UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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

* * * * *

PRELIMINARY STATEMENT

The movants, Living In a Finer Environment, Irwin I. Oster, PhD., and William E. Reany, on behalf of the group's members, on their own behalf, and on the behalf of others similarly situated, hereinafter for the sake of simplicity referred to collectively as LIFE, have requested leave to intervene in the matter of the application filed by The Toledo Edison Company and the Cleveland Electric Illuminating Company for a construction permit to build a pressurized water nuclear reactor known as the Davis-Besse Nuclear Power Station. On December 9, 1970, their Petition was denied by the Atomic Safety and Licensing Board sitting in Port Clinton, Ohio, for the stated reason of

> "not being timely filed and for not having shown good cause for failure to file it on time." (Hearing Transcript, p. 349)

LIFE now moves for reconsideration of this denial on the grounds that it was an abuse of discretion and that on reconsideration the Board will find that LIFE had good cause for its failure

to file the Petition on time and also has novel important issues to raise and valuable information to contribute to this hearing.

LIFE wishes to note at the outset that the granting of this motion at the present time will cause neither inconvenience to the parties nor delay in the proceedings. The hearings have been recessed until January 5, 1971. At that time the applicant and all parties are to reconvene for the taking of evidence. LIFE is familiar with the matters which have already been taken up in this proceeding and has no desire to duplicate matters already considered or to cause any undue delay. The other parties will in no way be prejudiced by LIFE'S appearance as a party but the public interest in clear presentation of all the issues prior to issuance of the construction permit will be seriously prejudiced if it is denied the right to intervene.

In the pages that follow the movants will explain the reasons that they were unable to file their petition within time and will further show why their intervention is vital for the present case. If the Board does not grant this motion to Reconsider the Denial of the right to Intervene, however, in the alternative, LIFE moves that the Board reconsider its prior action and certify the question of intervenor status raised herein to the Atomic Energy Commission.

II DELAY IN FILING LIFE'S PETITION TO INTERVENE UNAVOIDABLY RESULTED FROM AN UNAVAILING EFFORT TO PARTICIPATE JOINTLY WITH ANOTHER INTERVENOR AND SUCH DELAY WORKS NO PREJUDICE UPON ANY PARTY

At a very early stage in these proceedings, LIFE had indicated its intention to appear as an intervenor in this matter. The original notice of Hearing on The Davis-Besse plant application is dated October 30, 1970. Shortly thereafter, on November 1, 1970, Victoria Evans, Co-chairman of LIFE, sent a letter to Mr. A. A. Wells, Chairman of The Atomic Safety and Licensing Panel (Exhibit A attached hereto) which letter indicated the intention to appear as an intervenor in this matter (See Hearing Transcript, p. 334.) Following this action, the proposed intervention was the subject of several telephone conversations between Evans and Wells (See Exhibit B.) Thus, as early as November 2, 1970, (The date on which the letter was received by the AEC) the A.E.C. had notice of LIFE'S intent to intervene.

Subsequent to mailing this letter, however, LIFE learned that several other citizens groups interested in environmental problems also wished to intervene in the hearings.

Motivated by a desire to avoid needless duplication of effort which would be detrimental to individuals and citizens groups of limited resources such as LIFE and time-consuming to the other parties involved, LIFE decided to join the Coalition for Safe Nuclear Power (hereinafter referred to as the Coalition) which had begun to be organized in Cleveland, Ohio, during August, 1970. It was hoped that coordination of their activities

would be the most direct and economical method of intervention without unfairly neglecting any inportant issues to be raised. Unfortunately, the geographic distance made communication between the LIFE group in Northwestern Ohio and the Cleveland-based Coalition extremely difficult. There were also differences in the approaches and ultimate goals of the two groups. LIFE believed and continues to believe that certain essential points, further elaborated below, should be presented for the Board's consideration. Although, as a member of the Coalition, LIFE attempted to have these points included in the Coalition's Petition to Intervene, the Petition ultimately filed on behalf of the Coalition did not make these points.

Indeed, the Coalition filed its Petition for Leave to Intervene without giving LIFE <u>any</u> opportunity to examine the document or to make suggestions concerning it. With a covering letter dated November 14, 1970, C. Raymond Marvin, attorney at that time for the Coalition, mailed a copy of what he described as the petition which the Coalition intended to file on November 16, 1970. Believing this petition was the one to be filed and referring to it, LIFE issued a Press Release November 16, 1970 stating their filing of a petition to intervene as a part of the Coalition (See Exhibit C.) Recognizing serious omissions in this petition, LIFE then prepared a Supplemental Petition which it served upon all parties and filed prior to the November 23, 1970 pre-hearing

date by mailing to the Secretary of the Atomic Energy Commission in accordance with 10 CFR 2.701 (a). The official receipts show that the telegraphic announcement of that Supplemental Petition was received by the AEC on November 18, 1970, and that the Supplemental Petition itself was received on November 23, 1970. Attached hereto are receipts for the aforementioned as Exhibit D.

At the pre-hearing, for the first time, LIFE received a copy of the petition that the Coalition actually filed on November 18, 1970. It was different in several respects from the petition which had previously been mailed to them by Attorney Marvin as described in the preceding paragraph.

Another shock preceded this one. At 4:55 P.M. on Friday November 20, 1970, LIFE was informed that the attorney whom the Coalition had retained would not be present at the Pre-hearing on November 23, 1970. No one of the Coalition had so informed LIFE previously and the representatives of LIFE were understandably surprised and distressed at this turn of events.

In other words, Vicki Evans, Co-chairman of the Living in a Finer Environment group, Dr. Irwin I. Oster, and William E. Reany arrived at the November 23 Pre-hearing completely unaware that a petition different from the one they had been shown had been filed in their names but without their approval and only recently apprised of the fact that the attorney whom they had understood to be representing the Coalition would not be present.

At the Pre-hearing, Chairman Skallerup asked Vicki Evans whether the Supplemental Petition which had been filed by LIFE was intended as a Petition for Leave to Intervene, separate and distinct from the one filed by the Coalition. At that juncture, of course, there had been no opportunity to study the petition which the Coalition had actually filed, no chance to consider the problems raised by this total breakdown of communication between themselves and the Coalition, and no chance to confer with the LIFE membership on what course of action to pursue. In effect, they were stranded--without counsel--members of the Coalition in name only. Under these circumstances, Miss Evans replied in the negative since that had been the understanding up until the time of the Pre-hearing. (Transcript of Pre-hearing, p. 44.)

Twice during the course of the Pre-hearing, (Transcript of Pre-hearing, p. 20), Miss Evans attempted to read a prepared statement explaining the problems of coordination which had arisen within the Coalition and seeking time to consult with counsel. A copy of that statement is attached hereto as Exhibit E. She had personally handed copies of that statement to the Board but being unfamiliar with procedures at a hearing of this type and without the guidance of an attorney, Miss Evans did not know that she could insist upon inserting her statement into the record and thus was unable to clarify the ambiguous role of LIFE at that time.

It is important to note that no decision was made by the Board on November 23, 1970, as to whether the Coalition

would be granted intervenor status. Instead the Coalition was given until December 8, 1970--the scheduled hearing date--in which to file an amended petition more specific in nature and accompanied by affidavits from each group presumably represented by the Coalition showing that representation at the hearing by the Coalition was duly authorized. (Transcript of Pre-hearing, p. 33.) Apparently the Board did not consider it essential that the issue of who would be permitted to intervene be decided yet.

Following the Pre-hearing, repeated efforts to coordinate with the Cleveland-based Coalition ninety miles away proved futile. LIFE then informed the Coalition through Mrs. Evelyn Stebbins, Co-chairman, that it intended to withdraw from the Coalition and to attempt to obtain intervenor status independently. On the evening of December 7, the Coalition presented its Amended Petition for Intervention. The next morning, December 8, LIFE presented its own Petition for Leave to Intervene to the Board and that afternoon the LIFE petition was filed in original and twenty copies with the official AEC recorder for transmittal to the appropriate AEC office.

At the Hearing on December 8, Mr. Baron, Attorney for the Coalition, read the names of those originally part of the Coalition who had decided to withdraw. (Transcript of Pre-hearing, p. 103). The present movants were among these so listed.

It was not until Wednesday afternoon, December 9, that the Board finally decided that the Coalition would be granted

intervenor status. Immediately following this decision, the Board took up the petition filed by LIFE, and denied it

> "for not being timely filed and for not having shown good cause for failure to file it on time." (Hearing Transcript, p. 349.)

LIFE then moved the Board to Certify the matter of its request to intervene to the Commission. (Hearing Transcript p. 365.) This motion was denied on the following day. (Hearing Transcript p. 371) and at the close of proceedings on December 10, 1970, the Hearing was recessed until January 5, 1971.

III THE BOARD HAS AUTHORITY TO GRANT THIS MOTION FOR RECONSIDERATION AND TO DO SO WOULD CARRY OUT THE POLICY AND SPIRIT OF AEC HEARINGS

In view of the facts described above, we contend that the Board should reconsider its ruling that their petition was filed too late. The Board has authority to accept a late petition. 10 CFR 2.712 (a) states that a late petition for leave to intervene may be granted if the petitioner shows good cause for the delay. In Appendix A to 10 CFR Section 2, it is again stated:

> "A Board has general authority to extend the time for good cause with respect to allowing intervention."

Additional evidence that the regulations anticipate the acceptance of some late filings is found in Appendix A in the following words:

> "Any agreements reached or decisions made at the conference will be incorporated promptly in the formal record of the hearing <u>without prejudice to the rights of subsequent intervenors</u>" 10 CFR Section 2, II (d) [emphasis added]

The reason for this permitted flexibility toward late filing is found in the policy which inspires the entire hearing procedure. The idea is to encourage responsible participation by knowledgeable and concerned citizens. If, as in the present case, circumstances beyond the control of a potential intervenor have unavoidably caused a delay in the filing of a petition, the petition should not be denied if it does have merit. This is especially true in the present case where the reason that LIFE did not file independently at the outset was to avoid undue delay and inconvenience for all concerned and to reduce the heavy financial burden which intervention places on any public interest group with limited funds. The fact is that public interest groups can rarely summon sufficient financial resources to pursue a matter such as this one adequately. The facts recited above show how handicapping it was to LIFE to appear without counsel, as ordinary citizens unfamiliar with the details of AEC procedures. Yet these citizens are the very ones for whom the oublic hearings are designed. Obviously, in order to give them the real benefit of the policy in favor of participation, and to prevent the hearing from being a meaningless charade, some recognition of their special situation must be a part of the Board's exercise of discretion.

The flexibility authorized by the Regulations is also intended to avoid the possibility that petitions for intervention would be granted on a "first come-first served" basis. This might unfortunately deny the right of intervention

to persons who may have valuable information and ideas to contribute, and certainly threatens to impair the credibility of these hearings as genuine efforts to benefit the public. The AEC policy is clearly enunciated in Appendix A to 10 CFR Part 2:

> "Boards have considerable discretion as to the manner in which they accommodate their conduct of the hearing to the local public interest and the desires of local citizens to he heard. Particularly in cases where it is evident that there is local concern as to the safety of the proposed plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views, while at the same time protecting the legal interest of all parties and the public interest in an orderly and efficient licensing process. Boards should give full public recognition to the fact that utilization of such opportunity is one of the important reasons why public hearings are held by the Commission and are held in the locality of interest."
>
> 10 CFR Part 2, Appendix A, III (b) (8).

As mentioned above, no substantial inconvenience is created by the late filing. Since early November, 1970, the AEC and the applicant have been aware of LIFE's interest in this matter. LIFE representatives have been present at nearly all prior sessions. As we will further explain below, many concerned people in Northwestern Ohio are counting on LIFE to represent them at these hearings. Furthermore, LIFE does not intend duplication of other intervenors' efforts but merely wishes to present evidence on certain points which are of utmost significance and which have not been adequately brought before this Board.

IV DENIAL OF THE PROPOSED INTERVENTION WOULD PREJUDICE THE LEGITIMATE INTERESTS OF MANY LOCAL CITIZENS

The moving parties herein were identified in their Petition to Intervene and this is not the place for extensive review of those credentials. Their personal interest is, of course, considerable. The members of LIFE, Dr. Oster, and Mr. Reany, all reside in the Northwestern Ohio area which will be affected by this power station. They work here and frequent recreational areas in the vicinity. There can be no greater personal interest than that of people, such as these, whose health, economic interest, safety, and very lives may be adversely affected by the proposed Davis-Besse facility.

In addition to these factors of highest personal interest in the proceedings, the movants believe that they have something to offer the hearings in the way of expertise and access to scientific information. Dr. Irwin I. Oster, a Professor of Biology and Anatomy at Bowling Green State University, is a geneticist who has specialized in the effects of radiation on biological systems. On the basis of his extensive background in studying the genetic and somatic effects of acute and chronic irradiation he has been called to testify as an expert witness at the Shoreham and Midland Hearings. William E. Reany, a graduate student in Economics at Bowling Green State University, has studied the economic aspects of the proposed facility on Ohio, Northwestern Ohio, and Ottawa

County. Being in close touch with the scientific and academic communities, these movants had secured the necessary funding and commitments from several expert witnesses, consisting of nuclear engineers, radiation geneticists, physicians, and radioecologists to help in the cross examination of the witnesses attesting to the safety of the proposed facility. These included Mr. Richard Webb, Drs. B. Sonnenblick, J. Gofman, E. Carlson, Wm. Lee, L. Browning, etc., and several others whose heavy schedules did not allow them to make definite commitment at the time they were contacted but who hoped to be able to appear.

With these qualifications and contacts, the movants feel that they certainly have what Commissioner James T. Ramey (in his address entitled "The Role of the Public in the Development and Regulation of Nuclear Power" delivered at the Conference on Nuclear Power and the Environment, University of Wisconsin, Madison, Wisconsin, April 6, 1970) has called "the requisite interest to intervene in hearings under the AEC's liberal intervention policy." Commissioner Ramey further stated:

> "Members of the public whose interests are affected can intervene in these hearings, and can call witnesses and cross-examine in order to try to satisfy themselves as to the safety of the proposed plant. Thus, AEC invites public scrutiny, and welcomes the study and comment of independent experts and, of equal importance, the general public. Here is a place in which trained people or the universities can play a particularly important role in the public interest."

Beyond all this, there is the fact that the movants repre-

sent numerous concerned citizens who live in the affected area and who are relying upon LIFE to represent them. The Bowling Green State University student group itself has a membership of 100. In one week during the summer of 1970, they collected over 200 signatures from Ottawa County Residents on petitions requesting preliminary Public Hearings on the whole issue of the Davis-Besse facility. As a result of newspaper publicity concerning LIFE's efforts in this field, LIFE has received numerous letters from local citizens expressing support for LIFE's proposed intervention, even accompanied by an occasional small donation, demonstrating the degree of commitment and concern felt by these citizens. In October, 1970, Mr. Daniel Romick, Co-chairman of The Erie County Committee against Thermo-Nuclear Pollution joined with LIFE to plan a possible intervention. In August 1970 his group had obtained almost 2000 signatures on petitions addressed to the expression of concern for the establishment of safeguards for the environment threatened by the proposed Davis-Besse plant. These petitions are now in our possession and are available to the Board on request.

Thus, the movants represent a large group of similarly concerned people and should not be denied the opportunity to participate as a party in these Hearings on a purely formal ground. Since, in fact, no prejudice to any party has resulted from our late filing, the public should not be penalized by rigid adherence to a deadline.

V. THE PROPOSED INTERVENTION RAISES NOVEL AND IMPORTANT ISSUES

The movants will not duplicate the efforts of the Coalition which has already been granted intervenor status. The issues raised are novel, distinct from those raised by the Coalition, and significant enough to warrant consideration during these hearings. It may be that our original petition raising these issues did not delineate them clearly enough. If so, we could prepare an amended petition clarifying these points, just as the Coalition amended its petition after flaws were pointed out by the applicant and the regulatory representative. The same right to amend was extended to another intervenor whose formal petition for Leave to Intervene was filed at approximately the same time as ours. (Hearing Transcript, pp. 81, 88-92). Particularly in view of the fact that the AEC regulations concerning implementation of NEPA were as recently as December 5, 1970 so that they were not available for full study prior to our initial Petition for Leave to Intervene, the right to amend that Petition now would serve a useful purpose in these proceedings.

The important point is that <u>significant issues directly related to the protection of the public should not be ignored in these hearings because of minor and non-prejudicial failures to meet formal requirements.</u>

The following are the points on which we wish to present evidence and which will not be presented by the Coalition.

(A)

LIFE contends that the present proceedings violate the National Environmental Policy Act of 1969 (hereinafter referred to as NEPA), Public Law 91-190, 91st Congress S. 1075. This contention was raised on pages 13-18 of our Petition for Leave to Intervene filed previously. NEPA was enacted on January 1, 1970, and requires that there be included:

> "* * * * in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
> (i) the environmental impact of the proposed action,
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
> (iii) alternatives to the proposed action,
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
> (v) any irreversible and irretrievable commitments of resource which would be involved in the proposed action should it be implemented."

There can be no doubt that the proposed construction of the Davis-Besse Nuclear Power Station will have significant effects on the environment; yet the requirements of NEPA have not been met. In several cases, failure to comply with NEPA has led the courts to issue injunctions to prevent the issuance of an "outlaw permit." Zabel v. Tabb, 430 F. 2d 199 (C.A. 5th, July 16, 1970) held that NEPA requires the U.S. Army Corps of Engineers to fully consider all environmental factors before granting a dredge and fill permit. In Wilderness Society v. Hickel, 1 Environmental Reporter 1335

(District Court, D. C., April 23, 1970) the Court granted a preliminary injunction against defendant for failure to comply with NEPA. In Sierra Club v. Laird, ____ F. Supp. ____ (Ariz., June 23, 1970) also an order granted preliminary injunction against defendant for failure to comply with NEPA.

NEPA has expanded AEC jurisdiction to include full review of all environmental effects resulting from a construction permit or license it may issue. The key to this review is the detailed environmental report including discussion of the alternatives to the proposal submitted. To be meaningful this report must be part of the early stages of inquiry. If postponed, it will be a hollow gesture since economic and technological activities will already be in process. The report will then have to overcome faits accomplis.

To date, the AEC response to NEPA's clear mandate has been deplorable. The detailed environmental statements filed with respect to the proposed issuance of construction permits or operating licenses not been merely summaries of summaries received from other agencies and from the applicant. In every case the environmental statements reflect the fact that future studies will be conducted to determine the environmental impact of radioactive releases, cooling water discharge, and the like. Conclusions, without underlying data or reasoning, are given in rejecting other alternatives to the plant design, location, operation, use, etc.

The Applicant's Environmental Report filed by the Toledo Edison Company on August 3, 1970, is a classic example of

the self-serving unsupported conclusions which the Commission merely summarizes in its so-called detailed statement. Moreover, while the Department of Health of the State of OHIO tacitly "endorses the issuance of a construction permit for the proposed Davis-Besse Nuclear Power Station" Dr. E. W. Arnold in his letter of October 14, 1970 to Mr. Harold L. Price, Director of Regulation, quickly adds that the aforesaid endorsement is given "pending full consideration and satisfactory resolution of any testimony offered at the forthcoming public hearing which tends to conflict with the radiation evaluation and findings of the commission's regulatory staff and of the Advisory Committee on Reactor Safeguards". Dr. Arnold also points out "We contend, however, that the (Environmental) report does not contain sufficient detailed information to permit an independent evaluation of the total environmental of the proposed facility if the evaluation must be based solely on the content of the report. The report is particularly lacking in specific qualitative and quantitative data relative to the environmental factors of greatest current public concern--the anticipated levels of radiological and thermal emissions to the environment under normal operating conditions and under foreseeable accident or emergency conditions". These contentions coming from State and/or local agencies "which are authorized to develop and enforce environmental standards" (letter from Mr. Price to the undersigned dated November 6, 1970) serve to reinforce the movants

claims--namely, that the purpose and intent of the NEPA is not being adhered to in the current proceedings.

A satisfactory detailed report in the present case must include full analysis of the fact that the Water Quality Improvement Act of 1970 sets the State's water quality standard as a minimum standard to be applied by the AEC in issuing constructive permits. It should be noted at this point that these standards have not yet been approved for the State of OHIO by the Department of the Interior. The detailed environmental statement may indicate that the specific location of the proposed plant requires even higher water quality standards which can only be met by a change in plant design. These design changes will affect the safety analysis of the plant. The plant may be obsolete prior to its completion. Increased costs as a result of the design changes may warrant a relocation of the plant to an area where less stringent water quality standards are required. The issuance of a construction permit involves the kind of polycentric problem which can only be resolved when all relevant factors are discussed in one hearing.

Nevertheless, the notice of Hearing for a Construction Permit on the Davis-Besse facility did not even suggest that environmental factors would be discussed. If the AEC had prepared and submitted sufficiently in advance a properly detailed environments report these hearings would necessarily have to include discussion of that report and opportunity for

the applicant and the general public to express their views on the alternatives mentioned and on proposed modifications in design, location, and existence of the plan. The detailed Environmental Report prepared by the Atomic Energy Commission on November 20, 1970 and was made available on November 23, 1970 at the time of the Pre-hearing. Its availability to the public was announced on December 4, 1970, Federal Register, 18485.

This report paraphrases the applicants Environmental Report previously mentioned, since it is taken basically from that document. As a result, it suffers from the same aforementioned shortcomings.

We contend that the postponement of full compliance with NEPA beyond December 3, 1970, and in particular postponement of the effective date for the requirement of hearings on environmental factors (Appendix D of Part 50 of Title 10 CFR) is a violation of NEPA and that, therefore, these Davis-Besse hearings are illegal.

This issue is presently on appeal in Calvert Cliffs Coordinating Committee, Inc., National Wildlife Federation and the Sierra Club v. U.S. Atomic Energy Commission and The United States, Case No. 24,271 in The United States Court of Appeals for the District of Columbia. Filed on December 7, 1970, pursuant to Section 189 (b), 28 U.S.C. Section 2342 and 5 U.S.C. Section 702, that case reads in relevant part as follows:

"Petitioners request this Court to hold invalid that portion of Appendix D of Part 50 of Title 10, Code of Federal Register . . . which:

1. Prohibits the Atomic Energy Commission from imposing conditions on construction permits and operating license for nuclear power plants for the protection of the environment which are more stringent than standards set by state or federal agencies.

2. Postpones the effective date of the requirement that hearings for construction permits and operating licenses including a hearing on environmental factors until hearings noticed in the Federal Register on or after March 4, 1971.

3. Refuses to require that nuclear power plants be back-fitted with the most advance available equipment to reduce the adverse environmental impact of these plants.

4. Postpones full compliance with the National Environmental Policy Act by the Atomic Energy Commission beyond December 3, 1970.

5. Refuses to require all owners of nuclear power plants which now have construction permits and for which operating licenses have not been issued to show cause why their construction permits should not be suspended pending a full investigation of the environmental impact of the nuclear power plant as required by the National Environmental Policy Act.

Petitioners further request this Court to order the respondent to implement rules and regulations to correct the inadequate and illegal provisions of the rules and regulations under review in this proceeding."

The decision of the Court of Appeals on the Calvert Cliffs Case will crucially affect the legitimacy of these hearings on the Davis-Besse facility. The decision may well invalidate these proceedings and any construction permit issuing as a result of them. This means that the present hearings will be just wasted time, effort, and money on the part of the applicant and the AEC. Any steps toward construction, should the permit issue prior to a decision from the Court of Appeals, would be subject to sweeping revision once the full and appropriate environmental hearings were then held pursuant to the Court of Appeals decision. Movants are informed and believe that the existence of the Calvert Cliffs Court of Appeals case has already affected proceedings in at least two other pending nuclear power plant facilities, The Indian Point and Midland facilities.

In view of the interaction among all these cases and the pending Court of Appeals Case, the issue of NEPA implementation should really be resolved by the Court of Appeals prior to issuance of any further permits or licenses under the existing regulations. We feel that the issue is in any event one of sufficient importance to warrant its inclusion in the present proceedings.

(B)

LIFE contends that the proposed facility will not be operating without undue risk to the health and safety of the public even if it complies with the criteria presently set forth in 10 CFR Part 20, "Standards for Protection Against Radiation," for the reason that said Standards themselves are inadequate. This point was raised in our Petition for Leave to Intervene on page 9, Items 6 and 7, and further discussed in said Petition at pages 10-13.

The present radiological protection standards are not within the Commission's authority, and are not a reasonable exercise of the broad discretion given the AEC by the Atomic Energy Act. That Act, 42 USCA 2201 (p) gave the Commission authority to

> "make, promulgate, issue, rescend, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter."

It was anticipated that such rules and regulations would be kept up to date with the latest scientific information which the AEC was given full power and ability to obtain. As stated by the AEC itself in its August 8, 1969 Memorandum In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2):

> "Part 20 is a 'living document . . .'"

The present criteria in 10 CFR Part 20, however, are outmoded and inadequate, in contravention of the AEC's responsibilities.

Specifically the LIFE Petition raised the following objections to the Standards and thus to the proposed facility's operations under these inadequate standards:

1. The results of scientific research concerning the dose effect relationship between radiation and cancer or leukemia induction in man warrant a reduction in the Federal Radiation Council guidelines for radiation exposure to the population at large;

2. The radiation protection standards prescribed by 10 CFR 20 will permit the Davis-Besse plant to expose the public to dangerous levels of radiation which could cause a 10% increase in birth defects, a 10% increase in cancer and leukemia, and a general increase in many major diseases including cardiovascular disease, schizophrenia and other genetically related diseases as well as metabolic diseases such as diabetes. In addition to the foregoing, the proposed plant will be permitted to expose the workers in said plant to levels of radiation 10 times and in some cases 50 times the levels permitted for the general public. As a consequence, the medical risks to the workers will be increased proportionately over those risks born by the general public.

3. A valid scientific justification for the allowable dose of 0.17 rads of total body exposure to ionizing radiation has never been presented;

4. The radiation protection standards in 10 CFR 20 adopted by the AEC fail to take into account the possibility of multiple sources of radioactive pollution;

5. The allowable radiation dosage to the population permitted by the regulations of the Atomic Energy Commission (10 CFR, Part 20) must be revised downward to zero concentration, until such time as sufficient scientific data is obtained to permit an informed judgment on the maximum limits of exposure to low levels for long periods of time advisable for individuals or populations, and until appropriate consideration can be given as to what is the acceptable total genetic risk, and what portion the nuclear power industry, as one of many sources of ionizing radiation exposure (and other agents in the environment which have mutagenic qualities including many chemicals), may be permitted

to contribute towards its appropriate share of the permissable dose limits, and so that there may be an appropriate balancing and apportioning of the benefits and the risks within the Lake Erie Area from the various sources of ioninzing radiation;

6. The biological effects of tritium and other radioactive wastes are serious nuclear contaminants to the environment; there is difficulty in the filtering or removing such wastes from the effluents of nuclear plants, and the effect of their discharge on the public health and safety is not yet well documented;

The extent to which diluted radioactive isotopes may be concentrated by aquatic organisms, enter into the food chain, and eventually be taken up by men and animals is not well documented in this case;

There is insufficient study of the Lake Erie Area to arrive at a conclusion of the critical pathways of the radionuclides, the use of, and dilution in the environment, the critical segments of the population and the exposed population density, the number of nuclear power plants installed or planned to be installed, and the success in reducing other sources of population exposure.

That the present hearing is the appropriate forum for this issue was determined in the Initial Decision, June 30, 1969 of the Atomic Safety and Licensing Board, In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2) Docket Nos. 50-317 and 50-318. That decision held that it was within the Board's function to inquire into the validity of the standards established by Part 20.

> "The Part 20 limits, of course, play a central role in the question of what constitutes "undue" risk. However, it seems to the Board that there may be cases in which the evidence introduced is such as to draw into question the validity of those regulations themselves. In such a case, the Board might not be able to rely upon Part 20 as establishing the outer limits of acceptable risk."

Text of Initial Decision, reproduced at paragraph 11, 578.01 of C.C.H. Atomic Energy Reporter

This decision was further elaborated in an AEC Memorandum dated August 8, 1969, which added that if a substantial question of that nature were raised, the Board should "certify that question for guidance prior to rendering an initial decision." Thus, if this issue is to be raised at all, it should be raised on the record now, before the initial decision, and LIFE believes that it should be granted the opportunity to do so. Dr. Oster, one of the individual movants, has specialized in studies related to the effects of radiation on biological systems. We respectfully submit that his training and knowledge in the area qualifies him to present valuable information on this issue. Furthermore, as discussed above in item IV, LIFE has access to scientists who can also present scientific and technical data on this point.

VI THE BOARD SHOULD RECONSIDER THE DENIAL OF CERTIFICATION PREVIOUSLY REQUESTED BY LIFE

On December 10, 1970, the Board denied LIFE's request, voiced by Vicki Evans, that the denial of our Petition for Leave to Intervene be certified to the Commission for its decision on the matter. In the preceding Memorandum we have attempted to demonstrate why LIFE should be permitted to intervene. If, however, the Board refuses to reconsider

its earlier denial of that right, LIFE submits that the good cause for lateness explained herin and the two substantive matters which we wish to present are sufficiently meritorious that the Commission should be given a chance to rule on them. We therefore move the Board to reconsider and to reverse its denial of our December 9 Motion for Certification under 10 CFR 2.718 (i).

For all the foregoing reasons, we move the Board to reverse its previous denial of our Petition for Leave to Intervene or in the alternative to grant our Motion for Certification.

Respectfully submitted,

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CERTIFICATE OF SERVICE
(Supplemental)

I hereby certify that copies of MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR LEAVE TO INTERVENE OR IN THE ALTERNATIVE FOR RECONSIDERATION OF DENIAL OF CERTIFICATION dated December 24, 1970 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 29th day of December 1970:

Walter T. Skallerup, Jr., Esq.
Chairman, Atomic Safety and
Licensing Board
1155 Crest Lane
McLean, Virginia 22101

James P. Gleason, Esq., Alternate
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