehensive corrective action. Specifically, for Violation A: (1) as noted in Section 2 of this Appendix, B&W Fuel's safety analysis of the BW–2901 shipping package was inadequate; and (2) the Licensee continued to use nonconforming packages after performing its analysis until the NRC staff informed B&W Fuel staff that it was not authorized to do so.

B&W Fuel was initially informed by the NRC staff via telephone on May 24, 1995, as a result of identification of the bolt hole discrepancies, that it was not authorized to use packaging that does not meet the drawings listed in the COC. In the telephone conversation, B&W Fuel was requested to submit revised pages to the safety analysis report to clarify that packages must conform to the drawings specified in the Certificate of Compliance.

By letter dated May 24, 1995, B&W Fuel submitted revised pages for the BW–2901 safety analysis report. The revised acceptance tests included the following statements: ''Containers will be fabricated only in accordance with the designed drawings referenced in the Certificate of Compliance. The approved Quality Assurance Manual will be used to ensure compliance. Any changes in the drawings shall be submitted to NRC for approval.'' Based on this, NRC staff understood that B&W Fuel would not use packaging that deviated from the drawings referenced in the Certificate of Compliance, without prior NRC approval.

Contrary to the communications, and based on its erroneous interpretation of the use of its QAP, B&W Fuel used the BW–2901 packaging that did not conform to the drawings following identification of the inner dimensional discrepancies until July 20, 1995, when the NRC staff reiterated the regulatory requirements to the Licensee. While the NRC acknowledges that B&W Fuel ultimately agreed to stop using the BW–2901 shipping package, the Licensee, absent NRC involvement, would have continued to use the nonconforming packages. Therefore, the NRC concludes that its statement in the Notice was appropriate.

With regard to Violations B, the Licensee did not provide additional corrective actions which were not already considered after the November 21, 1995 predecisional enforcement conference. As stated in the Notice, although the initial corrective actions for Violation B were appropriate, the adequacy of the long term corrective action is yet to be demonstrated. The corrective actions for violation C were adequate.

Therefore, the NRC concludes that, in accordance with Section VI.B.2 of the Enforcement Policy, credit for the Licensee's corrective action is not warranted.

NRC Conclusion

The NRC has concluded that the violations in the Notice were correctly categorized as a Severity Level III problem, and that the Licensee did not provide an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $12,500 should be imposed.

[FR Doc. 96–11606 Filed 5–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio.

The proposed amendment would correct minor technical and administrative errors in the Improved Technical Specifications (ITS) prior to ITS implementation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Eight of the proposed changes are administrative in nature and either correct errors or incorporate into the improved Technical Specifications a change which was approved by the NRC under Amendment 70 for the current Technical Specifications. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The proposed changes to the diesel generator fuel oil day tank minimum volumes provide more stringent requirements for operation of the facility to increase the reliability of the diesel generator fuel oil transfer pump operation. The more stringent requirements continue to ensure that the safety analysis and licensing basis are maintained. The proposed change to Specification 5.7.3 clarifies continuously guarding a high radiation area is an option, not a requirement. The proposed changes have been reviewed and determined to have no affect on accident conditions or assumptions.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above eight of the proposed changes are administrative in nature and do not increase the possibility of any new or different kind of accident. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The proposed changes to the diesel generator fuel oil day tank minimum volumes do not involve installation of new or different equipment nor do they change the methods governing normal plant operations. These changes are also consistent with assumptions made in the safety analysis and licensing basis. Clarifying the controls of high radiation areas will not impact existing or introduce any new accident precursors. The proposed changes do not create the possibility of a new or different kind of accident since they do not affect the reactor coolant pressure boundary or reactivity controls. Consequently, no new failure modes are introduced as a result of the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is unchanged because the proposed administrative changes do not affect any design basis or accident assumptions. Changing the classification of the Backup Hydrogen Purge System isolation valves from drywell isolation valves to primary containment isolation valves results in the same actions being taken in the event one of these valves is declared inoperable. However, the Completion Times are more restrictive for inoperable primary containment isolation valves than for inoperable drywell isolation valves. The imposition of more restrictive requirements for the diesel generator fuel oil day tank minimum volumes results from the implementation of the Bases for the Technical Specification Surveillance Requirement. Clarifying the controls of high radiation areas is consistent with ALARA practices.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in preventing startup of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 10, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 26, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 3rd day of May 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–11603 Filed 5–8–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21936; 811–4502]

Pierre Funding Corporation; Notice of Application

May 2, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Pierre Funding Corporation.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on December 18, 1995, and was amended on April 30, 1996.