

Reg file

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)

THE TOLEDO EDISON COMPANY, ET AL.)
(Davis-Besse Nuclear Power Station,)
(Unit 1))

Docket No. 50-36

CERTIFICATE OF SERVICE

I hereby certify that copies of SPECIAL PREHEARING CONFERENCE ORDER dated May 31, 1973 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 31st day of May 1973:

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)

TOLEDO EDISON COMPANY AND)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)

(Davis-Besse Nuclear Power Station))

Docket No. 50-346

SPECIAL PREHEARING CONFERENCE ORDER

On May 22, 1973, this Atomic Safety and Licensing Board (Board) held a Special Prehearing Conference (Conference) pursuant to a duly issued and published Notice. The Applicant and the AEC Regulatory Staff were represented by their respective counsel. Mrs. Evelyn Stebbins, having filed a petition for leave to intervene in this proceeding, appeared on her own behalf and as the representative of the Coalition for Safe Nuclear Power (name changed on the record at the Conference to Coalition for Safe Electric Power).

After a careful review of the entire record, including the initial petition to intervene dated February 2, 1973, and the amended petition for leave to intervene submitted

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on April 16, 1973, as supplemented further by discussion on the record at the Conference, the Board concludes that the Petitioner has sufficiently identified its interest, and specified certain aspects with sufficient particularity and basis so as to raise issues which may become matters in controversy. Therefore, the Board rules that Mrs. Evelyn Stebbins and the Coalition for Safe Electric Power will be admitted as a party to this proceeding on the issues stated below. In so ruling, the Board has taken account of the fact that the Intervenor did not have the benefit of Counsel but has attempted to comply with the procedural requirements of Section 2.714. The Board also recognizes that the provisions of Section 2.749 are available to the Applicant and to the Staff if no facts are developed by the Intervenor to support its case. The Board expects the Intervenor to support, through direct testimony, the contentions made at the Conference.

As to the amended petition to intervene filed April 16, 1973 by the Intervenor, as supplemented by the record developed at the Conference on May 22, 1973, the Board rules as follows:

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1. Paragraphs 1 and 2 of said amended petition relate to the interest of the Petitioner. The Board is of the opinion that sufficient interest has been shown by the Intervenor to justify its admission as a party to this proceeding.

2. Paragraph 3 of the amended petition presents a contention which will be admitted as follows:

Issue 1: "The Coalition contends that the Final Environmental Statement constitutes an arbitrary and capricious refusal to comply with consideration of alternatives as required by Section 102(2)(c)iii of the National Environmental Policy Act of 1969, in that the 'staff' has failed and refused to consider the alternative of conservation of energy within the Applicants' service areas so as to obviate the need for the 372 MW additional capacity of the Davis-Besse Plant."

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3. Paragraphs 4 and 5 of the amended petition deal with radiological health and safety issues which are not involved in this proceeding, except insofar as they may relate to the environmental analysis required. No such relationship has been shown. Upon direct inquiry, the Intervenor failed to provide specific information relating to any relevant fact that might indicate the possibility of the type of accident which Intervenor alleges. Accordingly, the Board concludes that the Intervenor has completely failed to show that there would be a genuine showing of material fact that could be in dispute and, therefore, the contentions are denied. Moreover, these contentions appear to be a challenge to the Commission's Interim Acceptance Criteria for Emergency Core Cooling Systems. Since they fail to conform to the requirements of 10 CFR Section 755, they are rejected.

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4. Paragraph 6 of the amended petition, as clarified at the Conference, presents a contention which will be admitted as follows:

Issue 2: The Coalition contends that the Final Environmental Statement has not properly evaluated all possible storm damage and the environmental consequences of such incidents as having the cooling tower lost due to storms, flooding of the area, or damage to buildings. The high lake levels and severe lake storms make these events distinctly possible."

5. Paragraph 7 of the amended petition, presents a contention relating to the use of plutonium. It is denied as vague, unclear and irrelevant to this hearing.
6. The allegation in Paragraph 8 of the amended petition is not understood, and is denied as vague and unclear.

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7. Paragraph 9 of the amended petition, as clarified at the Conference, presents a contention to the effect that Section 7.2.2 of the Final Environmental Statement (Sections 5.9.1 through 5.9.5 incorrectly cited by Intervenor) fails to adequately evaluate the environmental consequences arising from a transportation accident involving spent fuels because of the specific characteristics of the Cayahoga Valley. Since this contention relates to a "special situation", the Board does not consider it as a challenge to the Commission's Regulations and will admit the contention formulated as follows:

Issue 3: "The Final Environmental Statement is inadequate in that the treatment of transportation accidents in Section 7.2.2 underestimates the effects of accidents involving spent fuel being transported from this particular facility. The particular situation around the Davis-Besse facility is such that the potential exists for greater environmental contamination than that contemplated by Section 7.2.2 of the Final Environmental Statement."

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8. The following issues, contained in the initial petition to intervene which was appended to the amended petition, are admitted as supplemented and clarified at the Prehearing Conference as set forth below.
9. Paragraph 26(1) of the initial petition presents a contention which will be admitted as follows:

Issue 4: "The Final Environmental Statement's evaluation of the threat of radioactivity to the agricultural and farming lands, and farm animals and products has been underestimated in that the Final Environmental Statement should have assumed a fuel failure rate higher than 0.25 percent of failed fuel to obtain a source for environmental impact calculations."

10. Paragraphs 26(m) and 26(n) of the initial petition present contentions which will be consolidated and admitted as follows:

Issue 5: "The Final Environmental Statement is inadequate in that it fails to evaluate the cumulative and synergistic effects on Lake Erie of the effluents from the Davis-Besse

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effluents may be produced by other nuclear reactors operating adjacent to Lakes Michigan, Superior, and Huron."

11. Paragraph 26(o) of the initial petition presents a contention which will be admitted as follows:

Issue 6: "The Final Environmental Statement is inadequate in that no consideration has been given to the fact that operating experiences at nuclear plants show that radioactive releases go up with aging of the reactor. The evaluation, therefore, of radioactivity on the environment is completely inadequate and incorrect."

12. Paragraph 28 (second paragraph so numbered) of the initial petition presents a contention which will be admitted as follows:

Issue 7: "The Final Environmental Statement is inadequate in that population growth in this area has not been properly assessed inasmuch as the placing of this plant in this largely agricultural area will probably stimulate the growth of industry and population. The

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environmental effects assumed in the Final Environmental Statement are incorrect."

13. The contention stated in Paragraph 29 of the initial petition will be admitted as follows:

Issue 3: "The total effect of all effluents (radioactive, heat, chemicals, dissolved solids and suspended solids, and B.O.D.) to Lake Erie as a result of all operations of the Davis-Besse Plant (either alone or in combination with other pollutants) will add to the pollution of Lake Erie, endanger fish, wildlife, spawning grounds, aquatic biota, their habitat and supporting ecosystem, recreational aspects or water supplies, and will be in violation of the Non-degradation clause of the Water Quality Standards of Ohio as approved by the Environmental Protection Agency. These effects have not been properly assessed in the Final Environmental Statement."

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14. All other contentions not specifically discussed above and which were raised by the Intervenor in

the initial petition or the amended petition are hereby denied for failure to meet the requirements of Section 2.714.

Discovery

As indicated at the Conference, discovery by the parties on the eight issues admitted herein will proceed immediately and may continue for approximately three weeks, until June 22, 1973. The parties are urged to cooperate to the fullest extent in the exchange of information. A Second Prehearing Conference will be held on or about June 26, 1973, in preparation for the Evidentiary Session to begin within a reasonable time thereafter.

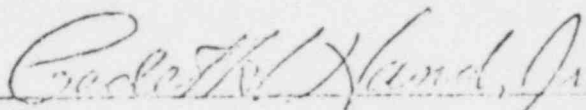
The parties are directed to confer and to present to the Board by June 15, 1973, a proposed schedule, not inconsistent with the above dates, for this proceeding,


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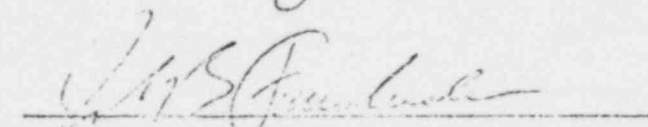
including proposed dates for exchange of written direct testimony, start of evidentiary hearing, etc.

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 31st day of May, 1973.

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