



the State, but that it reserved its rights to respond to any forthcoming petition, and to object on any grounds other than those of timeliness.

On June 6, 1973, the Commission established an Atomic Safety and Licensing Board (Board) to rule on petitions for leave to intervene. By Memorandum and Order dated July 10, 1973, the Board denied the motion of the State dated June 29, 1973, "except that the State of Ohio may file a petition, if it so decides, provided it does so . . . [by July 25, 1973]. If it does not choose to intervene, the State may, of course, participate in accordance with Section 2.715(c)."

On July 30, 1973, the State, by its Assistant Attorney General, filed a "Motion for Reconsideration of Foreclosure of State of Ohio's Participation in the AEC Operating Proceeding." The Motion requested

that the Board rescind in [sic] order of July 10 insofar as the State of Ohio is dismissed as a potential intervenor. We request further 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 license proceeding . . . .

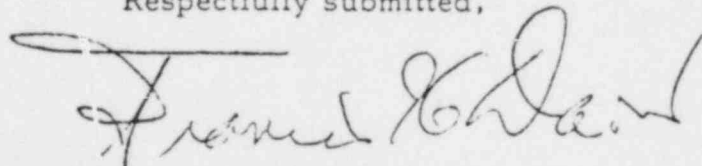
The regulatory staff believes that the State has misconceived the nature of an operating license hearing and how the issues for such a hearing are defined. If such a hearing is ordered, upon a proper request therefore, the issues are those placed in controversy by the parties to the proceeding. An interested person may become a party to the proceeding by filing a proper petition for leave to intervene.

The State has, as yet, filed no petition for leave to intervene. The period that passed between the publication of the Federal Register Notice and July 25, 1973, the date set by the Board for a petition from the State of Ohio that the Board would not disallow as untimely, was at least 85 days. This period provided the State an adequate amount of time to determine whether or not to intervene and to prepare and submit a petition for leave to intervene containing those contentions it wished to have litigated. If the State now, after this substantial period of time, chooses to petition for leave to intervene, it should comply with the Commission's Rules of Practice and should make a substantial showing of good cause for its further untimeliness.

However, if the State prefers, as indicated in its motion, to decide whether to participate or not only after matters in controversy are decided and the issues defined, § 2.715(c) of the Commission's Rules of Practice and the Board's order already provide for such participation.

For the foregoing reasons, the regulatory staff believes that the motion for reconsideration of the State, dated July 30, 1973, should be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Francis X. Davis".

Francis X. Davis  
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland  
this 13th day of August, 1973.

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Response of the AEC Regulatory Staff to the Motion for Reconsideration of the State of Ohio Dated July 30, 1973," dated August 13, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 13th day of August, 1973:

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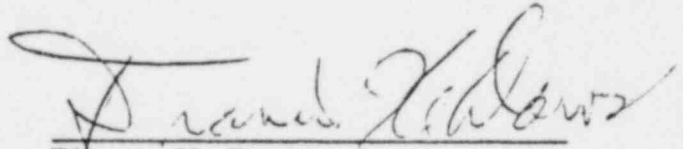
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