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UNITED STATES ATOMIC ENERGY COMMISSION

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IN THE MATTER OF:

TOLEDO EDISON COMPANY
and
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

Bracket No. 50-346

(Davis-Besse Nuclear Power
Station, Unit No. 1)

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Place - Fort Clinton, Ohio

Date - 12 February 1971

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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 5 TOLEDO EDISON COMPANY :
 and : Docket No. 50-346
 6 THE CLEVELAND ELECTRIC :
 ILLUMINATING COMPANY :
 7 :
 (Davis-Besse Nuclear Power :
 8 Station, Unit No. 1) :
 :
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Trinity Methodist Church
Conference Room
Adams and Second Streets
Port Clinton, Ohio

Friday, 12 February 1971

The above-entitled matter came on for further
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

WALTER SKALLERUP, JR., Esq., Chairman,
Atomic Safety and Licensing Board.

DR. CHARLES E. WINTERS, Member.

DR. WALTER H. JORDAN, Member.

APPEARANCES:

(As heretofore noted.)

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25Page

Closing Statement on Behalf of the
Applicant by Mr. Charnoff.

2232

Closing Statement of Evelyn Stebbins
on Behalf of the Coalition for
Safe Nuclear Power.

2256

Closing Statement on behalf of the
Regulatory Staff by Mr. Engelhardt

2269

RMS:rmsl

P R O C E E D I N G S

1
2 CHAIRMAN SKALLERUP: Will the hearing please come
3 to order. The time is 9:30 and the Board would like to
4 memorialize the fact that it is the birthday of Robert Tedesco
5 and Abraham Lincoln.

6 (Laughter.)

7 DR. JORDAN: Yesterday I raised a question con-
8 cerning Dr. Goldman's reply to one of the Intervenor's
9 questions, in that I failed to understand just how the
10 conversions went from picocuries per liter to microcuries
11 per cubic centimeter.

12 Dr. Goldman has straightened me out on this, and I
13 have no further questions in that respect.

14 MR. ENGELHARDT: Mr. Chairman, I would like to
15 note for the record that the Applicant and the Staff are
16 prepared to go forward. However, Intervenors appear to be
17 absent at the opening of this hearing.

18 CHAIRMAN SKALLERUP: I had a phone call this morning
19 from Mrs. Stebbins who said that she has prepared a summary
20 statement and is on her way here and would hope to arrive
21 sometime this morning.

22 MR. CHARNOFF: As I understood it, Mr. Chairman,
23 we were to meet here to hear Mr. Lau's continuation of his
24 direct and his cross examination. It seems to me that if
25 he is not here at this point in time that he has defaulted.

WRMS/rms2
1 And I would move that the Board rule that Mr. Lau's opportu-
2 nity for further cross and direct testimony in this case
3 be terminated.

4 CHAIRMAN SKALLERUP: Have you any response?

5 MR. ENGELHARDT: Well, Chairman, it is now 9:32.
6 And the precedent established in this proceeding has been
7 to defer at least briefly to counsel and other parties to
8 make a timely appearance for the presentation of evidence.
9 I think at this hour of 9:32 it may be a bit premature to
10 grant that motion. Maybe we should provide a reasonable
11 period of 15 minutes or thereabouts and reconvene at that
12 time to see whether Mr. Lau is present and ready to go.

13 CHAIRMAN SKALLERUP: Considering the severity of
14 the consequences, the Board believes we ought to allow
15 a reasonable period of time for Mr. Lau to arrive. So we
16 will deny your motion.

17 We will recess until 9:45.

18 (Recess.)

19 CHAIRMAN SKALLERUP: The Board is ready to
20 proceed. And the time being 9:47, with respect to Mr. Lau
21 the burden is now on him to show cause why he should not
22 be precluded from further participation in this case.
23 Accordingly, we are prepared to hear closing summary
24 arguments.

25 MR. CHARNOFF: Shall I plan on going first, Mr.

RMS/rms 3

1 Chairman?

2 CHAIRMAN SKALLERUP: That would be appropriate.

3 MR. CHARNOFF: Let me establish the agenda. As
4 I understand it, the only remaining item for this hearing is
5 the closing statement by the Applicant, the Staff and any
6 Intervenors who might get here.

7 CHAIRMAN SKALLERUP: That is our understanding
8 subject to Mr. Lau's coming late and showing adequate cause
9 why he should be heard.

10 CLOSING STATEMENT ON BEHALF OF THE APPLICANT

11 BY MR. CHARNOFF

12 MR. CHARNOFF: Gentlemen: Ordinarily in pro-
13 ceedings such as this I pass the opportunity to make a
14 closing statement. In such cases the issues, while
15 technical in nature, involve only a determination that the
16 proposed facility has been demonstrated to satisfy appli-
17 cable AEC requirements. Such a determination is made on
18 the basis of the entire record of the proceeding, including
19 the application and the Staff's Safety Evaluation. In many
20 respects this hearing does not differ from most proceedings
21 that I am familiar with.

22 In some respects, however, this hearing proceeding
23 has been unique. For example, it is the first proceeding
24 that I know of to be afflicted with a case of the mumps. It
25 is also the first AEC proceeding I believe to receive a

1 petition for leave to intervene asserting that the Atomic
2 Energy Act of 1954 was unconstitutional. Accordingly, I
3 think it is appropriate for me to discuss the matters in
4 controversy, the nature of the evidence relating thereto and
5 the public interest in having the Davis-Besse plant constructed
6 and available for power production as close to its scheduled
7 date for commercial service as possible.

8 I will first briefly discuss the case of the
9 Coalition, the first of the admitted Intervenor. This
10 Intervenor some may characterize as an intervenor in search
11 of an issue, any issue which might deter or halt the con-
12 struction of the Davis-Besse plant. The Coalition contended
13 that the AEC siting criteria were not complied with, that
14 the plant engineering safeguards could not be relied on,
15 that the critical exposure routes associated with plant
16 effluents were not adequately examined and that the
17 ordnance and Air Force activities at Camp Perry and over
18 Lake Erie in some undefined way posed a threat to the safety
19 of the plant and therefore to the public.

20 Uncontroverted evidence was introduced explaining
21 the AEC siting criteria and demonstrating how the Davis-
22 Besse plant and site are in conformance therewith. Similarly,
23 uncontroverted testimony was introduced demonstrating the
24 adequacy and reliability of the engineered safeguards which
25 make a core melt virtually incredible.

RMS/rms5

1 The testimony demonstrates that the ordnance
2 activities at Camp Perry and the Erie Industrial Park and
3 the Air Force training programs carried out over Lake
4 Erie were carefully reviewed by the Regulatory Staff and
5 the Advisory Committee on Reactor Safeguards and that such
6 activities will be conducted under appropriate controls
7 established by cognizant defense authorities who fully
8 recognize the existence and operation of the Davis-Besse
9 facility.

10 Furthermore, the Staff presented, uncontroverted
11 testimony concerning the steel and concrete surrounding
12 the reactor's critical parts which provide inherent
13 capability to safely withstand most forms of ordnance. The
14 Coalition's single witness, Dr. Sternglass, proved to be
15 the most versatile witness in the proceeding. He testified
16 on behalf of the other two intervenors and on almost all the
17 matters in controversy in the proceeding.

18 Regardless of the matter in controversy
19 addressed by Dr. Sternglass, however, he delivered himself
20 of only a single theme, that is, that radioactive gaseous
21 effluents from all nuclear facilities are generally the
22 same, radioactive materials reconcentrate in the food chain
23 and there are strong statistical grounds for suggesting a
24 causal relationship between radioactive gaseous effluent
25 releases and infant mortality.

RMS/rms6

1 Unfortunately for Dr. Sternglass' testimony on
2 behalf of the Coalition the evidence shows that the gaseous
3 isotopes he was concerned about will be retained by the
4 Davis-Besse gaseous waste hold-up and treatment system.
5 That is, those gaseous isotopes will not be released to
6 the environment.

7 Also, unfortunately for Dr. Sternglass, the
8 testimony shows that the gaseous effluents from the different
9 types of nuclear facilities do differ in important respects.
10 The Davis-Besse plant, a pressurized water reactor, will
11 release gaseous effluents at levels more than a thousandfold
12 less than the nuclear facilities of different types, and
13 of a different generation too, I might add, which have been
14 reviewed by Dr. Sternglass.

15 And I would remind the Board that it was Dr.
16 Sternglass who, based upon his review of the releases from
17 these other types of facilities called for a thousandfold
18 reduction in gaseous effluent releases in order that we may
19 all sleep peacefully at night.

20 Of equal significance is the rejection of Dr.
21 Sternglass' simplistic and questionable selection of data
22 to suggest a causal relationship between radioactive
23 gases and infant mortality by organizations and persons
24 not beholden in any way to the so-called atomic energy
25 establishment, if indeed the latter exists in this country.

1 I, of course, am referring to the Committee on
2 Environmental Hazards of the American Academy of Pediatrics
3 and components of the Environmental Protection Agency,
4 including sections formerly belonging to the United States
5 Public Health Service.

6 The testimony by Mrs. Tompkins and by Doctors
7 Kahn and Davis convincingly demonstrated that Dr. Stern-
8 glass' hypothesis lacked any statistical base and suffers
9 from sincere but false use of data.

10 Dr. Sternglass' response to this criticism of
11 his work is to complain about the existence of a conspiracy
12 of some sort which refuses to recognize the validity of his
13 work.

14 In this connection it is worth noting that Dr.
15 Sternglass also suggested a conspiracy of sorts when
16 Nature Magazine, the British equivalent of our Science
17 Magazine, rejected an article by him purporting to demon-
18 strate a causal relationship between fallout deposition
19 and infant mortality.

20 In reply, Nature Magazine editorialized on
21 January 31, 1970, as follows: "The fact that more than one
22 editor has rejected Professor Sternglass' papers could be
23 a sign of the looseness of Professor Sternglass' arguments
24 rather than of the tightness of the conspiracy."

25 Mr. Lau, the second intervenor, like the Coalition,

RMS/rms8

1 allegedly was concerned that the AEC and the Applicant did
2 not correctly apply the AEC siting criteria. Taking an
3 illustrative table in reference to document TID-14844, Mr.
4 Lau simplistically contended that the Davis-Besse site has
5 inadequate exclusion and low population zone areas and an
6 inadequate population center distance.

7 The testimony demonstrates that several engineered
8 safety features and systems have been incorporated in the
9 plant design to assure conformance with the AEC siting
10 criteria.

11 Mr. Lau also contended that the meteorological
12 data obtained at the site was inadequate and that it did
13 not take into account certain season weather storms. Perhaps
14 this contention more than any other illustrates the complexity
15 of dealing with complicated technical considerations in
16 public hearings such as this for the layman.

17 Here we have Glenn Lau and one or more of the
18 limited appearors reporting on bad weather storms allegedly
19 not considered by the Applicant. Unfortunately, in the
20 sophisticated technical world of atomic energy what may be
21 bad weather for the layman is good weather for radioactive
22 releases. The more violent the storm, the greater the
23 dilution effect it has on radioactive releases, whether
24 they be normal or accidental.

25 Lau's contention with regard to meteorology is

1 wrong. The testimony has demonstrated the conservatism of
2 the meteorology used in evaluating this site.
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1 As far as the ability of the station to withstand
2 structural damage from such storms, the testimony pointed
3 out that the station is designed to withstand a tornado,
4 producing winds of 300 miles per hour, a more severe
5 condition than has occurred at this site.

6 Mr. Lau also contended without success that the
7 population growth projections are in error. No testimony
8 was introduced contradicting the population projections in
9 the PSAR. In comparison with many other approved reactor
10 sites, this is a lightly populated area.

11 Mr. Lau's final contention related to the capability
12 to evacuate the low population zone, or that portion of it
13 which might only in the most remot circumstances have to
14 be evacuated in the event there was a concurrent flood, sand
15 or snowstorm.

16 The Applicant has clearly committed to make the
17 necessary arrangements prior to the inception of plant
18 operation to assure that evacuation, if it should be
19 necessary, will be done and done promptly. The testimony
20 demonstrates that Mr. Lau and his witnesses confused their
21 normal difficulties with the effects of bad storms, with the
22 feasibility of moving people, not vehicles, over a reasonable
23 period of time, several hundred feet to areas outside of
24 the radioactive cloud or outside of the low population zone.

25 Furthermore, the testimony yesterday afternoon

1 clearly established the feasibility of accomplishing any
2 required evacuation.

3 Finally, we come to the Intervenor, who has made
4 this case unique, LIFE and Mr. Reany. This is the first
5 proceeding to involve a challenge to the AEC's radiation
6 protection standards since the Commission's memorandum in
7 the Calvert Cliffs proceeding. That memorandum set the
8 ground rules for challenges to the radiation protection
9 standards in licensing proceedings. These ground rules need
10 to be clearly understood the Commission's memorandum in the
11 Calvert Cliffs decision dated August 8, 1969, clearly
12 stated that findings in proceedings such as this must be
13 made in accordance with AEC regulations which establish the
14 standards for reactor construction permit determinations and
15 that such regulations which are general in nature and are
16 adopted in public rule-making proceedings are not subject
17 to amendments by Atomic Safety and Licensing Boards in
18 individual plant licensing hearings.

19 The memorandum did, however, permit a challenge
20 in licensing hearings such as this to the validity, and I
21 underscore the word "validity," of such AEC regulations on
22 limited grounds, if the contested regulation relates to an
23 issue in the proceeding. And I would underscore the latter,
24 "on limited grounds, if the contested regulation relates
25 to an issue in the proceeding."

1 The memorandum thereupon identified three limited
2 grounds for challenge to the validity of AEC regulations in
3 licensing hearings.

4 One, whether the regulation was within the
5 Commission's authority;

6 Two, whether the regulation was promulgated in
7 accordance with applicable procedural requirements; and,

8 Three, with respect to the radiological safety
9 standards, whether ther the standards established are a
10 reasonable exercise of the broad discretion given to the
11 Commission by the Atomic Energy Act for implementation of the
12 statute's radiological safety objectives.

13 In this proceeding LIFE at al have not challenged
14 10 CFR Part 20 on the first two limited grounds which I
15 have just mentioned. LIFE's challenge apparently is directed
16 only at the third limited ground, namely, whether the
17 standards are a reasonable exercise of the Commission's
18 discretion.

19 The radiological safety objectives of the Atomic
20 Energy Act of 1954 as amended are set out in many places
21 in the Act. Sections 3(d) and 161(b) are representative.
22 They speak of development and utilization of atomic energy
23 for peaceful purposes to the maximum extent consistent with
24 protection of the health and safety of the public.

25 The test of reasonable exercise of its broad

1 discretion is not different from the test that would be
2 applied on judicial review by a court of appeals to establish
3 that there is a substantial question as to the validity of
4 the standards and I would note that the memorandum points
5 out that only if the Board feels that there is a substantial
6 question presented on the record as to the validity of the
7 challenged regulation is it to do anything, and if it is to
8 do anything at all, it is simply to certify that question to
9 the Commission.

10 To establish that there is a substantial question
11 as to the validity of the standards, the Intervenor LIFE
12 would have had to show that such standards were or are an
13 arbitrary or capricious exercise by the Commission of its
14 discretion. This LIFE has failed to do.

15 LIFE's sole witness, Dr. Sternglass, was quite
16 convincingly rebutted as to his hypothesis, his techniques,
17 and his facts. Nor does the record which includes the
18 testimony of the Board's witness, Mr. Tamplin, show that
19 such standards represent an arbitrary or capricious action
20 by the Commission. On the contrary, the record of this
21 proceeding shows that the Commission's Part 20 standards are
22 based on and consistent with the recommendations of the
23 Federal Radiation Council and approved by the President for
24 the guidance of federal agencies. This is consistent with
25 the provisions of Section 274(h) of the Act, which until

1 December 1970, established the Federal Radiation Council.

2 In December of 1970, as has been stated here
3 many times, the functions of the Federal Radiation Council
4 were taken over by the new Environmental Protection Agency.
5 The testimony also reveals that the National Council on
6 Radiation Protection and Measurements, as recently as last
7 month, published recommendations that the present standards,
8 as they apply to the general population, be retained. This
9 reflected a review of developments in research during the
10 last decade as evidenced by the references set forth in the
11 NCRP document number 39, which was Applicant's Exhibit No. 8,
12 I believe.

13 Similarly, the testimony shows that the National
14 Academy of Sciences, National Research Council Advisory
15 Committee to the Federal Radiation Council in April 1970
16 reviewed allegations such as those made by Drs. Gofman and
17 Tamplin, calling for immediate reduction of the maximum
18 permissible radiation levels and concluded that there is
19 no justification for an immediate revision of the existing
20 standards.

21 Arrayed against this testimony is the testimony
22 of Dr. Sternglass and Dr. Tamplin.

23 With respect to Dr. Tamplin's testimony, it is
24 sufficient to note that in addition to the consideration
25 given to his views by the National Council on Radiation

1 Protection and Measurements, and the NAS-NRC Advisory
2 Committee to the FRC, that the testimony shows that sub-
3 stantial questions have been raised as to his assumption that
4 the population at large can receive an average dose of 170
5 millirem if the individual dose at the site boundary is limited
6 to 500 millirem.

7 Dr. Morton Goldman's testimony has established
8 that the 500 millirem maximum annual dose to an individual
9 at the site boundary virtually precludes the exposure of a
10 suitable sample of the population to a dose of 1970 millirem
11 per year. Substantial questions have also been raised as
12 to Dr. Tamplin and Dr. Gofman's assumptions with respect
13 to the magnitude of carcinogenic effects that would result
14 from the doses that they assume. Both Dr. Sternglass and
15 Dr. Tamplin present the phenomenon of reconcentration of
16 radioactivity in portions of the food chain as a recent
17 development or discovery which requires revision of the
18 Part 20 standards. They choose to ignore the fact that
19 Section 20.106(e) in Part 20 has been in Part 20 for quite
20 some time and is used by the AEC to restrict nuclear power
21 plant releases where it appears necessary to do so, taking
22 into account the possibility of reconcentration in critical
23 food paths.

24 The testimony of Mr. Rogers and Dr. Morton Goldman
25 is clearly refutation of LIFE's apparent contention that

1 Section 20.106(e) is a residual power exercised by the Commission
2 only after a bad situation develops. LIFE misreads that
3 provision. It clearly allows the Commission to anticipate
4 situations and to establish specific limits to fit specific
5 situations.

6 The testimony demonstrates that this is indeed
7 exactly what the AEC has done and does do.

8 Dr. Tamplin and Dr. STernglass and LIFE might
9 like to see 10 CFR Part 20 formulated or drafted differently
10 to account for the phenomenon of reconcentration, but their
11 testimony cannot and does not demonstrate that reconcentration
12 is not anticipated and treated by the present 10 CFR Part
13 20.

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2 It is clear, therefore, that the Intervenor LIFT
3 and the testimony have failed to demonstrate any abuse of
4 discretion by the AEC in establishing and upholding the radia-
5 tion protection standards in 10 CFR 20. The testimony to the
6 contrary demonstrates that the AEC standards are in accordance
7 with the most recent advice of the Federal Radiation Council,
8 the Congressionally-chartered National Council on Radiation
9 Protection and Measurements, and the NCRP, except for certain
10 few NCRP occupationally dose recommendations made in January
11 of this year which the Atomic Energy Commission and the
12 Environmental Protection Agency which now has standard setting
13 responsibilities, have obviously not had time to turn around
14 on.

15 This alone demonstrates that the AEC has not acted
16 arbitrarily or capriciously and, therefore, there is no sub-
17 stantial question with regard to the validity of the AEC
18 radiation protection standards. I would remind the Board that
19 under the Calvert Cliffs decision all it can do is determine
20 whether on the limited grounds for challenge of the standards
21 in a licensing hearing there is a substantial question as to
22 the validity of the standards.

23 Given the nature of the testimony by Drs. Sternglass
24 and Tamplin and its very effective impeachment and rebuttal
25 by the Staff witnesses and Dr. Maxton Goldman, and given the
conformance of the AEC standards with the advice of the

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1 qualified standards setting agencies, this Board cannot but
2 find no unreasonable exercise of discretion by the NRC in
3 implementing the radiological safety objectives of the Atomic
4 Energy Commission Act of 1954 as amended.

5 I would, however, like to proceed further, partly
6 because, gentlemen, I think this being the first case
7 to handle a challenge to 10 CFR Part 20, I would submit to
8 you that the extents to which you consider this challenge
9 and you apply the rules of Calvert Cliffs will have precedent-
10 setting value for other cases.

11 I urge the Board, therefore, to review and read the
12 Calvert Cliffs decision with great care. While it may not be
13 a classic example of clear and simple prose, that decision
14 unequivocally requires that the challenge to the regulation in
15 a proceeding such as this must be related to an issue in the
16 proceeding.

17 Those words cannot be lightly disregarded.
18 Accordingly, this is not a general inquiry into the validity
19 of Part 20 independent of any other considerations in this
20 case. It must be limited to an inquiry into the validity of
21 Part 20 as it applies to the Davis-Besse reactor.

22 Let me quickly state that this does not mean that
23 the issue is whether the Davis-Besse reactor can meet Part 20.
24 That issue has not been raised by any of the parties. What it
25 does mean is that the challenge to the validity of Part 20

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1 cannot be based upon radioisotopes that won't be released from
2 the Davis-Pesse facility. Similarly, the challenge cannot be
3 based upon an examination of the reasonableness of the maximum
4 permissible concentrations set forth in the Table 2 in Appendix
5 B, for any one of the isotopes which may be released by the
6 Davis-Pesse plant, if that isotope is not physically releasable
7 by itself without accompanying isotopes.

8 This is because the note at the end of the tables
9 in Appendix B of Part 20 provides that where there is a mixture
10 in air or water of more than one radionuclide, the limiting
11 value for each radionuclide is determined to be less than the
12 table MPC values for such nuclide.

13 Thus, LJFF, under the Calvert Cliffs memorandum,
14 for example, might have attempted to challenge Part 20 as it
15 applies to the Davis-Besse facility by presenting testimony
16 with respect to the safety of isotopes which would be released
17 from the Davis-Pesse plant; such testimony would have had to
18 show that the maximum permissible concentration values for such
19 isotopes, taking into account both the note at the end of the
20 tables in Appendix B, and the provisions of Section 20.100(3),
21 were grossly unsafe.

22 This LJFF has failed to do. Tamplin's testimony was
23 equally deficient. The testimony of Sternglass and Tamplin
24 insofar as it discussed, for example, the effects of cesium-137
25 and 138 and strontium resulting from gaseous effluents, and

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1 insofar as it considered only the Table 2 values for cesium,
2 without considering the reductions in those concentrations
3 as required by the note at the end of the table, was simply
4 not relevant to an issue in this proceeding.

5 Accordingly, on the basis of the record at this
6 hearing, gentlemen, I submit that you can find no substantial
7 question as to the validity of the radiation standards. Upon
8 receipt of the proposed findings by the parties, we would hope
9 that you will promptly issue a decision granting the construction
10 permit. This is justified by the record in this proceeding.

11 The prolongation of this hearing to hear from promised
12 witnesses by LJFF who did not materialize, together with the
13 order to the Director of Regulation to deny our request for
14 a modest amendment to our previously granted exemption has
15 already made it impossible to meet the December, 1974 schedule
16 for power production from the Davis-Besse facility.

17 I urge you to examine the comments of the Federal
18 Power Commission which are set forth beginning on page A-21 of
19 the Staff exhibit which set forth the Staff's detailed state-
20 ment under the National Environmental Policy Act. Those
21 comments of the Federal Power Commission will enable you to
22 gain a very clear understanding of that other public interest
23 which is sometimes lost sight of in hearings such as these,
24 namely, the public interest in having a reliable supply of
25 power in 1974, '75, and later years. Thank you.

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CHAIRMAN SKALLERUP: The Board will go off the record.

(Discussion off the record.)

CHAIRMAN SKALLERUP The Board would like a conference with counsel.

(Dench conference.)

CHAIRMAN SKALLERUP: Mrs. Lau.

MRS. LAU: I am here this morning because my husband is completely unable to even get out of bed this morning. And he asked me to come here and appear in behalf of him, not to cross-examine or give further testimony, but to ask that the Board might reconsider his motion for a delay on these problems that he has.

I understand the first motion was made for a three-week delay. I don't know if a whole three weeks is necessary. It is going to depend a great deal on, as I told you up there, I have called a neurologist, but I cannot talk to anybody until 12:00 today. It may depend on what his recommendations are. It may only be a week.

And I would ask the Board to reconsider this very strongly and in view of the fact that Mr. Charnoff says that they cannot already meet the 1974 December deadline, that I don't feel another week or even two weeks is going to have that much more delay on the case.

I might also further state that he is completely

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1 Prepared with his, to give cross-examination, and to give his
2 testimony. This is not any reason at all for the delay. Also,
3 that he has been here this week, when I don't feel that he
4 should have, and he has just extended himself much further than
5 a man should be capable of doing.

6 Also, in view of the fact that you are beginning
7 with summation, and you have stated that Mr. Lau has given
8 some cross-examination, the greatest part of his cross-examination
9 has not been completed.

10 Now, whether this will take two, three, four, five
11 hours of cross-examination, I don't know. But the thing of it
12 is there are very important questions which he has yet to ask.
13 And these deal with some of the things Mr. Charnoff brought up
14 in his I think it is called a summation, dealing with the
15 meteorology, population zones, and so forth.

16 And these questions I feel are very pertinent to
17 the case. Now if he is denied the time that he needs to get a
18 little recuperated, that all the points in this case cannot
19 be brought out, and, therefore, cannot be rendered and given
20 a just verdict or decision by the Board, if they do not have
21 all of the facts to consider.

22 Therefore, I think at this time I will again put
23 the motion before the Board as to asking for a delay.

24 CHAIRMAN SKALLFRUP: Mr. Charnoff?

25 MR. CHARNOFF: Yes, sir, Mr. Chairman.

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1 I will give a very brief response. We are sorry
2 that Mr. Lau is not feeling well. We believe, however, that
3 the arguments that were offered yesterday by us with regard to
4 his motion for at least three weeks apply equally forcefully
5 to the statement by Mrs. Lau.

6 We believe too that there is a requirement to
7 balance all of the interests and considering all of the many
8 opportunities that have been extended to Mr. Lau, that were
9 recited by me in my argument yesterday and considered by the
10 Board in its decision yesterday, we believe the Board's
11 decision was a fair one yesterday and we would urge the Board
12 to reconfirm it.

13 I would also point out that the Board noted that
14 it was sending the question up, or its decision up to the
15 Atomic Safety and Licensing Appeal Board. If that Appeal
16 Board feels that the Board's decision yesterday was not
17 correct, it would order this Licensing Board to reopen the
18 hearing.

19 There is nothing particularly new in what Mrs. Lau
20 has offered this morning, that was different from what Mr. Lau
21 had offered in support of his motion yesterday.

22 That being the case, I would urge the Board to
23 simply reconfirm its decision yesterday and I think that its
24 decision with respect to submitting the question to the
25 Atomic Safety and Licensing Appeal Board was a correct and a

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1 wise one.

2 CHAIRMAN SKALLERUP: Mr. Engelhardt.

3 MR. ENGELHARDT: Mr. Chairman, speaking on behalf
4 of the Staff, I think I would have to say that we would be
5 opposed to a reconsideration of the Board's decision of
6 yesterday, regarding Mr. Lau's motion for more time to prepare.

7 I don't believe that the considerations suggested
8 by Mrs. Lau this morning in any way appreciably change the
9 facts as they were presented to the Board yesterday when it
10 responded to Mr. Lau's motion and we think that the opportunities
11 for Mr. Lau to present his case has come and gone, and that
12 it is now the time to find that this matter has been dealt
13 with properly and as a consequence we would oppose any recon-
14 sideration of the Board's action of yesterday denying Mr. Lau's
15 motion.

16 MRS. LAU: Mr. Chairman, may I say something first.

17 CHAIRMAN SKALLERUP: Yes.

18 MRS. LAU: In view of the two comments made, first
19 of all Mr. Lau does not need more time to prepare his case,
20 as he already does have it prepared. And also when Mr. Lau
21 was here and made the motion himself, at that time he was
22 feeling very bad.

23 But this time he is completely incapable of even
24 coming. So I feel the matter has worsened, and, of course,
25 this is not being used as a means for delay. It is something

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1 that is totally unpredictable and certainly was not prepared
2 for. And I think under these circumstances reconsideration
3 should be made.

4 CHAIRMAN SKALLEPUP: The Board will go off the
5 record.

6 (Discussion off the record.)

7 CHAIRMAN SKALLEPUP: On the record.

8 MRS. LAU: Mr. Chairman, may I make one more
9 further point before you speak?

10 Talking about the delays in being prepared and
11 having enough time to do cross-examination, it might be noted
12 that Mr. Lau first began his cross-examination, that at that
13 time he did come down with the mumps.

14 And perhaps you did grant a two-week delay I believe
15 or something, until February 8th for somebody, which was not
16 Mr. Lau. And I think this also should be taken into con-
17 sideration, that at the time he did begin his cross-examination,
18 it was not his fault that he could not continue it at that time.

19 And, therefore, I feel he should have time to put
20 his case into the record.

21 CHAIRMAN SKALLEPUP: The Board has considered the
22 arguments of the Applicant and the Staff, and the Board would
23 state that in coming to its conclusion yesterday to deny the
24 motion to recess for three weeks, the Board did consider
25 Mr. Lau's illness and recognized the possibility that he might

ln10 1 not be able to continue with the case due to his illness.

2 We took this into consideration and in weighing
3 all of the interests involved, determined that the proceeding
4 should continue.

5 The Board will at the earliest practicable time,
6 very likely on Monday of next week, file with the Appeal Board
7 its ruling in this matter. And we will also file with that
8 ruling this ruling denying the motion for reconsideration.

9 MRS. LAU: Is it proper for me at this time to ask
10 what interests were weighed?

11 CHAIRMAN SKALLERUP: That is in the record.

12 MRS. LAU: Thank you.

13 CHAIRMAN SKALLERUP: It would appear in yesterday's
14 transcript.

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1 MR. CHARNOFF: Mr. Chairman, I take it the only
2 remaining item then are the closing statements by the
3 parties who have not yet made them.

4 There is one procedural item we didn't dispose
5 of yesterday and that is a schedule has not been set for
6 transcript corrections, proposed transcript corrections.

7 Might I propose that all of the parties submit
8 them on the 20th day, on or before the 20th day after the
9 conclusion of the hearing.

10 CHAIRMAN SKALLERUP: Any objection?

11 MR. ENGELHARDT: No.

12 CHAIRMAN SKALLERUP: The Board orders that any
13 corrections to the transcript be submitted to the Board on
14 or before the 20th day after the conclusion of the hearing.

15 Mrs. Stebbins, would you like to have the last
16 word or give Mr. Engelhardt the last word?

17 MRS. STEBBINS: Mr. Engelhardt, what is your
18 desire? You know a woman always likes the last word.

19 MR. ENGELHARDT: You look so prepared and eager,
20 I think I should defer to you to make your closing statement.

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21 CLOSING STATEMENT OF EVELYN STEBBINS

22 ON BEHALF OF THE COALITION FOR SAFE

23 NUCLEAR POWER.

24 MRS. STEBBINS: Well, my statement is as Chairman
25 of the Coalition and I am also speaking for all of the

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1 organizations and individuals that we represent.

2 We must disagree completely with Mr. Russell Baron,
3 attorney for the Coalition, in his closing remarks and must
4 point out that the remarks made by him did not represent the
5 Coalition's view of the AEC hearing, that they were his own
6 personal comments and certainly do not reflect the position
7 of the Coalition.

8 I, further, do hereby swear and affirm that the
9 Coalition for Safe Nuclear Power never requested a "delay for
10 the sake of delay" and that our request for delay was based
11 solely upon one reason -- the time needed to properly
12 prepare a case and bring in expert witnesses. We completely
13 fail to understand how Mr. Baron could have used that term.
14 He seemed to be quoting something the Applicant's lawyer,
15 Mr. Charnoff had accused us of.

16 As members of this Hearing Board, the AEC Staff,
17 and the Applicants, Toledo Edison and Cleveland Electric
18 Illuminating, know full well, the purported purpose of this
19 hearing is to determine whether or not the construction and
20 operation of the proposed facility will cause uniuue risk to
21 the public health and safety or damage to the environment
22 or biosphere.

23 This Hearing Board, the AEC Regulatory Staff, and
24 the Applicant, along with the AEC rules and regulations, have
25 worked together to prevent a fair hearing for the issues

1 which need to be discussed at this hearing, and decided before
2 the Davis-Besse Nuclear Power Station is constructed. The
3 Applicant, aided and abetted by the AEC, is trying to push
4 this nuclear power plant down the throats of the citizens
5 of Ohio.

6 First, the AEC granted a variance to the Applicant
7 which allowed them to start construction, at their "own risk,"
8 of course, before the construction hearing which is to
9 decide whether such a plant can be built safely. An objection
10 to this variance permit was made by one of the intervenors
11 before the permit was granted, because of the fact that once
12 the utilities had invested money in the plant, the Hearing
13 Board would be under pressure to allow them to proceed. It
14 is perfectly obvious that the start of construction by the
15 Applicant puts pressure on the Board to allow them to continue
16 construction.

17 We are disgusted with the Applicant, Toledo
18 Edison's action in this matter. We wish to point out that
19 the Coalition was offered time to prepare our case if we
20 would agree to a "mini-permit" which would allow Toledo
21 Edison to continue construction, of course, at their "own
22 risk." However, because of the precedent setting possibility
23 of such a decision, and the very dangerous implication that
24 this might have on construction of other nuclear power plants,
25 whereby the power companies could first get a variance to

1 start construction, then continue with a "mini-permit" and
2 pour millions of dollars into construction before it was
3 ever decided that such a plant could or should be built at
4 that location, and thereby making it even more of a burden
5 on the hearings boards to allow a construction permit "after
6 the fact of construction" already started.

7 Since we would not agree to the mini-permit, the
8 Toledo Edison Company sneaked around behind our backs and
9 requested such a permit from the AEC on January 7, without
10 sending copies of such request to the Intervenors, and did
11 not do so until January 11. Here they were requesting
12 the very same thing that we had denied them, and which would
13 have given us the time we needed to prepare our case.

14 We must, at this point, commend this Hearing
15 Board, for their refusal to allow any further construction
16 on the Davis-Besse plant until the construction permit is
17 issued.

18 Second, the Coalition was not granted intervention
19 status at the prehearing, and decisions were made regarding
20 the hearing without our being allowed any say so in this
21 decision making. As a citizen group, with lack of adequate
22 funds, we could not go ahead with any planning for a "possible"
23 participation in the hearing as Intervenors. Instead of
24 deciding whether we would be allowed intervention status as
25 a first order of business, we were not granted intervention

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1 status until December 9, after the hearing had been proceeding.
2 It would seem as though there should have been an additional
3 prehearing, as has been done in some other cases, to determine
4 our status legally, and that this should have been a first
5 order of business.

End #3

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1 This hearing Board did not grant the Coalition
2 adequate time to prepare our case and bring in our witnesses.

3 I do hereby swear and affirm that the Coalition had
4 contacted the following persons, and they had agreed to be
5 witnesses for the Coalition: Dr. Edward Radford of Johns
6 Hopkins, Dr. Lamont Cole of Cornell University and Charles
7 Huver, of the University of Minnesota, previously entered
8 into the record.

9 The Applicant has put constant pressure on the Hearing
10 Board not to grant any delays because it would cost them
11 money. The purported reason for the hearing -- to decide
12 whether this plant can be built without risk to the public
13 health and safety -- should have been the only deciding
14 factor, not whether it would cost the Applicant money.

15 Without adequate time, we could not properly prepare our
16 case. Further, even when we could have had a witness, Dr.
17 Huver, come in on Monday, January 11, we were denied per-
18 mission to do so. We offered to have him come in when the
19 hearing reconvened, and that was also denied.

20 Fourth: One after another of the Coalition's con-
21 tentions were not allowed to be discussed, not necessarily
22 because AEC rules would not allow them to be discussed, but
23 apparently simply because we had not worded our contentions
24 in a manner in which the AEC staff, the Applicant and the
25 Hearing Board thought to be properly worded.

DB-2

1 We were not allowed to discuss radiation standards,
2 as allowed in the Calvert Cliffs case. We must point out
3 that the "safe standards" which the AEC adopted for uranium
4 miners have caused lung cancer. The supposedly safe radiation
5 from weapons testing has probably caused leukemia in persons
6 in Utah. The accidental but "safe" release, according to
7 AEC, of radiation from the recent testing out West contaminated
8 milk in five states.

9 Eminent scientists have said that the radiation standards
10 which the AEC has adopted will cause cancer and leukemia,
11 and yet the Coalition was not permitted to raise this issue.
12 Why? Because for some reason we did not word our petition for
13 leave to intervene in the correct manner. The issue was here,
14 but we could not discuss it.

15 You need only to go through out petition and ask whether
16 the points we raised are pertinent considerations that should
17 be thoroughly looked into in order to assure that this nuclear
18 facility can be built without undue risk to the public health
19 or safety. When should we discuss the following matters,
20 before or after a plant is built?

21 Whether the Davis-Besse plant can operate safely in
22 view of the fact that this plant is based on designs which
23 are not presently tested according to the information listed
24 by the Applicant in the PSAR, since none of the plants listed
25 by the Applicant are presently operating.

DB-3

1 Whether there is any assurance that the integrity of
2 components and engineering of safeguards will be maintained
3 over the life of the proposed plant, inasmuch as they will
4 be exposed to radiation which will lead to deterioration.

5 Whether the quality control and quality assurance
6 procedures and programs are adequate.

7 Whether emergency plans and procedures have been adequately
8 developed in case of an accident.

9 Whether occurrence of an accident or the discharge of
10 radioactive effluents and heat into Lake Erie would endanger
11 the health, safety, lives and property of the public.

12 Whether the fog created by the cooling towers would
13 cause dangerous environmental conditions hazardous to aircraft,
14 and cause more dangerous conditions in case of accidental
15 release of radioactivity.

16 Whether the proposed plant will cause serious erosion
17 of the Lake Erie shoreline and damage to shorefront property.

18 How the dangerous radioactive wastes will be transported
19 from the plant, and whether this can be done safely.

20 Whether such wastes would have to pass through densely
21 populated areas.

22 Whether the normal release of radioactive wastes will
23 be properly monitored.

24 Whether operation of the plant will be inimical to the
25 health and safety of the public due to the location near

DB-4
1 dense population centers of Detroit, Toledo, and Sandusky
2 and Cleveland.

3 Whether effective arrangements could be made to control
4 traffic and permit ready removal and evacuation of people in
5 case of an accident.

6 Whether the applicants have demonstrated that no bio-
7 logical damage to any of the population of Lake Erie area
8 will result from the radiation emitted by the proposed plant.

9 Whether all aspects of the environment should be con-
10 sidered, as required by the National Environmental Protection
11 Act.

12 Whether the Applicant has demonstrated that the proposed
13 facility can comply with applicable Federal and State water
14 quality standards.

15 Whether the risks to the public health and safety far
16 outweigh the benefits.

17 Whether the final design has undergone necessary
18 research and development.

19 Whether the AEC presently has qualified, adequate staff
20 to conduct the necessary on-site compliance inspection during
21 the course of construction.

22 Whether a complete environmental study should be
23 completed before construction.

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The questions which we must ask are:

Is this a hearing to see how well our lawyer could word our contentions, or is the purpose of this hearing to determine whether or not the construction and operation of the proposed nuclear plant will cause undue risk to the public health and safety?

Shouldn't the AEC allow the discussion of these vital, pertinent issues before construction of a nuclear power plant?

Fifth, the Atomic Energy Commission is a God unto itself, and can set its own rules and regulations without regard, even for the laws of the land. It has been an agency with its own built-in conflict of interest, due to the fact that they were charged with setting safety standards and also promoting nuclear power.

The National Environmental Policy Act was designed to assure the public that all federal agencies, including the AEC, would fully explore the environmental implications of activities under their jurisdiction to prevent costly mistakes. The AEC finally adopted new eregulations on December 4 for implementing the NEPA, slightly more than four months after the deadline established by President Nixon for all federal agencies and six months after the June 1 deadline set by the President's Council on Environmental Quality.

1 However, these rules still do not apply to the
2 Davis-Besse plant, because the AEC, in its own way, without
3 regard for the environment, has determined that these rules
4 do not apply until March 4, 1971.

5 The question we must ask is whether it is logical
6 to allow the Davis-Besse plant to be built without considering
7 the NEPA when the plant will have to operate within the
8 determinations of the National Environmental Policy Act. It
9 would seem as though these determinations should be made
10 before the plant is built, not after, which might prove
11 exceedingly costly to the power companies and its customers.

12 Sixth, with respect to the other Intervenor, we
13 must point out:

14 That the conditions under which LIFE was forced
15 to present complete testimony to the AEC and the Applicant,
16 a change of the rules in the middle of the hearing; and
17 the extremely short time allowed for them to obtain such
18 testimony would have made it practically impossible for them
19 to comply with such an unfair ruling.

20 Here again, it was the insistent demands of the
21 Applicant that there be no delays, that the hearing proceed,
22 which forced the short time, not the consideration of whether
23 the issues to be examined could be properly done in the
24 short time allowed.

25 We completely fail to understand how the Board

1 could have possibly ruled against Mr. Lau's request for a
2 delay in the hearing because of his illness. It must be
3 unheard of in the annals of "justice." Since I was not
4 here, I can only presume that the Applicant must have again
5 reiterated his time worn phrase that there should be no
6 delays, that these delays cost the Applicant money.

7 Again, we must ask: What is the purpose of this
8 hearing?

9 Is it to rush this matter through for the Applicant,
10 Toledo Edison Company and Cleveland Electric Illuminating
11 Company? Or is it to assure that the construction and operation
12 of the Davis-Besse plant will not cause undue risk to the
13 public health and safety or damage to the environment or
14 biosphere?

15 We do hereby finally and emphatically declare that
16 we do not, cannot consider that there has been a fair
17 hearing -- a hearing which would allow discussion of the
18 issues which should be decided before the Davis-Besse nuclear
19 plant is built.

57 Inl 1 I would also like to enter into the record a copy
2 of a telegram which I sent to the Director of Ohio Water
3 Pollution Control Board and to the Governor of the state, which
4 I think has some bearing on this hearing.

5 The telegram reads, "Dr. Thomas A. Gardner, Acting
6 Chairman, Ohio Water Pollution Control Board, 450 East Town
7 Street, Columbus, Ohio 43216, dated February 9, 1970.

8 "We strongly urge that a public hearing be held
9 before any certificate or permits be issued for the Davis-
10 Besse nuclear power plant. We further request that public
11 hearings be held in Cleveland.

12 "Discharge of radioactive waste to the water would
13 violate the water quality standards, minimum conditions appli-
14 cable to all waters at all places and at all times,
15 should be free from substances which are toxic or harmful to
16 human, animal, plant or aquatic life. The discharge of
17 radioactive waste to our water would also violate non-
18 degradation clause of our water quality standards."

19 Signed Evelyn Stebbins, Chairman, Citizens for
20 Clean Air & Water, Inc., and Coalition for Safe Nuclear Power.

21 I would also like to enter into the record a copy
22 of the Wall Street Journal article on Atom-Age Trash, dated
23 Monday, January 25, 1971.

24 end 57
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1 MR. ENGLEHARDT: Mr. Chairman, that last request
2 raises some question as to what status this is. Is Mrs.
3 Stebbins just bringing this to the attention of the Board?

4 MRS. STEBBINS: Just bringing it to the attention
5 of the Board is all.

6 MR. ENGELHARDT: Need it be marked for anything,
7 other than just recognized as an article brought to your
8 attention?

9 CHAIRMAN SKALLERUP: What is it you are doing?

10 MRS. STEBBINS: "Atom-Age Trash," I merely wish
11 to enter it into the record for whatever purposes such a
12 limited appearance might count, not for evidence or anything
13 of that nature.

14 CHAIRMAN SKALLERUP: Any comment?

15 MR. CHARNOFF: No comment.

16 CHAIRMAN SKALLERUP: It is so worded that it
17 be received as a limited appearance.

18 Are you ready for Mr. Engelhardt?

19 MRS. STEBBINS: I am ready.

20 CLOSING STATEMENT ON BEHALF OF THE REGULATORY

21 STAFF BY MR. ENGELHARDT

22 MR. ENGELHARDT: Mr. Chairman, I have a very
23 brief closing statement. The application for a construction
24 permit filed by the Toledo Edison Company and the Cleveland
25 Electric Illuminating Company for the Davis-Besse plant has

1 been under consideration by the Regulatory Staff and by the
2 Advisory Committee on Reactor Safeguards since August 1,
3 1969.

4 As our testimony in this proceeding has shown, we
5 have concluded that there is a reasonable assurance that
6 this proposed facility can be constructed and eventually oper-
7 ated without undue risk to the health and safety of the public.

8 Three intervenors in this proceeding have attempted
9 to raise questions as to the safety of this proposed facility.
10 The Coalition for Safe Nuclear Power presented as its sole
11 witness Dr. Ernest Sternglass, whose testimony had little
12 relevance to specific contentions of that party. And what
13 was relevant raised no serious question as to the adequacy
14 of the design of the proposed plant or the safety of the
15 proposed operation.

16 Cross examination by the Intervenor also failed
17 to raise any serious questions regarding this facility.
18 They did raise specific questions regarding the use of off-
19 shore ranges by the various military organizations, but
20 these matters have essentially been resolved during
21 the review of the application by the AEC Regulatory Staff
22 and by additional assurance given by responsible government
23 officials as to the controls to be exercised in the use of
24 these ranges.

25 The second intervenor, Mr. Glenn Lau, presented

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1 Dr. Sternglass as his witness. This testimony was essentially
2 not relevant to Mr. Lau's contention with respect to the
3 safety of this facility.

4 Mr. Lau presented in addition some 10 witnesses
5 who described the snow and storm conditions in the Sand
6 Beach area in which they live in support of Mr. Lau's
7 contention that the applicant failed to meet the requirements
8 of the Commission in that it could not assure the feasibility
9 of proposed evacuation plans.

10 The information was not previously known by
11 the Regulatory Staff, it was considered by the Staff, and
12 in rebuttal testimony it indicated that this problem would
13 be given serious consideration in the course of review of the
14 detailed emergency plan to be developed by the Applicant
15 during the operating license review stage.

16 There was, however, no showing by Mr. Lau that
17 a feasible plan for coping with emergencies could not be
18 developed or that the Applicant could not meet the requirements
19 of the regulations.

20 The third intervenor, LIFE, contended that the
21 radiation standards set forth in 10 CFR Part 20 were illegal,
22 inadequate and an abuse of the Commission's discretion.

23 In support of their contentions Intervenor LIFE
24 presented but a single witness, Dr. Sternglass. In addition,
25 the Board presented as its witness Dr. Arthur Tamplin,

1 whose testimony was also related to the LIFE contention.
2 The testimony of the LIFE witness and Dr. Tamplin was
3 rebutted by the Staff's witnesses.

4 With respect to Dr. Tamplin's testimony, rebuttal
5 testimony indicated that Dr. Tamplin's testimony was
6 deficient in that it failed to provide underlying assumptions
7 on which his conclusions were based, and that further the
8 assumptions which were provided were unrealistic.

9 The testimony by Dr. Sternglass was rebutted by
10 several Staff witnesses. The rebuttal made clear that
11 the data relied upon by Dr. Sternglass in his testimony
12 relating to the adequacy of the standards were unreliable
13 and chosen to support his hypothesis while ignoring or
14 distorting other data which failed to support this hypothesis.

15 Other rebuttal testimony discredited certain
16 contentions of Dr. Sternglass with respect to the adequacy of
17 known information, the adequacy of studies and the effects
18 of strontium-90.

19 In summary, the Staff in this proceeding has
20 heard no reliable evidence which would in any way change
21 its conclusions as stated in the Safety Evaluation as to the
22 adequacy of the application or as to whether this construction
23 permit should be issued.

24 Furthermore, the evidence presented in this
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1 proceeding regarding the invalidity of Part 20 has been
2 fully and completely rebutted in the presentation of evidence
3 by the Staff and the Applicant.

4 And as far as the evidence is concerned, there has
5 been no showing by the Intervenors that the Part 20 radiation
6 standards are deficient or will not adequately protect the health
7 and safety of the public.

8 That concludes our statement.

9 CHAIRMAN SKALLERUP: Any further matters to come
10 before the Board?

11 (No response.)

12 CHAIRMAN SKALLERUP: There being none, the Board
13 adjourns the hearing.

14 MR. CHARNOFF: May I ask whether the Board has
15 closed the record in the hearing?

16 CHAIRMAN SKALLERUP: The Board is closing the
17 record of the hearing. It is so ordered.

18 (Whereupon, at 11:10 a.m., the hearing was
19 concluded.)
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