

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

ANSWER OF THE TOLEDO EDISON COMPANY
AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
TO PETITION OF COALITION FOR SAFE NUCLEAR POWER

1. On February 6, 1973, the Atomic Energy Commission ("Commission") received a letter from Evelyn Stebbins, on behalf of the Coalition for Safe Nuclear Power ("Petitioner" or "Coalition"), which transmitted "one copy of . . . [Petitioner's] list of contentions with respect to the forthcoming Environmental Hearing on the Davis-Besse Nuclear Power Plant." The Toledo Edison Company and the Cleveland Electric Illuminating Company ("Licensees") believe that this letter should be presumed to be a petition for leave to intervene pursuant to 10 C.F.R. §2.714. For the reasons set forth below, however, Licensees believe that leave to intervene should be denied, and that Mrs. Stebbins should more appropriately be accorded permission to make a limited appearance.

2. As a petition for leave to intervene, the Coali-

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tion's letter and accompanying list of contentions fail to satisfy the requirements of §2.714 of the Commission's Rules of Practice. First, the petition has not been filed under oath or affirmation as required by §2.714(a). Secondly, the petition has not been accompanied by a supporting affidavit identifying the specific aspects of the proceeding as to which intervention is sought and setting forth with particularity the facts pertaining to Petitioner's interest and the bases for Petitioner's contentions. Insofar as the Coalition is no stranger to AEC proceedings, having participated in both the construction permit hearing for the Davis-Besse Nuclear Power Station and the hearing held pursuant to Section E of Appendix D to 10 C.F.R. 50, these deficiencies are inexcusable and are alone sufficient reason for denial of leave to intervene.

3. The most serious defect of the Coalition's petition is its failure to set forth with particularity the bases for the contentions raised. Petitioner's contentions are merely unsupported allegations of the broadest possible kind with no showing of a basis in fact, substance or in responsible scientific or technical opinion. Vague, unsupported contentions are at complete variance with the intent of the Commission's restructured Rules of Practice.

4. In this regard, the Licensing Board ruling on this petition should take note of the Coalition's failure in prior AEC and judicial proceedings concerning the Davis-Besse facility to substantiate the allegations and contentions which they raised. A construction permit for the Davis-Besse Nuclear Power Station was issued to the Toledo Edison Company and the Cleveland Electric Illuminating Company on March 24, 1971. The Coalition sought review in the United States Court of Appeals for the District of Columbia of the Commission's order authorizing the issuance of the construction permit, claiming that the Commission had "refused to allow consideration at the [Construction] Permit hearings of non-radiological environmental effects of the Davis-Besse Nuclear Power Plant." Petition for Review, Coalition for Safe Nuclear Power v. AEC, No. 71-1396, (D.C. Cir. May 21, 1971). Notwithstanding the Coalition's initial claim that its interests were in presenting evidence on non-radiological effects of plant operation, it declined to present any written testimony or any witnesses dealing with this question at the Appendix D, Section E hearing specifically convened to receive such evidence.*

* This hearing was convened pursuant to the Commission's Memoranda and Orders of June 5, 1972 and June 29, 1972, In the Matter of Toledo Edison Company and the Cleveland Electric Illuminating Company, (Davis-Besse Nuclear Power Station), Docket No. 50-346, and was held on July 7-8, 1972, at Brookpark, Ohio.

See Initial Decision, In the Matter of the Toledo Edison Company and the Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station), Docket No. 50-346, July 9, 1972, p. 5. Furthermore, the Coalition explicitly stipulated that it was not interested in cross-examining the testimony presented by the AEC Regulatory Staff and by the licensees on non-radiological matters. This stipulation, made during a prehearing conference of counsel, is reflected in the transcript of that hearing on pages 2802, 2803, 2809, and 2830 and also in the admission into the record without cross-examination of a large volume of written testimony on non-radiological environmental effects of the plant. Tr. 2832-2857.

5. Against this background we see that the Coalition is again seeking to participate in a proceeding concerning non-radiological environmental effects of operation of the Davis-Besse facility. Again, it appears likely that the Coalition's participation would result in no additional relevant information or responsible scientific and technical opinion. The Coalition's petition amounts to no more than a long list of vague, unsupported contentions, some of which are not even relevant to the subject matter of this proceeding. Allowing the Coalition to participate in this hearing on the basis of such a petition would serve merely to burden the hearing process by

expanding the areas of controversy at the hearing to matters on which the petitioner will make no substantive contribution.*

6. Many of Petitioner's contentions seek to raise issues which are not within the scope of the Notice of Hearing for this proceeding. The Notice provides for a hearing to review environmental considerations pursuant to the provisions of Section B of Appendix D to 10 C.F.R. 50. 38 Fed. Reg. 904 (1973). Many of Petitioner's contentions, however, concern radiological health and safety issues which have already been resolved at the construction permit hearing for the Davis-Besse facility. For example, Petitioner's contentions in paragraph 6, concerning siting considerations, would seek to reopen a matter which was raised and resolved at the construction permit hearing. See Initial Decision, In the Matter of the Toledo Edison Company and the Cleveland Electric Illuminating Company, (Davis-Besse Nuclear Power Station), Docket No. 50-346, March 23, 1971,

* Parenthetically, we call attention to a letter on file in the Public Document room from Jerome S. Kalur, counsel for the Coalition, to L. Manning Muntzing, Director of Regulation, dated July 20, 1972, in which Mr. Kalur says that "It is the Coalition's intention to supply written comments to the [AEC's] draft [environmental] statement within thirty days of its issuance in order to adequately supply the Commission with their views" The Draft Environmental Statement has been available for over 2 1/2 months. The Coalition has yet to submit the comments it promised.

paragraphs 11-15. The same is true of Petitioner's contentions in paragraphs 8 and 10 (ECCS), paragraph 15 (quality assurance), paragraphs 16-18 (emergency plans), paragraph 24 (flooding), and most of Petitioner's contentions in paragraphs 26-27 (radiological health and safety).

7. In paragraphs 7 and 9-13, Petitioner takes issue with the Draft Environmental Statement's consideration of the environmental risks associated with postulated accidents. In the Annex to Appendix D to 10 C.F.R. 50, the AEC has set forth certain required assumptions to be made in the discussion of accidents in Environmental Reports and Environmental Statements. 36 Fed. Reg. 22851 (1971). The Draft Environmental Statement's discussion of accidents is in accord with this Annex. For example, Class 9 accidents have not been discussed because, as the Annex provides, the probability of such accidents is so small that their environmental risk is extremely low.

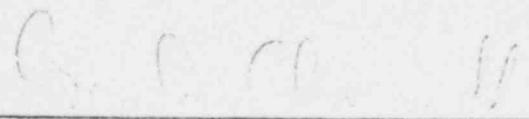
CONCLUSION

8. For the above reasons, the Toledo Edison Company

and the Cleveland Electric Illuminating Company respectfully request that leave to intervene be denied to the Coalition for Safe Nuclear Power.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By 

Gerald Charnoff
Counsel for the Toledo Edison
Company and the Cleveland
Electric Illuminating Company

Dated: February 14, 1973

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of the Toledo Edison Company and the Cleveland Electric Illuminating Company to Petition of Coalition for Safe Nuclear Power" were served upon the following, by deposit in the United States mail, postage prepaid, this 14th day of February, 1973:

Mr. Frank Karas, Chief (21)
Public Proceedings Branch
Office of the Secretary
U.S. Atomic Energy Commission
Washington, D. C. 20545

Atomic Safety and Licensing (1)
Board Panel
U.S. Atomic Energy Commission
Washington, D. C. 20545

Office of General Counsel (6)
U.S. Atomic Energy Commission
Washington, D. C. 20545

Mrs. Evelyn Stebbins, Chairman (1)
Coalition for Safe Nuclear Power
312 Park Bldg., 140 Public Square
Cleveland, Ohio 44114

By 
Gerald Charnoff

Dated: February 14, 1973