

DOCKET NUMBER
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1-21-71

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)
(Davis-Besse Nuclear Power Station))

Docket No. 50-346

MOTION OF THE AEC REGULATORY STAFF FOR AN ORDER REQUIRING
THE SUBMISSION OF CERTAIN TESTIMONY IN WRITING OR FOR
ALTERNATIVE RELIEF

At the January 7, 1971 session of the public hearing in this matter, the board ordered (Transcript pages 764-765):

" . . . that L.I.F.E. and Mr. Lau on or before January 20, 1971, provide all parties to the proceeding with the names of their witnesses, the qualifications of the witnesses, and copies of the complete testimony of the witnesses or an accurate summary thereof."

Counsel for the AEC regulatory staff was advised by telephone on January 20, 1971, of the identity of witnesses whom intervenor Living In A Finer Environment ("L.I.F.E.") intends to call at the next session of the public hearing in this matter beginning on January 25, 1971. A written copy of the list of witnesses was obtained from the applicant on January 21, 1971. L.I.F.E. has indicated that some fourteen identified witnesses will definitely appear and several additional identified witnesses will be called if it is possible for L.I.F.E. to secure their attendance. The staff has not received the complete testimony of these witnesses nor the accurate summary

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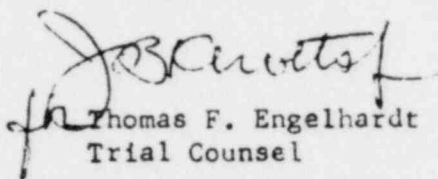
thereof called for by the board's Order of January 7, 1971. We have been furnished only a scanty indication of the qualifications of the witnesses and of the nature and scope of their testimony. In addition, counsel for the staff was informed by counsel for the applicant, based on a telephone conversation between applicant's personnel in Ohio and Mr. Lau, of the names of five identified witnesses and the general subject matter for the testimony of a sixth, unidentified witness, whom Mr. Lau will call if arrangements can be made for their attendance. Again, we have received no copy or accurate summary of the testimony of these prospective witnesses.

It is evident that neither L.I.F.E. nor Mr. Lau have complied with the board's January 7, 1971 Order. In the interest of a full and true disclosure of the facts which requires an adequate opportunity to prepare for cross-examination and to prepare rebuttal evidence, the staff moves the board for an order pursuant to §§ 2.730 and 2.743(b) of the Commission's "Rules of Practice," 10 CFR Part 2, requiring the testimony of L.I.F.E.'s and Mr. Lau's witnesses to be submitted in writing and at a time such that it may be received five days in advance of the session of the hearing at which such testimony is to be presented. The order should also provide that unless this procedure is followed as to each witness, that witness will not be permitted to testify.

In the alternative, if the board does not grant the relief requested above, the staff moves the board for an order pursuant to §§ 2.730 and 2.743(a) of the Commission's "Rules of Practice," 10 CFR Part 2, that each of L.I.F.E.'s and Mr. Lau's witnesses may be permitted to testify at the next session of

the public hearing in this matter on January 25, 1971, only on the conditions that (1) the witness agrees to be available for cross-examination at a subsequent evidentiary session scheduled so as to afford the parties a reasonable opportunity to review the transcript and prepare for cross-examination and for the presentation of rebuttal evidence, and (2) the testimony of any witness who fails to reappear as so agreed will be stricken from the record.

Respectfully submitted,


Thomas F. Engelhardt
Trial Counsel

Dated at Bethesda, Maryland,
this 21st day of January, 1971.