

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
THE TOLEDO EDISON COMPANY)	
and)	
THE CLEVELAND ELECTRIC ILLUMINATING)	DOCKET NO. 50-346
COMPANY)	
(Davis-Besse Nuclear Power Station)	

REPLY OF THE AEC REGULATORY STAFF TO INTERVENOR'S
MOTION TO RE-OPEN SUSPENSION HEARINGS

On May 9, 1972, Coalition for Safe Nuclear Power, (Intervenor) filed a "Motion to Re-Open Suspension Hearings" on the ground that the Atomic Safety and Licensing Board had erroneously declined to hear evidence from any of the parties to the proceeding "with respect to identification of the radiological environmental harm that may result from the planned operation of the Davis-Besse plant." Intervenor simultaneously made a filing declining to submit proposed findings for the reasons set out in the aforesaid Motion.

For the reasons set forth herein, the staff urges the Board to deny Intervenor's motion to re-open suspension hearings and to proceed with utmost expedition to issue an initial decision in this matter.

As part of the Memorandum and Order and Notice of Hearing issued by the Commission for the subject hearing, the Board was directed to "render

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a de novo decision based upon the criteria in 10 CFR Part 50, Appendix B, Section 1.2," together with the consideration specified in the April 7, 1972, decision of the United States Court of Appeals for the District of Columbia in Coalition for Safe Nuclear Power et al. v. U.S. AEC, No. 71-1396, that:

" On remand, the Commission should consider in detail whether this additional irretrievable commitment of substantial resources might affect the eventual decision reached on the N.E.P.A. review. The degree to which this expenditure might affect the outcome of the final N.E.P.A. process should be a paramount consideration in the decision on suspension reached after the hearings on remand."

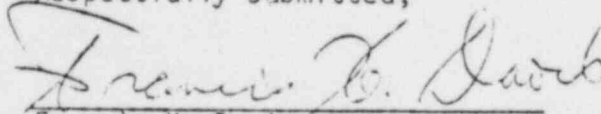
During the course of the hearing the Board excluded from the record proposed testimony of both the applicant and the staff dealing with matters relating to environmental impact of the continued construction of the facility during the NEPA review period, and the environmental impact of operation of the facility (Tr. 71-89, 117-129, 446-449). Such testimony was designed to complete the record with respect to the matter cited in the court's decision above - that is, to enable a fully informed conclusion to be reached on the prospect of financial foreclosure of abandonment or of the adoption of alternatives because of the substantiality of the total irretrievable resources incurred during the NEPA review period. The basis stated by the Board for excluding the proposed testimony was that such testimony, if admitted, would broaden the scope of the issues to encompass matters that would

be decided during the NEPA review period - matters under the Commission's [not the Board's] authority. (Tr. 29-33, 36-37, 39-40, 46-47, 83-87, 447-449, 462.)

The staff objected to the ruling of the Board but was permitted to make an offer of proof of the staff testimony so rejected. (Tr. 449) The staff's proposed findings of fact and conclusions of law filed with the Board on May 10, 1972, further reflect the staff's rationale for believing that the Board's ruling was incorrect.

While the staff is thus of the view that the present evidentiary record is not complete, it believes that the appropriate and most expeditious course of action to bring this matter to the Appeal Board or the Commission for determination is not by the method of re-opening the hearing, as proposed by intervenors, but rather by the Board's issuance of its Initial Decision on or before May 19 (i.e. within the time period prescribed by the Commission Memorandum and Order) on the basis of the record as it now stands. Exceptions could thereafter be filed within five days, so that this matter might be considered by the Appeal Board or the Commission.

Respectfully submitted,


Francis X. Davis
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland
this 17th day of May, 1972

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(Davis-Besse Nuclear Power Station)

Docket No. 50-346

CERTIFICATE OF SERVICE

I hereby certify that copies of the "AEC Regulatory Staff's Additional Proposed Transcript Correction" and of the "Reply of the AEC Regulatory Staff to Intervenor's Motion to Re-Open Suspension Hearings" in the captioned matter, both dated May 17, 1972, were served on the following by deposit in the United States mail, first class or air mail, this 17th day of May, 1972:

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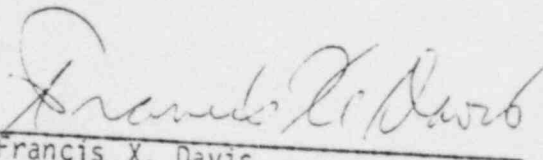
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