

Reg. File

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Richard S. Salzman
Jerome E. Sharfman



_____)
 In the Matter of)
)
 THE TOLEDO EDISON COMPANY AND)
 THE CLEVELAND ELECTRIC)
 ILLUMINATING COMPANY)
)
 (Davis-Besse Nuclear Power Station,)
 Units 1, 2 & 3))
)
 THE CLEVELAND ELECTRIC)
 ILLUMINATING COMPANY, et al.)
)
 (Perry Nuclear Power Plant,)
 Units 1 and 2))
)
 _____)

Docket Nos. ~~50-346A~~
 50-500A
 50-501A

Docket Nos. 50-440A
 50-441A

ORDER

January 27, 1977

On January 19, 1977 we enlarged applicants' time to file and brief their exceptions to the initial decision below in this antitrust proceeding, thereby giving them four weeks for exceptions and seven more for briefing in lieu of the 7 and 15 days, respectively, allowed by the Rules of Practice. 10 C.F.R. §2.762. In the same order we placed an outside limit of 300 pages on applicants' opening brief (or briefs). At the same time we limited their

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opponents to answering briefs of 200 pages each, due eight weeks after applicants' opening briefs, and allowed applicants to file a reply brief (or briefs) totalling another 100 pages. (The Rules of Practice do not sanction the filing of reply briefs as a matter of course.)

Applicants are now back before us, this time seeking an additional week for filing opening briefs and leave to file briefs of not 300 but 500 pages.

We grant the applicants the additional week requested to brief their exceptions. We do so not because it is somehow "unfair," as applicants suggest, to allow them seven weeks for opening briefs and their opponents eight. Anyone experienced in the practice of administrative law and familiar with the work habits of the legal profession -- and we claim these modest credentials -- appreciates that some of the time allowed for exceptions will be available for work on the briefs and, as "Dr. Peter" has suggested, work expands to fill the time available to do it. Nevertheless, we recognize that the record is large, several utilities are involved, the issues are important to them, and no less than twelve lawyers entered appearances for applicants in

the proceedings below. We therefore grant the applicants' request for an extra week before they must file their opening brief or briefs.

We are not prepared, however, to allow applicants to file opening briefs of 500 pages. To be sure, four utilities are parties here and portions of the Licensing Board's findings are directed at some and not others. But it is also true that in considerable measure the questions of law and fact are common to all parties and are most appropriately addressed in a single brief. Indeed, we note that the case was tried below largely by counsel representing all the applicants jointly. In the circumstances, we think it not unreasonable that applicants' briefs be limited to fewer pages than the total pages of those of their opponents, who do not share the same close relationship and joint interest.

We are unpersuaded that substantially longer briefs are needed to present applicants' case in full. Indeed, in our experience, the likelihood of an appellate court giving any group of appellants 200 pages, let alone 300, to brief an appeal even in an antitrust case is small

indeed.^{1/} And as counsel well know, cases of Constitutional import, wider reach and greater complexity are regularly and adequately treated by the courts on far fewer briefing pages. We suggest that counsel bear in mind that we are not unfamiliar with the issues and that not all matters merit encyclopedic treatment.^{2/} The applicants might well be advised to employ the additional briefing time just allowed them to sharpen their presentations by appropriate editing. We wish to make clear now, however, that we will not countenance the filing of briefs in excess of the page limits we have set. Any such non-complying documents received will be returned unread to the party submitting them.^{3/}

For the reasons stated, the portion of our order of January 19, 1977, in this case establishing a briefing schedule is modified to read as follows:

Exceptions -- February 7, 1977.

Briefs in support of exceptions -- April 4, 1977.

Briefs in opposition to exceptions -- May 30, 1977.

Reply briefs -- June 20, 1977.

^{1/} See Rule 28, F.R.A.P. and Local Rule 8(c) of the U.S. Court of Appeals for the District of Columbia Circuit.

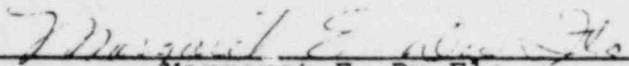
^{2/} See Eccl. 12:12.

^{3/} See Revised Supreme Court Rule 40(5).

In all other respects the applicants' motion is denied. ^{4/}

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD



Margaret E. Du Flo
Secretary to the
Appeal Board

^{4/} We also call all parties' attention to what we find to be the helpful practice of including an appropriate summary of argument in their briefs (see Rule 28(a) of the F.R.A.P. and Revised Supreme Court Rule 40(f)) and by starring in the table required by section 2.762(c) of our Rules of Practice the authorities chiefly relied upon. See Local Rule 8(d) of the Court of Appeals for the District of Columbia Circuit.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
THE TOLEDO EDISON COMPANY, ET AL.)	)	Docket No. (s) 50-346A
CLEVELAND ELECTRIC ILLUMINATING )	)	50-440A
COMPANY )	)	50-441A
	)	50-500A
(Davis-Besse Nuclear Power )	)	50-501A
Station, Unit No. 1; Perry))	
Nuclear Power Plant, Units 1&2)))	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
28th day of Jan 1977.

PA Downing
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TOLEDO EDISON COMPANY, ET AL	)	Docket No.(s) 50-346A
(Davis-Besse Unit 1))	
CLEVELAND ELECTRIC ILLUMINATING	)	50-440A
COMPANY, ET AL.	)	50-441A
(Perry Units 1 and 2))	
TOLEDO EDISON COMPANY, ET AL.	)	50-500A
(Davis-Besse Units 2 and 3)	)	50-501A

SERVICE LIST

Douglas Rigler, Esq., Chairman
Foley, Lardner, Hollabaugh & Jacobs
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

Joseph Rutberg, Esq.
Antitrust Counsel
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ivan W. Smith, Esq.
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of Antitrust & Indemnity
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

John M. Frysiak, Esq.
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Benjamin H. Vogler, Esq.
Roy P. Lessy, Jr., Esq.
Antitrust Counsel
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Donald H. Hauser, Esq.
Victor F. Greenslade, Jr., Esq.
Cleveland Electric Illuminating
Company
P. O. Box 5000
Cleveland, Ohio 44101

Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Joseph J. Saunders, Esq., Chief
Public Counsel and Legislative
Section
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

Richard R. Salzman, Esq.
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Gerald Charnoff, Esq.
Shaw, Pittman, Potts, Trowbridge
and Madden
910 -17th Street, N. W.
Washington, D. C. 20006

Lee C. Howley, Esq., Vice President
and General Counsel
Cleveland Electric Illuminating
Company
P. O. Box 5000
Cleveland, Ohio 44101

David C. Hjelmfelt, Esq.
Michael Oldak, Esq.
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Reuben Goldberg, Esq.
Arnold Fieldman, Esq.
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Steven M. Charno, Esq.
Melvin G. Berger, Esq.
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

Honorable Thomas E. Kauper
Assistant Attorney General
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

John C. Engle, President
AMP-O, Inc.
Municipal Building
20 High Street
Hamilton, Ohio 45012

Honorable Richard M. Firestone
Assistant Attorney General
Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Honorable William J. Brown
Attorney General
State of Ohio
Columbus, Ohio 43215

Honorable Edward A. Matto
Assistant Attorney General
Chief, Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Honorable Deborah P. Highsmith
Assistant Attorney General
Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Michael R. Gallagher, Esq.
Gallagher, Sharp, Fulton,
Norman and Mollison
630 Bulkley Building
Cleveland, Ohio 44115

Duncan, Brown, Weinberg & Palmer
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

John Lansdale, Jr., Esq.
Cox, Langford & Brown
21 Dupont Circle, N. W.
Washington, D. C. 20036

Leslie Henry, Esq.
W. Snyder, Esq.
Fuller, Henry, Hodge & Snyder
300 Madison Avenue
Toledo, Ohio 43604

Mr. George B. Crosby
Director of Utilities
Piqua, Ohio 45350

William M. Lewis, Jr.
W. M. Lewis & Associates
P. O. Box 1383
Portsmouth, Ohio 45662

Robert D. Hart, Esq.
Assistant Law Director
City Hall
Cleveland, Ohio 44114

Anthony G. Aiuvalasit, Jr., Esq.
Antitrust Division
Department of Justice
P. O. Box 7513
Washington, D. C. 20044

Susan B. Cyphert, Esq.
Antitrust Division
Department of Justice
727 New Federal Building
2140 East Ninth Street
Cleveland, Ohio 44199

David M. Olds, Esq.
Reed, Smith, Shaw and McClay
P. O. Box 2009
Pittsburgh, Pennsylvania 15230

Thomas A. Kayuha, Esq.
47 North Main Street
Akron, Ohio 44308

Perry Public Library
3753 Main Street
Perry, Ohio 44081

Director
Ida Rupp Public Library
301 Madison Street
Port Clinton, Ohio 43452

Joseph A. Rieser, Jr., Esq.
Lee A. Rau, Esq.
Reed, Smith, Shaw & McClay
Madison Building, Suite 404
Washington, D. C. 20005

Terence H. Benbow, Esq.
A. Edward Grashof, Esq.
Winthrop, Stimson, Putnam
and Roberts
40 Wall Street
New York, New York 10005

Janet R. Urban, Esq.
Antitrust Division
Department of Justice
Washington, D. C. 20530