

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

THE TOLEDO EDISON COMPANY and
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY

Davis-Besse Nuclear Power Station

Docket No. 50-346

4-26-71.

APPLICANTS' REPLY TO MOTION FOR ISSUANCE OF
STAYING ORDER BY COALITION FOR SAFE NUCLEAR POWER

1. By letter dated April 21, 1971, Intervenor Coalition for Safe Nuclear Power (Coalition) filed a Motion for Issuance of Staying Order requesting a stay of the effective date of the construction permit issued to the Applicants in the captioned proceeding. Without explanation or basis, Coalition asserts "that irreparable damage will be caused to the Intervenor's rights of appeal by failure to issue a Staying Order."

2.. Section 2.764(a) of the Commission's Rules of Practice provides:

"An initial decision directing the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party

8008050 770

G

why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to §2.762 or upon its own motion."

At no time during the course of the public hearing or in Coalition's Proposed Findings of Fact and Conclusions of Law did the Coalition object to immediate effectiveness of the initial decision; nor did it offer to show any good cause why the initial decision should not become immediately effective.

3. In passing on motions to stay an administrative order pending judicial review, the courts require such movants to demonstrate:

- a) the likelihood that the movant will prevail on its petition for review,
- b) that irreparable damage will be suffered by the movant if the stay is denied,
and
- c) that the public interest would be served by a stay order. Hamlin Testing Laboratories, Inc. v. United States Atomic Energy Commission, 337 F. 2d 221, October 9, 1964.

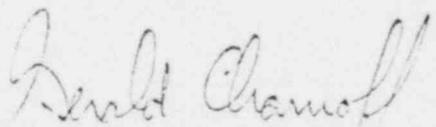
4. Applicants note that Coalition's motion mistakenly cites 5 U.S.C. §705 which applies to stays of final

agency actions pending judicial review.

5. Coalition's motion should be denied for failure to timely offer any good cause why the initial decision should not become immediately effective and for failure to make any demonstration of the factors set forth in paragraph 3 above.

Respectfully submitted,

SHAW, PITTMAN, POTTS,
TROWBRIDGE & MADDEN

By 
Gerald Charnoff
Counsel for The Toledo
Edison Company

Dated: April 26, 1971