

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

06/18/73

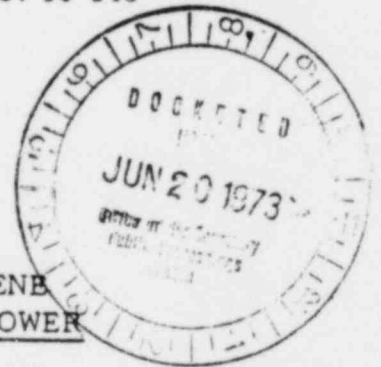
Before the Atomic Safety and Licensing Board

In the Matter of)

TOLEDO EDISON COMPANY AND THE)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)

(Davis-Besse Nuclear Power Station))

) Docket No. 50-346



AEC REGULATORY STAFF RESPONSE
TO THE PETITION FOR LEAVE TO INTERVENE
OF THE COALITION FOR SAFE ELECTRIC POWER

On April 30, 1973, the Atomic Energy Commission (Commission) published a notice in the Federal Register entitled "Receipt and Consideration of Issuance of Facility License; Opportunity for Hearing" (38 F.R. 10661) regarding the captioned facility, which provided, inter alia, an opportunity for any person whose interest may be affected by this proceeding to file a petition for leave to intervene in the proceeding on or before May 30, 1973. That notice reflected the requirements for such a petition as specified in the Commission's "Rules of Practice," specifically, 10 CFR § 2.714. Such petition must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the contentions of the petitioner.

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In addition, any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the bases for his contentions with regard to each aspect on which he desires to intervene.

On May 30, 1973, the Coalition for Safe Electric Power sent a telegram to the Office of the Secretary of the Commission stating:

"DAVIS-BESSE NUCLEAR PLANT OPERATING LICENSE. COALITION FOR SAFE ELECTRIC POWER PETITION TO INTERVENE IN PROCEEDINGS. PETITION BEING PLACED IN MAIL. REQUEST YOU TREAT TELEGRAM AS TIMELY FILING OF PETITION."

By itself, this telegram met none of the Commission's procedural or substantive requirements for a petition for leave to intervene as reflected above. Accordingly, it should be denied

By cover letter to the Secretary of the Commission dated June 4, 1973, the

Coalition submitted a document styled "Petition for Leave to Intervene" in this proceeding. An explanation for this clearly untimely filing was contained neither in the Petition nor in the earlier telegram.

The affidavit attached to the Petition is a simple adoption of the statements set forth in the Petition and fails to meet the requirements of 10 CFR § 2.714 in that it fails to adequately identify "the specific aspect or aspects of the subject matter of the proceeding as to which he [the affiant, Evelyn Stebbins] wishes to intervene and/or on which he bases his request for a hearing and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with respect to each aspect on which he desires to intervene."

Nonetheless, the AEC regulatory staff (staff) has reviewed the Petition to determine whether, considered as a whole, it provides adequate identification of specific aspects of the proceeding and identification of bases for petitioner's contentions. We believe it deficient, and, for the following reasons respectfully urge its denial.

The text preceding paragraph 2, and paragraphs 2 through 6, show the

membership of the Coalition and its interest (the interests of the members of the Coalition).

Paragraphs numbered 7 through 11 raise several objections of the Coalition. Their thrust might fairly be stated to be an objection to the procedural requirements of the Commission which require an Intervenor to specify contentions and provide their bases as part of a petition for leave to intervene. Such complaint is without merit. The Commission's rules cast no unreasonable burden on a petitioner -- only that he specify that which he wishes to contest and the basis for his allegations concerning such matters.

In the instant proceeding, the petitioner, or related predecessors, have had access to a massive amount of information beginning with the PSAR, the entire record of the construction permit proceeding in which they participated, the record of the Section E - (of 10 CFR Part 50, App. D) proceeding in which they participated, the documents in the Section B proceeding in which they are presently participating, and the FSAR. There is certainly no lack of available information on the basis of which adequate contentions could have been formed.

Further, Commission rules provide ample opportunity to request amendment of pleadings for "good cause" such as newly discovered information. See 10 CFR 2.711 and 10 CFR 2.714. Petitioner's motion in paragraph 11 is an attempt to request, in advance and without a showing of good cause, leave to later amend their petition. The staff objects to such motion as improper under the Commission rules.

Paragraph 12 is merely an unsupported conclusional statement that petitioner variously contests those positive and negative findings on the ultimate radiological health and safety issues as are set forth in the regulations.^{1/} No factual basis is given for such generalized objections to the findings required.

In paragraph 13, the Coalition has provided no basis for the allegations of threat to the environment, to the people of the area, to Lake Erie, to the fish and wildlife, or to the water supply of over 11 million people. The further allegations of violation of the Commission's own guidelines do not enumerate the specific aspects of these guidelines which are being "breached." In addition to lacking specificity, no bases are provided therefor.

Paragraph 14 attempts to raise the issue of reactor pressure vessel failure without indicating any basis therefor. It alleges no special considerations regarding this particular reactor pressure vessel. Accordingly, it clearly fails to meet the requirements of the Commission's Memorandum and Order

^{1/} 10 CFR § 50.57.

dated October 26, 1972, In the Matter of Consolidated Edison Company
(Indian Point Unit No. 2).

Paragraph 15 categorically states, and paragraph 16 necessarily implies, that the emergency core cooling system (ECCS) of the Davis-Besse facility will not function as planned. No bases are provided for such statements. For this reason alone the contentions in these two paragraphs should be denied. Additionally, they both appear to constitute a challenge to the Commission's Interim Acceptance Criteria for ECCS, and they are improper in form for such a challenge under the requirements of 10 CFR § 2.758.

Paragraph 17 is ambiguous and without bases. One cannot tell from these contentions whether petitioner alleges that the quantity of hydrogen gas will exceed that indicated in the FSAR because of failure of the ECCS to limit metal water reaction in accordance with the interim criteria, or for some other specific reasons. Nor can one tell if petitioner instead challenges the post-LOCA hydrogen control system proposed in the FSAR for some other reason.

The Coalition fails to specify in paragraph 18 the alleged "accident, which is entirely possible, which could contaminate Lake Erie as a public water supply." The contention is totally wanting in specificity and basis.

The Coalition has provided no bases for its assertions in paragraph 19 that, because of "exposure to radiation," there is no assurance that the integrity of certain (unspecified) components in the Davis-Besse facility will be maintained, and that there are no adequate procedures for inspection and replacement of these same "critical" components.

Paragraphs 20 and 21 suffer from the same defects as paragraph 19. No bases are alleged for the statements that "quality control and quality assurance procedures and programs have been inadequate to assure that the Davis-Besse Plant has been constructed in conformance with design," and "that crucial inspection points have been passed over without a proper inspection, and therefore materials of unknown quality have been installed."

Paragraph 22 contains many contentions, all of which should be denied for one or both of the reasons which follow. The Coalition has not specified the type of accident which allegedly "would require immediate evacuation in the vicinity of the plant." This same lack of specificity is found in the allegation that unspecified "storms in that area" would make evacuation impossible.

Paragraph 23 also has no bases asserted for the contentions therein, and should be denied.

In paragraph 24 there is no indication of how this allegation bears significantly on the issues in this proceeding, and inadequate basis is given therefor.

Paragraph 25 does not state which portions of the plant will allegedly be subject to high water. In addition to this lack of specificity, there is no basis for the statement that such an event (higher water levels) is more likely than the Applicants assumed.

Paragraph 26, as paragraph 12, is simply a denial that the positive ultimate environmental findings 2/ can be made for this facility; it is without basis in itself, and appears to be no more than introduction for the contentions which follow.

Paragraphs 27, 28, 29 and 30 set forth no adequate bases for the assertions that the Applicants' biological and radiological monitoring programs are inadequate. In paragraph 29 there is no indication of the nature of the "connection" which petitioner alleges must exist among the various food chain samples nor of the aspects of Applicants' surveillance and monitoring programs which fail to make such unspecified "connection".

In paragraph 30, no basis is provided for the general allegation that

2/ Appendix D to 10 CFR Part 50.

a "quick warning system to water users" as part of the radiological monitoring program is a condition precedent for the adequacy of that program. ^{3/}

Paragraphs 31 - 39 raise contentions relating to the impact of low level radiation from the facility. This issue was extensively considered during the course of the hearings relating to the Davis-Besse construction permit in 1970. The Coalition's predecessor was a party to that proceeding and had the opportunity to fully participate in that aspect of the hearing. Accordingly, we agree with the position taken by the Applicants in their response to this petition for leave to intervene (paragraph 11 at page 10) that these contentions essentially raise the same issues which have already been considered in any earlier licensing proceeding. Furthermore, the petitioner has not indicated in Paragraphs 31 - 39 that these contentions are based on any new information which may have become available subsequent to the 1970 hearings. In addition, they are also interspersed with irrelevancies and ambiguous statements, such as one in contention 33 which refers to unspecified "other pollutants."

Paragraph 40 does not meet the requirements of 10 CFR § 2.714, inasmuch as "adverse effects" the Coalition predicts are not specified. In addition,

^{3/} The staff wishes to note that a "quick warning system," separate from the instant program is provided for in this facility. See FSAR paragraph 11.4.2.1.

no basis is provided for the contention that operation of the cooling tower will lead to the alleged adverse effects.

Paragraph 41 inarguably lacks the specificity required in a petition, and should be denied.

Paragraph 42 provides no basis for the contention therein, in that the Coalition does not allege what the components of a "competent analysis" should be. Without that basis, it is defective.

Paragraph 43, relating to decommissioning, is without basis.

Paragraph 44 attempts to raise the environmental effects of the entire uranium fuel cycle. As raised, these matters are improper for consideration in an individual licensing proceeding. (See, Vermont Yankee Nuclear Power Corp., (Vermont Yankee Nuclear Power Station), ALAB-56, WASH 1218, June 6, 1972).

There is no basis given for the allegations contained in paragraph 45.

Paragraph 46 is excessively broad. There is no specificity of contentions, but rather many very broad allegations striking at many aspects of the planned operation of the facility, and no basis is provided for any of the allegations.

Paragraph 47 should also be denied as a contention in that no basis is provided for the assertion that protection of the public from acts of saboteurs or terrorists has not been adequately provided for.

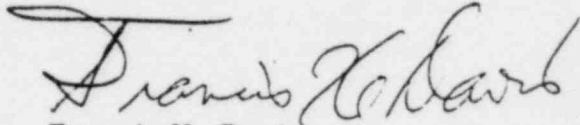
The contentions in paragraph 48 should be denied because they are without any bases. No basis is provided for the statement that transportation of spent fuel would present a hazard to public health and safety. In the next phrase, the Coalition states that an accident, while such wastes are being transported by water, would be catastrophic, but does not give any basis therefor. Nor does it give any indication of accidents which the Coalition allege have not been adequately considered. In the next sentence, the Coalition again refers to a "transportation accident causing the release of spent fuel elements," but does not give a basis for assuming such an accident.

In summary, the petition is untimely, and provides no showing of good cause therefor. But more significantly, the petition is defective for failure to specify contentions adequately, for failure to provide an adequate affidavit, and/or for

failure to otherwise specify adequate supporting bases for any contention.

For these reasons the staff believes the petition 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 18th day of June, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "AEC Regulatory Staff Response to the Petition For Leave to Intervene of the Coalition For Safe Electric Power," dated June 18, 1973, in the captioned matter, have been served on the following by deposit in the United States mail, first class or air mail, this 18th day of June, 1973:

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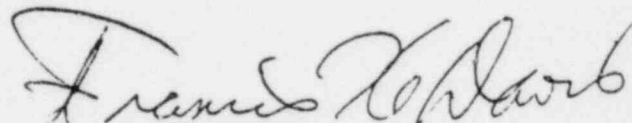
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