

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

Before Atomic Safety and Licensing Board

In the Matter of: )  
THE TOLEDO EDISON COMPANY ) *5-9-72*  
and ) DOCKET NO. 50-346  
THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY )  
(Davis-Besse Nuclear Power Station) )

MOTION TO REOPEN SUSPENSION HEARINGS

Intervenor Coalition For Safe Nuclear Power hereby moves this Board for an order reopening the suspension hearings for the purpose of the admission and consideration of evidence relating to the environmental hazards of the Davis-Besse plant during its proposed operation. The argument supporting this motion is set out in the attached brief.

*Jerome S. Kalur*

Jerome S. Kalur  
Attorney for Intervenor

~~8003 120 708~~  
8003 120 708

G

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion to Reopen Suspension Hearings" were served upon the following, by deposit in the U. S. Mail, postage prepaid, this 9th day of May, 1972:

Jerome Garfinkei, Esq., Chairman  
Atomic Safety and Licensing Board  
U. S. Atomic Energy Commission  
Washington, D. C. 20545

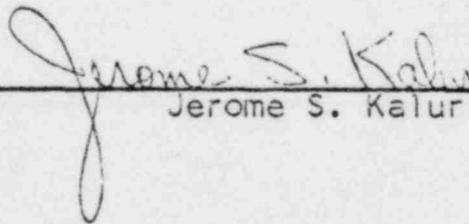
Dr. John R. Lyman  
Department of Environmental  
Sciences  
The University of North Carolina  
Chapel Hill, North Carolina 27514

Dr. Emmeth A. Luebke  
610 Foxen Drive  
Santa Barbara, California 93105

Secretary (20)  
U. S. Atomic Energy Commission  
Washington D. C. 20545  
Attn: Chief, Public  
Proceedings Branch

Martin Malsch, Esq.  
Office of the General Counsel  
U. S. Atomic Energy Commission  
Washington, D. C. 20545

Gerald Charnoff, Esq.  
Shaw, Pittman, Potts &  
Trowbridge  
910 17th St. N. W.  
Washington, D. C. 20006

  
Jerome S. Kalur

BRIEF IN SUPPORT OF MOTION

During the course of the suspension hearings held in Toledo, Ohio between May 2, 1972 and May 4, 1972, this Board, on numerous occasions, ruled as inadmissible any evidence with respect to identification of the radiological environmental harm that may result from the planned operation of the Davis-Besse plant. This Board held such evidence inadmissible although all three parties, i.e., the permittees, the regulatory staff and the intervenors, believed such evidence not only relevant but essential to a proper suspension decision under the established criteria.

The aforesaid hearings were ordered by the Court of Appeals for the District of Columbia. On page four (4) of the slip opinion, the Court was specific in its discussion of the added criteria that must be considered in suspension proceedings under 10 CFR §50, App. D. E(2)(b):

Omitted from these factors and from meaningful exposition in the initial Commission decision not to suspend the permit here in question, is a consideration central to the Calvert Cliffs' decision, i.e., whether the environmental harm outweighs the economic cost of abandonment.

In order for the Commission to be in a position to fulfill its substantive responsibilities under §101(b) of the National Environmental Policy Act of 1969 (42 U.S.C. §4331(b)), the

economic commitment and its effect on the eventual NEPA decision must be a part of the evidence before this Board. By preventing quantification and identification of the environmental harms of operation which could require abandonment of the project, this Board has foreclosed the most important line of suspension inquiry. This does not require the Board to conduct a full NEPA review, but it does require identification of the harms so that they may enter the suspension decision process.

Intervenors ask that the hearing be reopened and that this Board alter its ruling so that a full and proper suspension hearing record may be made.



---

Jerome S. Kalur  
Attorney for intervenor