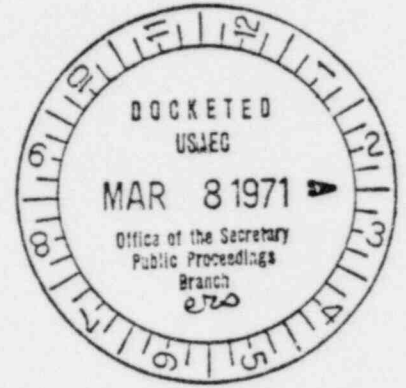


UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD:

Algie A. Wells, Chairman
Dr. John H. Buck
Dr. Lawrence R. Quarles



DOCKET NO. 50-346

IN THE MATTER OF
THE TOLEDO EDISON COMPANY AND
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY
(Davis-Besse Nuclear Power Station).

MEMORANDUM AND ORDER

By memorandum dated February 23, 1971, the Atomic Safety and Licensing Board in this construction permit proceeding referred to the Appeal Board two rulings which it had made during the course of the hearing: the denial on February 11, 1971, of a motion by intervenor Glenn Lau for continuance of the hearing for three weeks; and the denial the following day of intervenor's motion for reconsideration of the earlier ruling. The licensing board was of the view that its rulings were proper; however, because it considered the situation to be of an unusual nature, it referred its rulings to us for our views in the matter.

Under the Commission's Rules, the granting of continuance in a licensing proceeding is a matter within the sound discretion of

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the presiding officer. 10 CFR § § 2.718, 2.721(d). We believe that this discretion was properly exercised in connection with the rulings before us.

The factual background relevant to the licensing board's rulings is set forth in detail in the board's referral memorandum and need not be repeated here. It reflects, in summary, that intervenor Lau was afforded ample opportunity to present his case by evidence and argument. Among other things, he was able to call and examine 10 witnesses in support of his contentions. At the request of Mr. Lau, along with other intervenors, two postponements, totalling about 45 days, had already been granted.

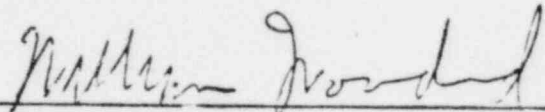
The board in its memorandum noted that after it was advised of the complications experienced by Lau while recovering from the mumps, it offered to meet at Lau's home so that he would have the opportunity of stating to the official recorder of the proceedings any further questions on cross-examination he wished to pursue, and that Lau never availed himself of this opportunity. The board stated that it was left in the dark with respect to the nature, relevance, and substantiality of any further direct testimony or cross-examination by Lau.

While Mr. Lau's illness is certainly regrettable, the board, in the exercise of its discretion, must consider not only the interests of Mr. Lau, but also those of the other parties. The factors set forth above (particularly the continuances which had already been granted.

and Lau's substantial completion of the presentation of his witnesses), and the other factors specified by the licensing board in its memorandum, indicate that the denial of the requested continuance was well within the sound exercise of the board's discretion.

We agree, therefore, with the rulings of the licensing board in denying intervenor Lau's motion for a three-week continuance.

By the Atomic Safety and Licensing
Appeal Board



William Woodard

Assistant Executive Secretary

Dated: March 8, 1971

Smith

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
)
TOLEDO EDISON COMPANY, ET AL.)
(Davis-Besse Nuclear Power Station)
Unit 1)

Docket No. 50-346

3-8-71

CERTIFICATE OF SERVICE

I hereby certify that copies of a MEMORANDUM AND ORDER issued by the Atomic Safety and Licensing Appeal Board on March 8, 1971 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this eighth day of March 1971:

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