

August 3, 1973

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' RESPONSE TO THE MOTION OF THE  
 ASSISTANT ATTORNEY GENERAL OF THE  
 STATE OF OHIO FOR RECONSIDERATION OF  
 FORECLOSURE OF THE STATE OF OHIO'S  
 PARTICIPATION IN THE AEC OPERATING  
 PROCEEDINGS AND RESPONSE TO COALITION  
 FOR SAFE ELECTRIC POWER REASONS FOR  
 LATE FILING OF PETITION FOR LEAVE  
 TO INTERVENE

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1. On April 19, 1973, the Atomic Energy 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 in the captioned proceeding. That Notice provided, among other things, 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."

2. The Coalition for Safe Electric Power submitted a late petition for leave to intervene under a cover letter

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dated June 4, 1973, but preceded by a May 30, 1973, telegram stating that its petition is "being placed in mail." The Licensing Board, by Memorandum and Order dated July 10, 1973, determined that the only contentions in the Coalition's petition which met the requirements of AEC regulations are contentions numbered 19 and 25. The Licensing Board stated it would be prepared to admit these two contentions if the Coalition demonstrates good cause for its late filing. On July 24, 1973, the Coalition submitted a statement of reasons for its late filing. Applicants believe that the statement of reasons, while it is not very persuasive, is sufficient to justify the untimely filing by the Coalition.

3. The State of Ohio, as represented by its Office of Attorney General, twice requested extensions of time within which to file a petition to intervene. On both occasions, Mr. George W. Pring, Chief, Environmental Enforcement Division, in the State of Ohio Office of Attorney General, telephoned the undersigned counsel for the Applicants requesting his consent to the extensions of time. In both telephone calls Mr. Pring advised the undersigned counsel for the Applicants that he had had conflicting obligations which prevented him from giving adequate consideration to whether or not the State of Ohio should request opportunity to participate in the operating licensing proceeding. Recognizing the representative capacity of the Office of Attorney General, Applicants' counsel consented, on both occasions, to the two thirty-day extensions of time requested by Mr. Pring.

4. In the Licensing Board's Memorandum and Order of July 10, 1973, the Licensing Board noted that the formal motions requesting the extensions of time were not accompanied by any statement of the reasons for the delay. While the first motion for extension of time was de facto granted, the second request for extension of time was partly denied in that the Licensing Board provided the Office of the Attorney General with a twenty-five-day period within which to respond to the notice rather than the thirty-day period requested in the second motion for extension of time. The second extension of time, as limited by the Licensing Board's Order of July 10, 1973, expired on July 25, 1973.

5. On July 30, 1973, five days after expiration of the second period of extension granted to the State of Ohio (and sixty-one days after the expiration of the first thirty-day period established in the April 19, 1973, notice for filing of petitions) the Assistant Attorney General of the State of Ohio moved the Licensing Board to rescind its Order of July 10, "insofar as the State of Ohio is dismissed as a potential intervenor" and requested "that the Board issue an order that the State need not submit a petition to intervene until such time as the AEC has defined the issues to be considered at an operating licensing proceeding as reflected in its pending construction licensing proceeding determination."

6. The motion also sets forth "the State's reason for deferring such action (and thereby invoking another complete hearing proceeding) was, and is, based on the fact that the AEC is still conducting and has not completed the first required stage of construction licensing hearing. . . ."

7. Applicants respectfully submit that the reasons stated in the Office of Attorney General's motion for requesting the extensions of time within which to determine whether it should file a petition to intervene is not at all consistent with the reasons set forth in the communications to the undersigned counsel by Mr. Pring. In those telephone conversations there was no indication that the reason for the extension was in any way related to the ongoing construction permit environmental review proceeding. Moreover, it is clear that the Licensing Board's Order of July 10, 1973, did not dismiss the State of Ohio as a potential intervenor. It simply afforded the State of Ohio an additional fifteen-day period within which to determine whether it wished to participate in the operating license proceeding. The State of Ohio permitted the fifteen-day additional period to expire and waited another five days before filing its motion requesting rescission of the July 10 Memorandum and Order. The ongoing construction permit environmental review proceeding does not in any way define the issues to be considered at any subsequent operating license proceeding; the State of Ohio misunderstands the nature of the current proceeding in that respect. In fact,

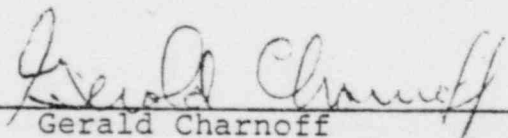
the ongoing construction permit environmental review hearing excludes from consideration at the operating license proceeding matters determined at the current proceedings.

8. In view of the satisfactory explanation by the Coalition for Safe Electric Power of its untimely filing, the Licensing Board will undoubtedly convene a public hearing with respect to the operating license application limited, however, to Coalition contentions numbered 19 and 25. Applicants believe that, while the Licensing Board should deny the State of Ohio's motion of July 30, 1973, it could, nevertheless, permit the State of Ohio to participate in the forthcoming operating license hearing under the provisions of Section 2.715(c) of the Commission's Rules of Practice with respect to the matters to be placed in controversy by the Coalition for Safe Electric Power provided that the State of Ohio provides timely notice to the Licensing Board of its interest in doing so.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

BY



Gerald Charnoff  
Counsel for Applicants

Dated: August 3, 1973

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

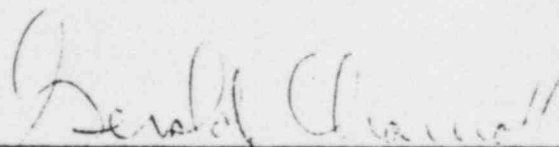
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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Response to the Motion of the Assistant Attorney General of the State of Ohio for Reconsideration of Foreclosure of the State of Ohio's Participation in the AEC Operating Proceedings and Response to Coalition for Safe Electric Power Reasons for Late Filing of Petition for Leave To Intervene has been served according to the attached Service List this 3rd day of August, 1973.



\_\_\_\_\_  
Gerald Charnoff  
Counsel for Applicants

Dated: August 3, 1973

SERVICE LIST

By Hand Delivery

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