



Conference Order issued May 31, 1973, by the Atomic Safety and Licensing Board in the proceeding now under way with respect to the Davis-Besse facility pursuant to Section B of Appendix D to 10 CFR Part 50, Applicants do not contest the Coalition's showing of interest.

3. The Federal Register Notice required that petitions be filed "[o]n or before May 30, 1973". The certificate of service appended to the Coalition's petition indicates that it was mailed on June 4, 1973.\* The Commission's Rules of Practice provide,

Non-timely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request that the petitioner has made a substantial showing of good cause for failure to file on time ...

10 CFR §2.714(a) (emphasis added). The Coalition has made no such showing.

4. A telegram from the Chairman of the Coalition to the Commission, dated May 30, 1973, stated in full,

Coalition for Safe Electric Power petition to intervene in proceedings. Petition being placed in mail: Request you treat telegram as timely filing of petition.

The petition was not, in fact "placed in mail" until five

---

\* The postmark on the envelope addressed to Applicants' counsel, however, reads "PM 5 June 1973".

days later. A telegram which merely requests to be treated "as timely filing of petition" is obviously not a petition. Nor did the telegram provide any reason which could even arguably be classified as "good cause". Nothing in the petition itself can be interpreted as a showing of "good cause". The Coalition is not a newcomer to AEC licensing proceedings, having intervened in the Davis-Besse construction permit proceedings, the proceedings pursuant to Section E of Appendix D, and the proceedings pursuant to Section B of Appendix D. Having had this much exposure to the Commission's administrative proceedings, the Coalition owes considerable fidelity to the obligations imposed by AEC's rules. The Coalition's petition should therefore be denied on the grounds of untimeliness.

5. Apart from the untimely nature of the Coalition's petition, the petition should also be rejected for failing to set forth adequate contentions. With only one possible exception\*, all of the contentions are either copied from the Coalition's initial petition to intervene in the Section B proceeding, a petition ruled inadequate by the Licensing Board, or copied from a petition to intervene filed by other intervenors in another licensing proceeding. The contentions to a substantial degree attempt to relitigate issues which are (or could have been) considered in the construction permit proceeding and in Section B proceeding.

---

\* Paragraph 25 appears to be generally related to contention 24 in the Coalition's February 2, 1973 petition.

Many challenge Commission regulations. There is a general absence of any showing of basis or particularity. Individual contentions simultaneously fall within several categories of inadequacy.

6. As shown in Exhibit A attached hereto, many of the contentions in the Coalition's petition are virtually identical to contentions submitted in its initial petition to intervene, dated February 2, 1973, in the Davis-Besse Section B proceeding. Only minor editorial changes were made in these contentions in an attempt to make them "health and safety" contentions rather than "environmental" contentions. For example, paragraph 23 of the Coalition's June 4, 1973 petition read as follows:

Petitioners contend that the Applicant has not made adequate provisions for either facilities or personnel to treat radiation injuries or radiation-chemical injuries which would result from a maximum hypothetical accident or any other lesser accident.

The equivalent contention, contention 19 in the Coalition's February 2, 1973, petition states:

The Applicant has not made adequate provisions for either facilities or personnel to treat radiation injuries or radiation-chemical injuries which would result from a maximum hypothetical accident or any other lesser accident, and therefore the harm to the public would be much greater than has been postulated in the AEC Environmental Report.

The Licensing Board in the Section B proceeding ruled that the Coalition's February 2, 1973, petition failed to meet the requirements of Section 2.714 of the Commission's Rules of Practice. Notice and Order for Special Prehearing Conference, May 4, 1973, p.1; Memorandum and Order, March 30, 1973, p.3. The contentions\* were inadequate as of February 2, 1973 and they remain inadequate.

7. With the one possible exception noted in paragraph 5 above, those contentions which were not copied from the Coalition's February 2, 1973 petition were copied from a petition submitted by other intervenors in another AEC licensing proceeding. As shown in Exhibit B attached hereto, these contentions are essentially lifted word-for-word from contentions filed by the City of Pittsburgh, et al., in proceedings involving Duquesne Light Company (Beaver Valley Power Station, Units 1 and 2), Docket Nos. 50-334 (filed December 11, 1972) and 50-412 (filed December 28, 1972). The copying went to such lengths that the Coalition even made the same spelling errors that the Beaver Valley intervenors had made. See Coalition's paragraph 44 and Beaver Valley contention 6.37 (Unit 1) and 5.37 (Unit 2), all of which use the word "fissle" instead of "fissile".

---

\* The Licensing Board in the Section B proceeding admitted only one contention in the February 2, 1973 petition which has been copied in the June 4, 1973 petition, paragraph 46 (June 4, 1973 petition) and contention 29 (February 2, 1973 Petition). Special Prehearing Conference Order, May 31, 1973, p.9.

8. The Atomic Safety and Licensing Appeal Board has ruled that contentions copied from petitions in other proceedings are to be given "especially careful scrutiny". This directive was given in the very proceeding from which the Coalition borrowed its contentions. As the Appeal Board stated in Duquesne Light Company (Beaver Valley Power Station, Unit 1), ALAB-109, RAI-73-4, 243 at 246 (April 2, 1973),

The Board must satisfy itself not only that the contention applies to the facility at bar but, as well, that there has been sufficient foundation assigned for it to warrant its further exploration.

Nothing in these contentions demonstrates any effort to show their application to this proceeding or even the slightest foundation assigned for it. In fact, the contentions copied by the Coalition from the Beaver Valley petitions do not even include the complete text of the Beaver Valley contentions. Rather, the Coalition has satisfied itself by restating a phrase or a sentence of a Beaver Valley contention and omitting everything else, even though the end result is completely devoid of particularity, specificity or basis. For example, the Coalition's paragraph 48 states in full:

Petitioners contend that the radiological monitoring and surveillance programs planned by the Applicants are inadequate to protect the health and safety of the public.

This is the barest skeleton of Beaver Valley contention 6.4 (Unit 1) and 5.4 (Unit 2) from whose first sentence it was

copied.

Petitioners contend that the radiological monitoring and surveillance programs planned by the Applicants are inadequate to protect the health and safety of the public, in that there are too few monitoring sites, the monitoring at such insufficient sites is not frequent enough to be meaningful and informative, and the monitoring proposed will not determine the concentrations and biological magnification of major radionuclides in animal and plant life and terrestrial and aquatic food chains in the vicinity of the plant. The proposed instrumentation for monitoring is not the most sophisticated available, and in some cases the instrumentation proposed will not give readouts for maxima, thus deleting peak readings and assuring that data will be held to pre-determined maxima, and therefore giving a false picture of the plant's emissions and effects. There is no assurance in the proposed monitoring and surveillance program that all of the radionuclides of significance to terrestrial, aquatic and human life will be regularly monitored in a manner sufficient to detect hazards before they have already had a significant deleterious effect on such life.

9. Many contentions seek to relitigate matters which are (or could have been) considered in the on-going Section B proceeding. Paragraphs 27 through 48 appear to be contentions relating to environmental matters.\* Such matters

---

\* Other contentions, although previously submitted as environmental contentions in the February 2, 1973 petition, now appear to be aimed at radiological health and safety issues. This was accomplished by deleting from the contentions the references to Applicants' Environmental Reports. See paragraphs 13, 15-20, 22-25.

should properly have been raised in the Section B proceeding. However, except for paragraphs 46 (which has been admitted as an issue in the Section B hearing), 47 and 48, the Coalition did not seek to raise these issues in the Section B proceeding. AEC's regulations provide that Applicants' operating license environmental report only discuss matters that differ from those described in the construction permit environmental report. Section A.5, Appendix D to 10 CFR Part 50. Similarly, detailed statements prepared by the AEC in connection with an operating license application "will cover only environmental considerations which differ from those discussed in the detailed statements previously prepared in connection with the application for a construction permit ...". Section A.8, Appendix D to 10 CFR Part 50. Comments on draft detailed statements at the operating license stage are only requested for environmental matters which differ from those considered at the construction permit stage. Section A.6, Appendix D to 10 CFR Part 50. Thus, environmental matters are to be raised and litigated at the construction permit stage, or for facilities such as the Davis-Besse plant, in the Section B proceeding. The Coalition is participating in the Section B proceeding and one contention set forth in the June 4, 1973 petition (paragraph 46) has been accepted as an issue in that proceeding. But the Coalition has not shown that the environmental matters which it seeks to litigate at the



operating license stage involve any new matters. Indeed, since all of the "environmental" contentions were copied from either the Coalition's February 2, 1973 petition or from the Beaver Valley petitions filed in December 1972, there is obviously nothing presented which is new to the operating licensing stage. These matters are being, or could have been, raised and litigated in the Section B proceeding. These contentions should therefore be rejected.

10. Several of the Coalition's contentions should be rejected because they seek to relitigate matters which have already been litigated in the construction permit proceeding for the Davis-Besse facility. Eight of the Coalition's contentions are copied from the Coalition's amended petition to intervene, filed December 7, 1970 in the Davis-Besse construction permit proceeding. See Exhibit C attached hereto. The Coalition has thus already had its chance to litigate these identical issues. Similarly, the construction permit hearing included extensive consideration of the validity of AEC's regulations governing releases of low-level radiation, including testimony, presented by intervenors, of Drs. Sternglass\* and Tamplin. See Initial Decision, March 23, 1971, paras. 33-48. Now the Coalition would like to litigate

---

\* Dr. Sternglass is one of the intervenors in the Beaver Valley proceeding from whose petition the Coalition's contentions challenging the Commission's radiological regulations were copied.

this question all over again. See Coalition's June 4, 1973 petition, paras. 31-39.

11. The Commission has strongly indicated that attempts to raise the same issues in successive licensing proceedings for the same facility should be rejected. The Commission in its Memorandum and Order in Florida Power & Light Co. (Turkey Point Units No. 3 and 4), March 30, 1972, denied an intervenor's attempt to relitigate in an operating license proceeding siting issues which had been considered during the construction permit hearing.

Apart from defects under 10 CFR § 2.714(a), all contentions but 5b seek, in one way or another, to raise issues as to the site of the plants. The petition presents no basis for reconsideration of siting questions in the context of the present proceeding. As to all contentions except 5b, the petition is therefore denied on this ground as well.

The contentions discussed in paragraphs 9 and 10 above seek to do what the Commission would prohibit, the relitigation at the operating license stage of issues already considered at earlier stages of the licensing process.

12. This Commission pronouncement is in keeping with judicial pronouncements and with the policy of conserving administrative resources. Concepts of res judicata apply to administrative agencies. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966); Retail Store Employees Union v. FCC, 141 U.S. App. D.C. 94, 436 F.2d 248, 254-55,

n.39 (1970); Appalachian Power Co. v. EPA, \_\_\_F.2d\_\_\_, 5 ERC 1222, 1227 (4th Cir. 1973); 2 Davis, Administrative Law Treatise § 18.02 (1970). To provide the Coalition with yet another opportunity to raise the same questions that they have raised in the AEC's construction permit proceeding, Section E proceeding and Section B proceeding, as well as in proceedings before agencies of the State of Ohio would, in the words of the Appalachian Power decision, supra, "be a useless exercise, wasteful and time-consuming and 'unnecessary'".

13. Many of the contentions are challenges to the Commission's regulations. Since they do not meet the requirements established by 10 CFR §2.758 for a showing by affidavit of the special circumstances justifying a waiver or exception, these contentions should be dismissed. Paragraphs 15, 16 and 18 appear to challenge the Interim Acceptance Criteria for emergency core cooling systems. Paragraphs 31, 32, 34-36, and 38-39 are challenges to AEC's regulations governing the release of radioactive effluents during normal operation. Paragraph 22 is a challenge to Part 100 in that it alleges that evacuation plans are necessary for areas outside the low population zone. Wisconsin Electric Co. (Point Beach Nuclear Plant, Unit 2), ALAB-31, WASH-1218 201 at 206, n.7 (August 18, 1971). See also Initial Decision, Consolidated Edison Co. of New York (Indian Point Power Station, Unit No.2), July 14, 1972 at 36.

14. Other contentions are clearly outside the scope of this hearing. Paragraphs 44 and 48 deal with aspects of the

uranium fuel cycle which the Appeal Board has ruled are not to be considered in individual licensing cases. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-56, WASH-1128, 395 (June 6, 1972); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-60, WASH-1218 (Supp. 1), 459 (July 19, 1972). Additional contentions postulate failures of the reactor pressure vessel without making the showing of special considerations required by the Commission in its Memorandum and Order, Consolidated Edison Co. of New York (Indian Point Unit No.2), October 26, 1972. See paragraphs 14, 16, 18 and 37.

15. With the exception of paragraph 46 (which is being considered in the Section B proceeding), none of the contentions are set forth with any particularity. There is certainly no factual showing of the basis for the contentions. For example,

- a. paragraph 20 asserts the quality control and quality assurance procedures and programs are "inadequate", but without any indication of the nature of the inadequacy or any examples of the inadequacy;
- b. paragraph 21 asserts that crucial inspection points were passed over, but gives no hint of any substance behind the claim;
- c. paragraph 25 claims that various hydrology calculations are "incorrect", and that storm

damage has not been "properly evaluated", but omits any basis for these assertions;

- d. paragraph 27 alleges that the biological monitoring program is "inadequate" and "insufficient", but fails to state any reason for this unsupported claim;
- e. paragraph 28 states that the radiological monitoring and surveillance programs are "inadequate", but does not indicate why;
- f. paragraph 40 claims that "adverse effects" caused by the cooling tower were not considered, but neglects to name any such unconsidered effects;
- g. paragraph 42 asserts that "several alternatives" to granting an operating license were not analyzed, but provides no hint of what those alternatives might be.

These are only some of the most egregious examples of contentions that are so vague and unspecific that they are in reality "non-contentions".

16. Finally, the petition does not meet the affidavit requirement established by 10 CFR §2.714(a). The only affidavit accompanying the Coalition's petition is the Affirmation of Mrs. Evelyn Stebbins, Chairman of the Coalition, "that the statements made in the foregoing Petition are true to the best of my knowledge and belief".

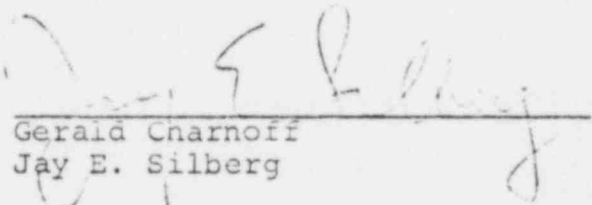
Since there is no indication that Mrs. Stebbins has the technical qualifications to attest to the truth of any of the matters set forth in the contentions, there is no affidavit of the type required by the Commission's Rules of Practice.

17. For the reasons set forth above, the petition for leave to intervene of the Coalition for Safe Electric Power should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

  
\_\_\_\_\_  
Gerald Charnoff  
Jay E. Silberg

Counsel for Applicants

Dated: June 14, 1973

EXHIBIT A

COMPARISON OF CONTENTIONS IN COALITION'S  
JUNE 4, 1973 PETITION WITH CONTENTIONS IN  
COALITION'S FEBRUARY 2, 1973 PETITION

<u>June 4 Petition Paragraph No.</u>	<u>February 2 Petition Contention No.</u>	<u>Changes from February 2 Petition</u>
13	6	Last sentence omitted *
15	8	Last sentence omitted *
16	9	Last sentence omitted *
17	10	Last sentence omitted
18	13	Last sentence different
19	14	Last sentence omitted *
20	15	Last sentence omitted *
22	16	Last sentence different
23	19	Last clause omitted
24	21	Last sentence omitted
46	29	Reference to non-degradation clause omitted
47	36	Last sentence omitted *
48	34	Last two sentences different

---

\* Also minor wording changes

EXHIBIT B

COMPARISON BETWEEN COALITION'S CONTENTIONS  
IN JUNE 4, 1973 PETITION AND CONTENTIONS  
OF CITY OF PITTSBURGH, et al., IN  
BEAVER VALLEY, UNIT 1 PROCEEDING

Coalition June 4 Petition Paragraph No.	City of Pittsburgh Petition Contention No.	Changes from City of Pittsburgh Petition
14	3.18	Only first sentence used
21	4.24	Only first phrase used
27	6.2	Only first sentence used
28	6.4	Only first part of first sentence used
29	6.5	Only first sentence used
30	6.6	Reference to short-lived isotopes and Western Pennsylvania dairies deleted
31	6.7	Reference to Pittsburgh deleted
32	6.8	None
33	6.9	Only first sentence used
34	6.10	Only last sentence used and reference to Shipping- port facility deleted
35	6.11	Only first part of first sentence used
36	6.12	Reference to Pittsburgh deleted
38	6.15	None
39	6.17	Reference to Pittsburgh deleted
40	6.29	Only first sentence used



EXHIBIT B CONTINUED

<u>Coalition June 4 Petition Paragraph No.</u>	<u>City of Pittsburgh Petition Contention No.</u>	<u>Changes from City of Pittsburgh Petition</u>
41	6.33	Only first part of first sentence used
42	6.34	Only first sentence used
43	6.36	Only first sentence used
44	6.37	Reference to Pennsylvania changed to Ohio
45	6.40 and 6.42	First sentence from each used

NOTE:

Paragraphs 7 - 11 of the Coalition's petition, setting forth various "reservations", are also copied from the City of Pittsburgh's petition in the Beaver Valley proceeding (see paragraphs II.A, II.B, II.C and II.D).

EXHIBIT C

COMPARISON OF CONTENTIONS IN COALITION'S  
JUNE 4, 1973 PETITION WITH COALITION'S  
AMENDED PETITION, FILED DECEMBER 7, 1970,  
IN THE CONSTRUCTION PERMIT PROCEEDING

June 4, 1973 Petition Paragraph No.	December 7, 1970 Petition Paragraph No.	Changes from December 7, 1970 Petition
<hr/>	<hr/>	<hr/>
15	16(a)	PSAR changed to FSAR
16	16(b)	PSAR changed to FSAR
17	16(c)	Minor change in wording
19	17	Minor change in wording
20	18	Minor change in wording
22	19	Only first sentence used with minor changes in the geographical descriptions
23	19	Only second sentence used
48	36(a)	References to spent fuel and last two sentences added

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

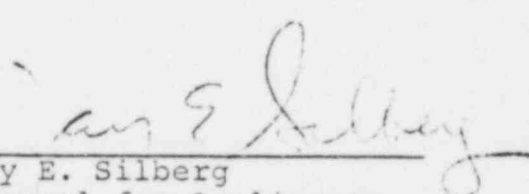
Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Petition for Leave to Intervene of Coalition for Safe Electric Power" has been served according to the attached Service List this 14th day of June, 1973.

By

  
Jay E. Silberg  
Counsel for Applicants

SERVICE LIST

By Hand Delivery

Mr. Frank W. Karas  
Chief, Public Proceedings  
Branch  
Office of the Secretary  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Atomic Safety and Licensing  
Appeal Board  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Atomic Safety and Licensing  
Board Panel  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Francis X. Davis, Esq.  
Office of General Counsel  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

John B. Farmakides, Esq.  
Atomic Safety and Licensing  
Board  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

Mr. Frederick J. Shon  
Atomic Safety and Licensing  
Board  
U.S. Atomic Energy Commission  
Washington, D.C. 20545

By Deposit in United States  
Mail

Mrs. Evelyn Stebbins  
Chairman  
Coalition for Safe Electric  
Power  
705 Elmwood Road  
Rocky River, Ohio 44116

Dr. Cadet H. Hand, Jr.  
Bodega Marine Laboratories  
University of California  
P.O. Box 247  
Bodega Bay, California 94923