



DOCKET NUMBER
PROD. & UJIL, FAC. 50-346

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))

1-18-71

Docket No. 50-346

ANSWER OF THE AEC REGULATORY STAFF TO INTERVENORS' MOTION
FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES

Introduction

On January 12, 1971, intervenors Living In A Finer Environment (L.I.F.E.), Irwin I. Oster, and William E. Reany (hereafter referred to collectively as L.I.F.E.), one of three intervenors in this proceeding, filed a motion for an order of the presiding atomic safety and licensing board (board) to require the applicant and the AEC regulatory staff to produce, and permit the inspection and copying of certain specified documents. A memorandum in support of the motion was also filed. In separate documents also filed on January 12, 1971, entitled "Interrogatories to Applicant" and "Interrogatories to AEC Regulatory Staff" L.I.F.E. propounded certain interrogatories for response by the applicant and the AEC regulatory staff.

Our answer to these matters contained herein are limited to those portions of the motion and to the interrogatories directed to the AEC regulatory staff.

Answer to Motion

On December 26, 1970, L.I.F.E. filed a motion for reconsideration of the board's denial of L.I.F.E.'s petition for leave to intervene. In this motion L.I.F.E. stated that it desired to present evidence on two specific contentions, if admitted as a party to this proceeding.^{1/} The first contention, identified as contention A, was that this proceeding violated the National Environmental Policy Act of 1969 (NEPA).^{2/} The second contention, identified as contention B, involved a challenge to the legal validity and adequacy of 10 CFR Part 20.^{3/} Neither the applicant nor the AEC regulatory staff opposed the granting of the motion provided that L.I.F.E.'s participation in the proceeding was limited to its stated contentions.

The board on January 5, 1971, ruled that:

"Now with respect to the matters raised in your L.I.F.E. petition, A and B, we are not completely clear with respect to A ourselves and we will identify any limitations, if any, in the morning.

As to B, there is no question, you are entitled to present evidence in line with the Calvert Cliffs doctrine with respect to radiation standards."^{4/}

On January 6, 1971, the board ruled that as to intervenor's contention regarding NEPA, L.I.F.E. could submit a brief if it desired but the contention would not be an evidentiary matter in this proceeding.^{5/}

^{1/} Motion, p. 14.
^{2/} Motion, pp. 15-21.
^{3/} Motion, pp. 22-25.
^{4/} Transcript, p. 611.
^{5/} Transcript, pp. 618-619.

The board on January 7, 1971, also ruled that:

"The Board wishes to take this opportunity to expand on this statement for the benefit of all parties so that there is an express understanding. In accordance with the regulations of the Commission and in the interest of an orderly proceeding, direct evidence, cross examination, motions for depositions, proposed finding of fact and conclusions of law and similar opportunities afforded Intervenor are to be confined to those contentions determined by the Board at the time of admission to the proceeding to have been properly raised by that particular Intervenor." 6/

The L.I.F.E. motion identifies seventeen categories of documents which it desires that we produce. Of these seventeen categories, categories 1-7 and 9-13 appear entirely irrelevant to either of L.I.F.E.'s contentions in this proceeding. Neither L.I.F.E.'s motion nor the supporting memorandum indicate how these categories of documents are relevant to their contentions. Under the provisions of 10 CFR §2.741(a)(1), a board may order the production of documents regarding any matter that is relevant to the subject matter involved in the pending action.

Since L.I.F.E. has not shown the relevance of these interrogatories as is required under the provisions of 10 CFR §2.741(a)(1), we are opposed to the granting of so much of L.I.F.E.'s motion as relates to the documents identified in categories 1-7 and 9-13.

With respect to the documents identified in categories 8 and 14, we will, under the circumstances of this case, make them available to L I.F.E.

6/ Transcript, p. 763.

without the necessity of an order from the board. The document identified in category 15 has not, to the best of our knowledge, been released by the "National Council for Radiation Protection Criteria" and thus we are unable to furnish it. As to the documents identified in categories 16 and 17, we will furnish to L.I.F.E. a list of citations to Federal Register notices relating to all 10 CFR Part 20 and 10 CFR Part 50, Appendix D rule making. The statements of consideration which preface each of these notices provide background information and data relating to these Commission rule making activities. By providing the above categories of documents to L.I.F.E., we do not waive any rights to object to their use in this proceeding.

Answers to Interrogatories

L.I.F.E. also filed five interrogatories to be answered by the regulatory staff.

With respect to Interrogatories 1 and 2, we believe that they are entirely irrelevant to the contentions of L.I.F.E. in this proceeding. The subject matter of these interrogatories was considered by the board at the last session of this proceeding as a part of another intervenor's case. Accordingly, we oppose responding to Interrogatories 1 and 2.

In our opinion, Interrogatories 3-5 are also irrelevant to the contentions of L.I.F.E. We are, however, prepared to respond to these interrogatories

since they deal with matters which conceivably could be relevant to their contentions, but we reserve our right to object to their introduction into evidence, or their use, if L.I.F.E. is not able to show their relevance.

Thomas F. Engelhardt

Thomas F. Engelhardt
Trial Counsel

Dated at Bethesda, Maryland,
this 18th day of January, 1971.