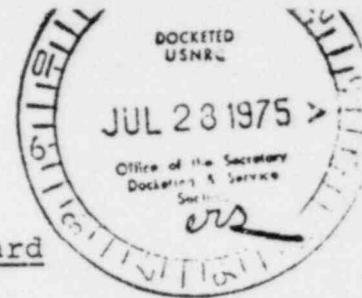


7-28-75



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
THE TOLEDO EDISON COMPANY and	)	Docket No. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING	)	
COMPANY	)	
(Davis-Besse Nuclear Power Station,	)	
Unit 1)	)	
	)	
THE CLEVELAND ELECTRIC ILLUMINATING	)	Docket Nos. 50-440A
COMPANY, ET AL.	)	50-441A
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

RULING OF THE BOARD DENYING THE MOTION  
OF THE LAW DIRECTOR OF THE CITY OF PAINESVILLE,  
OHIO TO QUASH THE SUBPOENA OF WAYNE R. MILBURN

On June 23, 1975, at the request of the Nuclear Regulatory Commission Staff (Staff), the Chairman of this Board signed a subpoena commanding the appearance on July 9, 1975 of Wayne R. Milburn at Bethesda, Maryland to testify upon oral examination in the above proceedings. At the time the subpoena was issued, the Board was satisfied that the general relevance of the testimony sought, 10 C.F.R. Section 2.720(a) of the Commission's Rules, adequately was set forth in the subpoena form prepared by the Staff. On July 9, 1975, Joseph Pandey, Jr., an employee of the City of Painesville, testified in the above proceedings also pursuant to subpoena signed by the Board Chairman on June 23, 1975. On page four of the transcript of his deposition, in response to

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a question from Staff as to whether Mr. Milburn would be available for testimony, Mr. Pandy read into the record a Motion to Quash Mr. Milburn's subpoena signed by Charles E. Cannon, Law Director of the City of Painesville. The NRC Staff challenged that Motion as not being in compliance with the provisions of 10 C.F.R. Section 2.720(f) in that the Motion was not made promptly and at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed.

No motion to quash has been directly addressed to nor served upon this Board by Mr. Milburn, the City of Painesville, or any party to these proceedings.\* On July 22, 1975, counsel for the Staff filed an Answer in opposition to the motion to quash the subpoena of Mr. Milburn.

We agree with the Staff that the motion to quash was served neither promptly nor in a fashion contemplated by Section 2.720(f) of the Commission's Rules of Practice. We further note that the motion was not supported by an affidavit or any brief in support thereof. For purposes of deciding whether to uphold the subpoena, however, we overlook such procedural deficiencies as may exist and will treat the motion apparently signed by Mr. Cannon on behalf of Painesville as if it complied with the Commission's Rules of Practice. We do so in order to reach the

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\* The Board has received a copy of the transcript of the Pandy deposition which contains the motion as recited by Mr. Pandy. Staff also delivered the motion to the NRC Docketing Section for appropriate distribution.

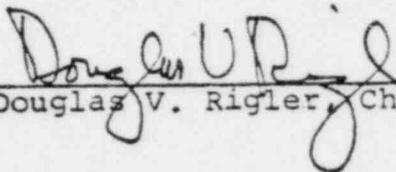
motion on its merits.

The basis upon which Painesville seeks to quash the motion is that another witness, Mr. Pandy, assertedly was to be able to furnish information requested of Mr. Milburn. In its opposition, the Staff indicates that the negotiations between the Cleveland Electric Illuminating Company (CEI) and the City of Painesville for an interconnection agreement took place over a period of approximately 11 years and that while Mr. Milburn was employed throughout that period by the City of Painesville, Mr. Pandy has been employed by Painesville only since 1971. Moreover, we have noted from the deposition transcript of Mr. Pandy that he and Mr. Milburn might have differing opinions with respect to the inclusion of certain language in proposed interconnection agreements between CEI and Painesville (Tr. p. 54). Furthermore, it appears that Mr. Milburn was the prime interconnection agreement negotiator with CEI during the relevant time period (Tr. p. 55). Thus, the assertion in the Motion to Quash that Mr. Pandy would be in a position to furnish the information requested of Mr. Milburn does not appear justified. Mr. Pandy's own testimony gives rise to the possibility that Mr. Milburn's knowledge of negotiations with respect to an interconnection agreement may be more extensive in many respects than that of Mr. Pandy. The Board, therefore, finds that a more than adequate showing of the general relevance of the testimony which Mr. Milburn may provide has been made. The City of Painesville has demonstrated no basis for

modification of the subpoena on any of the grounds set forth in Section 2.720(f) of the Commission's Rules.

Accordingly, the Motion to Quash the subpoena of Wayne R. Milburn is denied.

ATOMIC SAFETY AND LICENSING BOARD

  
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Douglas V. Rigler, Chairman

Dated at Bethesda, Maryland,  
this 28th day of July, 1975.