



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

DOCKET NUMBER
PROD. & UTIL. FAC. 50 346

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
THE TOLEDO EDISON COMPANY AND THE)
CLEVELAND ELECTRIC ILLUNINATING) Docket No. 50-346
COMPANY)
(Davis-Besse Nuclear Power Station))

AEC REGULATORY STAFF EXCEPTIONS TO THE INITIAL DECISION

In accordance with Section 2.762(a) of the Commission's "Rules of Practice" in 10 CFR Part 2 and paragraph 4 (pg. 3) of the Commission's "Memorandum and Order and Notice of Hearing" in the captioned matter, the AEC regulatory staff (staff) respectfully excepts to the Initial Decision of the Atomic Safety and Licensing Board (Board) in this proceeding as set forth below.

Staff Position

The exceptions set forth below are all based upon the staff's view that the Board improperly excluded evidence relating to environmental effects of construction activities beyond the NEPA review period and environmental effects of plant operation (see Initial Decision, pgs, 6, 7, 10). In our view, such evidence is relevant to the issue whether irretrievable commitments of financial resources during the NEPA review period would foreclose subsequent adoption of alternatives of a type that could result from the full NEPA review (so-called "economic foreclosure").

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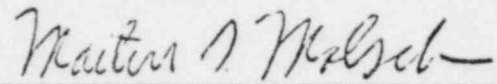
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We believe that the exceptions set forth below should be granted, and that the matter should be remanded back to the Board for the purpose of taking testimony and making appropriate findings related to environmental effects of construction beyond the NEPA review period and environmental effects of plant operation. We believe that the hearing on remand should be confined to these matters and that the record on other matters, including the issue of foreclosure from the standpoint of technical feasibility, need not be reopened should the staff's exceptions be granted. Should this requested course of action make it impossible to return the record in this matter to the Court of Appeals for the D. C. Circuit within the time set in its decision of April 7, 1972 (Coalition for Safe Nuclear Power v. AEC, No. 71-1396), we suggest that an appropriate extension of time be requested from the Court.

1. The staff excepts to the failure of the Board to find in accordance with the staff's proposed findings of facts in paragraphs 24 (first sentence, 29 (second sentence), 33 (last sentence after "(Tr. 170)"), and 34 (next to last sentence) on the ground that the Board's exclusion of evidence relating to environmental effects of construction beyond the NEPA review period and environmental effects of operation (Tr. 73, 125, 450) requires such findings.
2. The staff excepts to the failure of the Board to find in accordance with the staff's proposed conclusion in paragraph 2 of its proposed

conclusions of law, that the rulings by the Board rejecting the testimony described in paragraphs 24, 29, 33, and 34 of the staff's proposed findings of fact were legally erroneous.

Respectfully submitted,



Martin G. Malsch
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 24th day of May, 1972.