

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
THE TOLEDO EDISON COMPANY and)	Docket Nos. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING)	50-500A
COMPANY)	50-501A
(Davis-Besse Nuclear Power Station,)	
Units 1, 2 & 3))	
)	
THE CLEVELAND ELECTRIC ILLUMINATING)	Docket Nos. 50-440A
COMPANY, <u>et al.</u>)	50-441A
(Perry Nuclear Power Plant,)	
Units 1 and 2))	(Special Board)
)	
)	

PREHEARING CONFERENCE ORDER

(July 2, 1976)

The matter having come before this Special Atomic Safety and Licensing Board (Special Board) at a prehearing conference held, pursuant to prior notice, in Silver Spring, Maryland on June 28, 1976, and counsel for all parties having been present, the following actions were taken:

The Special Board raised the issue of participation in this proceeding by the NRC Staff and other parties not directly involved in the controversy concerning suspension under 10 C.F.R. §2.713. The Staff took the position that it had the right to participate actively and an obligation to advise the Board in whatever way it can to assure that the record is complete. Counsel for the Applicants stated

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that his participation would be minimal and confined to assuring that his clients' interests would be fully protected. The City of Cleveland accepted these positions but counsel for Squire, Sanders and Dempsey (SS&D) objected to participation by the Staff because of the adverse position taken by the Staff at a prior stage of this proceeding when the suspension matter was before the Appeal Board.

With regard to Applicants' position this Board considers their participation as outlined by counsel, to be reasonable. There can be no quarrel with both the obligation and the right of parties to the ongoing antitrust proceeding to have counsel participate in this special proceeding to the extent that it is necessary to protect their interests. The Board agrees that the need for such participation, would appear to be minimal.

On the other hand, a more difficult issue is raised concerning participation by the Staff which is not a party either seeking or opposing suspension of counsel. In the Board's view, the Staff should be permitted to participate because of its duty to protect the public interest in the Commission's licensing proceedings. Regarding the extent of such participation, we note that the Appeal Board at page 29 of its June 11, 1976 Decision (ALAB-332) has held that in a proceeding under Section 2.713(c), an attorney "is entitled to a full evidentiary hearing with all parties having the right

to present evidence and conduct cross-examination."

(Emphasis added)

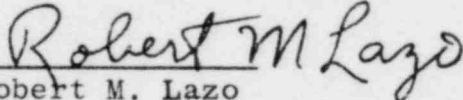
This Board would expect however, in light of the restricted nature of the suspension controversy, that the Staff would be sparing in its participation, limiting itself to examination only in areas that are general in nature. Given the circumstances of this case, it also would appear that Staff participation should be kept to a minimum. The controversy lies only between the City of Cleveland and the SS&D firm, and the public interest is best served by an expeditious disposition of that controversy.

Also considered at the prehearing conference was an application for a subpoena duces tecum directing the production of certain files of the SS&D firm which the City of Cleveland asserts to be necessary for the taking of testimony by deposition on oral examination of Mr. David J. O'Loughlin, a partner of the law firm. At the request of counsel for SS&D, it was agreed that the subpoena should be considered as issued and that counsel for SS&D and counsel for Applicants each be given until July 6, 1976, to file a motion to quash the

duces tecum feature of the subpoena. The Board also directed that answers, if any, by the Staff and the City of Cleveland be filed on or before July 12, 1976.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD ESTABLISHED
FOR A SPECIAL PROCEEDING
CONCERNING 10 C.F.R. §2.713


Robert M. Lazo
Chairman

Issued at Bethesda, Maryland
this 2nd day of July, 1976.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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THE TOLEDO EDISON COMPANY, ET AL.))	Docket No. (s) 50-346A
CLEVELAND ELECTRIC ILLUMINATING))	50-440A
COMPANY))	50-441A
)	50-500A
(Davis-Besse Nuclear Power))	50-501A
Station, Unit No. 1; Perry))	
Nuclear Power Plant, Units 1&2)))	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

2nd day of July 1976.

Peggy C. Downing
Office of the Secretary of the Commission

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)	50-441A
CLEVELAND ELECTRIC ILLUMINATING))	50-500A
CO., ET AL.)	50-501A
(Perry, Units 1 and 2))	
)	

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