

7-10-73

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
TOE)
TOLEDO EDISON COMPANY, ET AL.) Docket No. 50-346
)
(Davis-Besse Nuclear Power Station)

CERTIFICATE OF SERVICE

I hereby certify that copies of MEMORANDUM AND ORDER dated July 10, 1973 in the captioned matter have been served per the attached Service List by deposit in the United States mail, first class or air mail, this 11th day of July 1973.

Peggy A. Colvins
Office of the Secretary of the Commission

Attachment: Service List

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Station, Unit 1))

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION



In the Matter of)
)
TOLEDO EDISON COMPANY AND)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
)
(Davis-Besse Nuclear Power Station))

Docket No. 50-346

MEMORANDUM AND ORDER

On April 19, 1973, the Atomic Energy Commission (the Commission) issued a Notice of Receipt of Application for Facility Operating License; Notice of Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing. The Application for facility operating license was received from the Toledo Edison Company and the Cleveland Electric Illuminating Company (the Applicant) requesting license to possess, use, and operate Davis-Besse Nuclear Power Station, a pressurized water nuclear reactor located on the Applicant's Site on the southwestern shore of Lake Erie in Ottawa County, Ohio, at steady state power levels not to exceed 2,722 megawatts thermal.

Inter alia, the Notice provided that within thirty days from the date of its publication in the Federal Register (April 30, 1973; 38 Fed. Reg. 10661), ". . . any person whose interest may be affected by this proceeding may file a petition for leave to intervene". Such petition to intervene ". . . must be filed under oath and affirmation in accordance with the provisions of 10 CFR 2.714".

Pursuant thereto, two petitions to intervene, and a motion requesting an extension of time were received from the City of Cleveland, Mrs. Evelyn Stebbins on behalf of the Coalition for Safe Electric Power, and from the State of Ohio, respectively.

By Notice dated June 6, 1973, this Board was duly assigned to consider any petitions for leave to intervene and to rule thereon.

On May 30, 1973, the State of Ohio filed a motion to extend time until June 29, 1973, within which to file a petition to intervene. Upon assurance of counsel that the Staff and the Applicant stated that they had no objection thereto, and recognizing that a State agency

may require more time than a private petitioner to coordinate its action, this Board delayed ruling pending further action from the State of Ohio. On June 29, 1973, the State of Ohio submitted a second motion requesting another 30-day extension of time until July 30, 1973, ". . . within which to determine whether there exist matters appropriate to be raised by the State of Ohio in intervention, and to file its petition accordingly". No reason for the delay has been offered. As is clearly evidenced by the approval of the initial request for a 30-day delay, the Board appreciates the responsibility of the State of Ohio, and the State's need for sufficient time to formulate a position. Nevertheless, the Board is under a duty to resolve the issues before it and to decide whether a hearing is in order at the earliest opportunity consistent with the Rules of Practice of the Commission. Accordingly, the motion is denied, except that the State of Ohio may file a petition, if it so decides, provided it does so within 15 days of the date of this Order. If it does not chose to intervene, the State may, of course, participate in accordance with Section 2.715(c).

On May 9, 1973, the Commission received a letter from Mr. Russell O. Taylor, dated May 7, 1973, "requesting a petition for leave to intervene with respect to the Davis-Besse Nuclear Power Plant . . ." This letter, insofar as it was intended to be a petition to intervene, is rejected as completely failing to meet the requirements of Section 2.714. Mr. Taylor, however, may wish to express his views through a limited appearance at the Evidentiary Hearing.

On May 30, 1973, the City of Cleveland through Mr. Robert D. Hart, Assistant Director of Law, petitioned to intervene because "Although it appears to Cleveland that intervention in the operating license aspect of the proceeding may not be required to protect Cleveland's rights in the antitrust review aspect of the proceeding, out of an abundance of caution, the instant petition and affidavit are filed fully to protect and preserve the rights of the Petitioner in these proceedings". The petition raises no specific aspect or aspects, or material facts in dispute of the operation of the Davis-Besse facility; only matters relating to the antitrust issue for which the Commission has established a separate antitrust

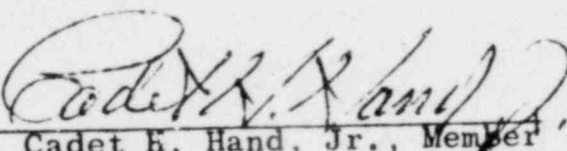
proceeding. Accordingly, the Petition to Intervene from the City of Cleveland is denied as failing to meet the requirements of Section 2.714.

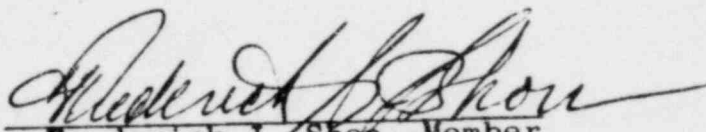
On May 30, 1973, the Coalition for Safe Electric Power submitted a telegram: ". . . to intervene in proceedings. Petition being placed in mail. Request you treat telegram as timely filing of Petition". The Coalition, by cover letter to the Commission, dated June 4, 1973, submitted a Petition for Leave to Intervene. The petition in no way attempts to explain the reason for the untimely filing. Since the Coalition has participated in AEC proceedings in the past, we conclude that there is no good cause shown for the untimely filing. Accordingly, the petition is denied unless the Coalition for Safe Electric Power within a period of 15 days from the date of this Order makes a showing of good cause why its petition should be considered timely. This Board also wishes to note that we have reviewed the entire petition and make these further findings: The petition repeats contentions that have been litigated and decided in the prior proceedings involving the Davis-Besse facility; and it includes contentions which fail to adequately particularize the points in dispute. Most of the contentions show no basis sufficient to raise a material fact

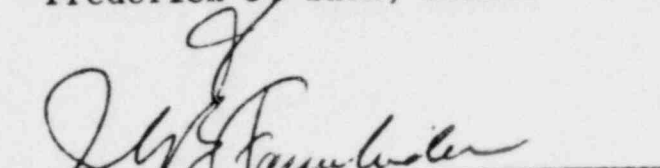
in dispute. The only contentions that appear at this time to raise novel issues and to be stated with sufficient particularization to be admitted by this Board, assuming that Petitioner shows sufficient good cause for failing to file timely, are contentions numbered 19 and 25. Accordingly, this Board would be prepared to admit these contentions in this proceeding if the Petitioner is able to show the good cause required above. All of the other contentions would be denied as res judicata or as failing to meet the requirements of Section 2.714.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


Cadet H. Hand, Jr., Member


Frederick J. Shon, Member


John B. Farmakides, Chairman

Issued at Washington, D. C.,
this 10th day of July, 1973.