

00-14-1970

Mr. Howard M. Metzbaum
700 Union Commerce Building
Cleveland, Ohio 44115

Dear Mr. Metzbaum:

I am pleased to reply to your letter of August 26, 1970, to Chairman Seaborg concerning preliminary construction activities at the proposed Davis Besse Nuclear Power Station site by the Toledo Edison Company before the Atomic Energy Commission's public hearing has been held.

The Atomic Energy Act of 1954 provides that a nuclear power plant cannot be constructed unless the AEC has issued an appropriate license. The Act also requires that the Commission impose the minimum amount of regulation that will permit the Commission to fulfill its responsibilities under the Act to protect the health and safety of the public. Since the term "construction" was not defined in the Atomic Energy Act, it was necessary to define this term in the Commission's regulations. In the development of this definition, consideration was given to the term as it might relate to health and safety factors which are the primary matters of concern in the licensing process.

For nuclear power plants, construction was defined to mean the pouring of the foundations for, and the installation of, any nuclear portions of the plant at a site, but to exclude such things as site exploration and excavation, and the construction of nonnuclear portions of the facility. We believe that such a definition was in accord with the congressional intent to minimize the amount of regulation consistent with providing adequate protection to public health and safety. The complete text of the definition of construction may be found in section 50.10 of the Commission's regulations, a copy of which is enclosed.

These regulations also provide that exemptions may be granted for good cause. The Toledo Edison Company has been granted an exemption from the provisions of paragraph 50.10(b) of the Commission's regulations to permit the performance of certain foundation work for the nuclear portions of the plant at the proposed site prior to the issuance of a construction permit. A copy of our letter granting the exemption request is enclosed. The cost of the work permitted by the exemption represents a small fraction of the total cost of the facility.

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Exemptions of this kind are granted by the Commission only after a thorough review to assure that the exemption is needed to enable the applicant to satisfy a public need for the energy to be produced by the proposed nuclear power plant on a timely basis. In this case the applicants are members of the Central Area Power Coordination Group (CAPCO) and the exemption was needed to assure that the Davis Besse generating capacity would be available in 1974 in order to meet the required minimum generating grid reliability standards of the CAPCO system. The exemption was granted after completion of the safety review of the plant by the AEC regulatory staff, and after the Advisory Committee on Reactor Safeguards had completed its safety review and written a favorable report to the Commission. A copy of the ACRS report is enclosed.

As stated in our letter to Toledo Edison, the granting of this exemption will have no bearing upon the subsequent granting or denial of a construction permit for the proposed Davis Besse Nuclear Power Station, and any work performed pursuant to this exemption shall be performed entirely at the risk of the companies involved.

Sincerely,

Original Signed by
Chris L. Henderson

HL
Harold L. Price
Director of Regulation

Enclosures:

1. 10 CFR Part 50
2. Exemption ltr to Toledo Edison
3. ACRS Report
4. Booklet, "Licensing of Power Reactors"

- cc: Chairman (2)-
 Commissioner Ramey
 Commissioner Johnson
 Commissioner Thompson
 Commissioner Larson
 Secretary (2)
 OGC (2)
 P. A. Morris
 E. G. Case
 J. Yore, AS&LBP
 Public Document Room #DR# (50-346)
 G. Ertter (DR-2771)

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