UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

4/26/73

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)	)	

ANSWER OF THE TOLEDO EDISON COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY TO AMENDED PETITION TO INTERVENE OF COALITION FOR SAFE NUCLEAR POWER

I. INTRODUCTION

1. By letter dated February 2, 1973, Evelyn Stebbins, on behalf of the Coalition for Safe Nuclear Power (Coalition), transmitted "its list of contentions with respect to the forthcoming Environmental Hearing on the Davis-Besse Nuclear Power Plant". In their answer, The Toledo Edison Company and The Cleveland Electric Illuminating Company (Permittees) asked that the petition should be denied because it failed to satisfy the requirements of Section 2.714 of the Commission's Rules of Practice. Permittees pointed out, inter alia, that the petition did not set forth with particularity the facts pertaining to the Coalition's interest and the bases for its contentions. The AEC Regulatory Staff, in its response, also observed that the petition was deficient

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in failing to set forth the Coalition's interest, and objected to most of the Coalition's contentions.

2. The Atomic Safety and Licensing Board (Licensing Board) in its Memorandum and Order of March 30, 1973, p.3, found that "[t]he petition filed by Ms. Evelyn Stebbins fails to meet the requirements of Section 2.714 in substantial part". However, the Licensing Board permitted Petitioner to resubmit within twenty days, a petition which would conform to the requirements of Section 2.714 relating to the environmental matters covered by Appendix D to Part 50. On April 18, 1973, the Coalition filed an Amended Petition to Intervene.

3. The amended petition should be denied for failing to properly set forth the interest of the Coalition in this proceeding, failing to particularize and set forth the basis for its resubmitted contentions as required by 10 CFR Section 2.714.

II. THE AMENDED PETITION FAILS TO ADEQUATELY SET FORTH THE INTEREST OF THE COALITION IN THIS PROCEEDING.

4. Both Permittees and the Staff concluded that the Coalition's original petition failed to adequately set forth the Coalition's interest in this proceeding. One of the primary reasons that the Licensing Board permitted the Coalition to resubmit a petition in conformance with the requirements of Section 2.714 was therefore to enable the Coalition to make a proper showing of the Coalition's interest. The amended petition fails to accomplish this.

5. The Coalition's statement of its interest in this proceeding is set forth in the first two paragraphs of the Amended Petition. The Amended Petition, like the original, does not identify any of the "numerous conservation and environmentally oriented groups both incorporated and unincorporated, and concerned individuals". As the Atomic Safety and Licensing Appeal recently ruled with respect to another Coalition,

> At the very least, the petition should have identified a Coalition member who lives or conducts substantial activities in reasonable proximity to the site and whose interest may be affected by the proceeding.

Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109 at 5, fn. 2 (April 2, 1973). The only identified individual in the petition is Mrs. Stebbins, who lives in Rocky River, Ohio, a suburb of Cleveland, 71 miles from the Davis-Besse site. The address given for the Coalition is in Cleveland, even farther from the site. This is well beyond the zone of interests protected by the Atomic Energy Act. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-1 7, RAI-73-3 at 190 (March 29, 1973). The attempt in paragraph 1 of the Amended Petition to refer back to the record of the construction

permit proceeding* would evade the import of the Licensing Board's observation, p.4, that

> contrary to the import of the petitioner's February 2 letter, the fact that the Coalition was a party to a previous proceeding involving this power facility does not automatically qualify it as a party here.

Reliance upon a listing of member organizations made several years earlier in a prior proceeding may not be fully warranted in the case of an ad hoc, unincorporated group.

6. The restatement of the Coalition's interest set forth in the Amended Petition is even less specific than the description set forth in the original petition (second, unnumbered paragraph). Paragraph 2 of the Amended Petition states that

> by reason of its member organizations, [it] has a special conservational interest in the protection of the natural resources and marsh ecosystem of Western Lake Erie.

This kind of special organizational interest in a problem has been held by the Supreme Court to be insufficient to confer standing to intervene. Sierra Club v. Morton, 405 U.S. 727, 31 L.Ed.2d 636, 64[illegible] (1972).

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* Permittees also note that at the time of the Coalition's intervention in the Davis-Besse construction permit proceeding, the standards for a showing of interest under Section 2.714 were less stringent than under the present form of that rule. See 37 Fed. Reg. 15127 (July 28, 1972).

7. The Coalition then attempts to satisfy the "injury in fact" test established by Sierra Club v. Morton.

> They [the Coalition's member organizations] will suffer injury in fact to this [special conservation] interest from the operation of the Davis-Besse Nuclear Power Station by reason of the plant's anticipated radiological and non-radiological and water borne emissions and by reason of possible unanticipated releases of radiological emissions in excess of 10 CFR 20 limitations.

This attempt is clearly unsatisfactory since it relies upon an injury to a special organizational interest, an argument ruled out by Sierra Club v. Morton. The Coalition's statement of "injury in fact" is also inadequate in view of the failure to identify member organizations and to show how these organizations or their members might in fact be injured.* The Coalition's showing clearly provides no facts pertaining to its interest and equally clearly lacks the requisite particularity.

8. The Coalition has now twice failed to provide the showing of interest required by 10 CFR Section 2.714. Having had two attempts to file a petition properly setting forth its interest and having failed to do so, the petition should be dismissed. As stated by the Appeal Board in ALAB-109, supra, at 5,

> The course followed by the [Licensing]

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* The Coalition's assertion that it is "a private attorney general" is not sufficient to give it standing in the absence of an "injury in fact". Permittees know of no case where the allegation that a petitioner claims to represent the public interest is by itself an adequate demonstration of interest or sufficient to confer standing. See, e.g. Office of Communication of United Church of Christ v. FCC, 123 U.S.App.D.C. 328, 359 F.2d 994 (1966); Associated Industries v. Ickes, 134 F. 694 (2d Cir. 1943), vacated as moot 320 U.S. 707; U.S. v. International Telephone & Tel. Corp., 349 F. Supp. 22 (D. Conn. 1972), aff'd mem. sub nom. Nader v. U.S., 41 U.S.L.W. 3441

Continued

> Board - that of according the Coalition a reasonable opportunity ... to clarify its interest - was well within the bounds of its discretion. [Omitting citation]. The Coalition having failed to avail itself of that opportunity, we hold that it is not to be given status as an intervenor.

In denying another petitioner a third opportunity to submit a petition conforming to Section 2.714, the Appeal Board recognized that two chances were enough.

> There is an obvious public interest in this proceeding moving forward without the untoward delay which would be occasioned if petitioners were accorded still another chance to comply with Commission regulations.

ALAB-107, supra, RAI-73-3 at 192.

III. THE CONTENTIONS SET FORTH IN THE AMENDED PETITION DO NOT MEET THE TESTS OF SECTION 2.714 AND DO NOT JUSTIFY THE COALITION'S PARTICIPATION IN THE HEARING.

9. Independent of the Coalition's lack of a proper showing of interest, the petition should be dismissed for failing to set forth contentions which meet the requirements of 10 CFR Section 2.714, and for failing to set forth contentions which warrant participation in the hearing by the Coalition.

10. Initially, Permittees observe that each of the Coalition's contentions (paragraphs 3 - 9 of the Amended Petition) is based upon alleged inadequacies in the Regulatory Staff's Final Environmental Statement (FES) (issued March, 1973).

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* Continued from p. 5.

(February 20, 1973).

Certainly, such an allegation cannot overcome the clear dictates of Sierra Club v. Morton, supra.

In this context, it should be noted that the Coalition failed to submit any comments to the Commission on the draft Environmental Statement despite its explicit announcement that it would do so. See letter of Jerome S. Kalur, attorney for the Coalition, to L. Manning Muntzing, Director of Regulation, dated July 20, 1972. Had it submitted comments, they could have been dealt with in the FES. The Coalition should not be able to sit back, refuse to comment on the Draft Statement when it so clearly was aware of its opportunity to do so, and then claim that the FES is inadequate.

11. The Coalition's contentions may also be deficient in that they are not supported by an appropriate affidavit or verification, as required by 10 CFR Section 2.714(a). The Appeal Board has recently described the requirements for complying with this aspect of Section 2.714(a) by observing that the affidavit requirement would be met

> so long as the petition is verified by one or more persons who have direct, personal knowledge of the truth of those averments.

ALAB-107, supra, at 190. The "Affidavit in Support of Petition" is signed by Evelyn Stebbins, the Coalition's Chairman. There is no indication that she has the requisite educational background or experience which would permit her to speak to the truth of the substantive matters set forth in paragraphs 3 - 9.

Contention 1 (paragraph 3)

12. The Coalition's first contention (paragraph 3) claims that the FES improperly failed to consider "all alternatives to construction of this plant ... including but not limited to conservation of energy and underground siting". In view of the Licensing Board's direction for particularization, the Coalition cannot rely upon the open-ended phrase, "including but not limited to". The contention must therefore be limited to the cited alternatives. With respect to the two alternatives which the contention cites, as a matter of law neither need be considered in the FES. An FES need not discuss all alternatives; rather its consideration is limited to "those reasonably available". National Resources Defense Council v. Morton, __U.S.App.D.C.__, 458 F.2d 827, 834 (1972). There is no indication, nor would common sense indicate, that conservation of energy and underground siting are reasonable alternatives to a facility in as advanced state of completion as the Davis-Besse facility. See Section 4.4 of the FES. This is particularly true where, as here, the Coalition has already had an opportunity to demonstrate that "the environmental harm outweighs the economic cost of abandonment". Coalition for Safe Nuclear Power v. USAEC, __U.S.App.D.C.__, 463 F.2d 954, 956 (1972). Furthermore, such wide-ranging "alternatives" as conservation of energy are not appropriate for consideration in the environmental review of a single facility. National

Resources Defense Council v. Morton, supra, 458 F.2d at 835. Nor is it appropriate for long-term alternatives to be considered with respect to facilities needed to meet short-term needs. Id. at 837. To the extent that paragraph 1 of the Affidavit of Mrs. Stebbins is intended to support this contention, Permittees note that the Coalition has already sought to demonstrate that Applicants' advertising campaigns and rate structure were increasing demand. The Licensing Board found to the contrary during the hearing held on whether construction of the Davis-Besse facility should be suspended pending completion of AEC's NEPA review, a hearing held at the Coalition's behest. See Initial Decision, May 19, 1972, p.34. The Coalition should be barred from relitigating this issue by considerations of fairness and the doctrine of res judicata.

13. Because the matters set forth in the Coalition's first contention are not required to be presented in the FES, the contention cannot justify the Coalition's participation in an adjudicatory hearing. No hearing is needed for questions of law. Sun Oil Co. v. FPC, 256 F.2d 233, 240-41 (5th Cir.), cert. den. 358 U.S. 872 (1958); cf. FCC v. WJR, The Goodwill Station, Inc., 337 U.S. 265 (1949). Unless there are substantial and material questions of fact, there should not be a hearing. Hartford Communications Comm. v. FCC, __U.S.App.D.C.__, 467 F.2d 408 (1972); Stone v. FCC, __U.S.App.D.C.__, 466 F.2d 316 (1972); Citizens for Allegan

County, Inc. v. FPC, 134 U.S.App.D.C. 229, 414 F.2d 1125, 1128 (1969). The contention should therefore be dismissed on the pleadings.

Contention 2 (Paragraph 4)

14. The Coalition's second contention erroneously asserts that the FES omits any discussion of the environmental consequences of "Class 9" accidents. "Class 9" accidents are defined in the Commission's proposed Annex to Appendix D of 10 CFR Part 100, 36 Fed. Reg. 22851, 22852 (December 1, 1971) as follows:

> The occurrences in Class 9 involve sequences of postulated successive failures more severe than those postulated for the design basis for protective systems and engineered safety features. Their consequences could be severe. However, the probability of their occurrence is so small that their environmental risk is extremely low. Defense in depth (multiple physical barriers), quality assurance for design, manufacture, and operation, continued surveillance and testing, and conservative design are all applied to provide and maintain the required high degree of assurance that potential accidents in this class are, and will remain, sufficiently remote in probability that the environmental risk is extremely low. For these reasons, it is not necessary to discuss such events in applicants' Environmental Reports.

In its radiological safety analysis of a nuclear facility, the AEC uses certain highly improbable occurrences, together

with highly conservative assumptions, as the design-basis events for establishing the performance requirements of the reactor's engineered safety features. "Class 9" accidents are hypothetical events or combinations of events which go beyond even the AEC's highly unlikely design-basis events.

15. Consideration of the environmental risk of "Class 9" accidents has not been ignored by the Regulatory Staff as asserted by the Coalition. The Regulatory Staff reported its consideration at page 7-3 of the FES. The Regulatory Staff there reported that the postulated occurrences in "Class 9" could have severe consequences but that, owing to their small probability of occurrence, the environmental risk is extremely low. The extent and nature of the consideration is in accord with the Commission's interim guidance.

16. The Commission specifically directed that "Class 9" accidents need not be addressed in the FES. On December 1, 1971, the Commission published the proposed Annex to 10 CFR Part 50, Appendix D, at 36 Fed. Reg. 22851, "Consideration of Accidents in Implementation of the National Environmental Policy Act of 1969". As stated in the Federal Register notice at 22851, the Annex was directed by the Commission to be used as "interim guidance until such time as the Commission takes further action on them". The Federal Register notice also specifically stated, contrary to the Coalition's allegation, that the Annex "would also be applicable to AEC draft and

final Detailed Statements". Id. The interim guidance excluded from consideration in the Commission's environmental statements occurrences in "Class 9" i.e., occurrences involving "sequences of postulated successive failures more severe than those postulated for the design basis for protective systems and engineered safety features". The Commission's interim guidance acknowledged that the consequences of "Class 9" occurrences "could be severe" but noted that "the probability of their occurrence is so small that their environmental risk is extremely low".

17. The Commission's directive in Annex A with respect to "Class 9" accidents is precisely in accord with the subsequent ruling of the U.S. Court of Appeals for the District of Columbia Circuit in Natural Resources Defense Council, Inc. v. Morton, supra, 458 F.2d at 834, which held that the scope of an agency's NEPA responsibilities is subject to "a rule of reason". Environmental Defense Fund, Inc. v. Corps of Engineers, 470 F.2d 289, 297 (8th Cir. 1972). The reasonableness test means that environmental impacts which are remote or unlikely need not be discussed.

> Thus a Section 102 statement must thoroughly discuss the significant aspects of the probable environmental impact of the proposed agency action. By definition, this excludes the necessity for discussing either insignificant matters, such as those without import, or remote effects, such as mere possibilities unlikely to occur as a result of the proposed

> activity. This criterion not only adheres to the CEQ guidelines but comports with a rule of reason; it does not, however, encompass the necessity for disclosing "all known possible environmental consequences".

Environmental Defense Fund, Inc. v. Corps of Engineers, 348 F. Supp. 916, 933 (N.D. Miss. 1972) (emphasis added). See also, Iowa Citizens for Environmental Quality v. Volpe, __F. Supp.__, 4 ERC 1755, 1758 (S.D. Iowa 1972).

18. In any event, it is clear that consideration of "Class 9" accidents, and indeed any radiological accidents, is not required in the FES. NEPA was not intended to require a duplication in another context of AEC's existing subject matter responsibility, i.e., radiological safety. Instead, NEPA was intended to require AEC to consider those environmental matters not already within its jurisdiction. The opinion in Calvert Cliffs' Coordinating Committee, Inc. v. USAEC, 146 U.S.App.D.C. 33, 449 F.2d 1109, 1112, fn. 4 (1971) recognized this dichotomy:

> Before the enactment of NEPA, the Commission did recognize its separate statutory mandate to consider the specific radiological hazards caused by its actions; but it argued that it could not consider broader environmental impacts.

NEPA required AEC to consider these "broader environmental impacts". It did not change AEC's "separate statutory mandate to consider the specific radiological hazards". Just as NEPA does not change the way in which the Federal

Aviation Administration evaluates the airworthiness of new airplanes, so too NEPA does not change the way in which AEC determines the radiological safety of nuclear reactors. Thus, NEPA cannot be used, as the Coalition is so obviously attempting to use it, to require consideration of the improbable "Class 9" accidents above and beyond the degree to which they are considered by AEC in its radiological health and safety review.

19. The Coalition's claim that the FES should consider the "[e]nvironmental consequences of a melt down of the fuel core, total failure of the emergency core coolant system, breach of the containment vessel and emission of over 75% of gaseous radioactive wastes" has already been resolved adversely to the Coalition. At the construction permit proceeding, the Coalition made the argument that this same chain of events had been erroneously excluded from the analyses of the Staff and the Permittees. The Licensing Board found that such a chain of events was not a credible event. As stated in paragraph 26 of the Initial Decision, March 23, 1971:

> The Coalition contended that the analyses by the Applicant and the Staff are inadequate because they did not include the consequences of an uncontrolled melt down of the nuclear fuel. The Coalition contended there is no reasonable assurance a melt down can be avoided, but offered no direct evidence which supported the contention. (Tr. pp. 820-33, 1659-60) Evidence introduced by

> Applicants and the Staff, however, indicated a core melt down is not a "credible event" as defined by the regulations, by virtue of the incorporation into the station design of redundant systems of engineered safety features to cool the core in the event of a loss-of-coolant accident. These safety features are designed to assure the integrity of the containment system for mitigating the release of fission products to the atmosphere. (Tr. pp. 661-76, 702-3, 862-3, 884-903)

There is no reason why the Coalition should be able to relitigate this issue.

20. The second contention also alleges that the Commission's finding in the proposed Annex to Appendix D of the extremely low probability of Class 9 accidents is "purely speculative and totally lacking in any evidentiary basis". The contention asserts that this is demonstrated by the fact that the Commission has undertaken a study by Dr. Norman Rasmussen to make a probability assessment of major accidents. As a matter of law, even if Class 9 accidents were required to be considered in the FES, an agency's undertaking of additional studies subsequent to the preparation of an environmental impact statement does not invalidate that statement. Environmental Defense Fund, Inc. v. Corps of Engineers, supra, 348 F. Supp. at 931. If environmental statements were to be invalidated because an agency undertook subsequent studies, either the agency would be dissuaded from doing further research or an environmental statement could never be acceptable. For this reason, the courts have held that

certainty of precise environmental consequences is not needed. City of New York v. U.S., 344 F. Supp. 929, 939 (E.D.N.Y. 1972) (3 judge ct.) (Friendly, J.). Similarly, it is not required that complete information on possible environmental impacts be available before a project may be authorized. Jicarilla Apache Tribe v. Morton, __F.2d__, 4 ERC 1933, 1936 (9th Cir. 1973).

21. Nothing in the contention itself supports the Coalition's assertion that the Commission's conclusion as to the extremely low probability of Class 9 accidents is "purely speculative and totally lacking in any evidentiary basis".* The quotation from the Commission's August 4, 1972, letter to the Joint Committee on Atomic Energy merely states that:

> [t]he present state of knowledge probably will not permit a complete analysis of low-probability accidents ...

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* The basis for the Commission's conclusion as to the extremely low probability of Class 9 accidents is set forth in the Draft Environmental Statement Concerning Proposed Rule Making Action: Acceptance Criteria of Emergency Core Cooling Systems (December, 1972), p.8:

> The conclusion that accidents in this category are sufficiently low in probability that their impact on the environment need not be considered is based on the technical judgment of the AEC staff rather than on statistical methods. This judgment has been the result of continuous studies by the staff, the nuclear industry, AEC contractors, the ACRS, and others in this country and abroad, especially over the last 5 years.

The Coalition offers no citation to support its claim that "the probability of a Class 9 accident is in the range of 1×10^{-2} per reactor per year to 1×10^{-3} per reactor per year". The affirmation by Mrs. Stebbins that this, and other technical claims in the petition, "is true to the best of my knowledge" cannot constitute compliance with Section 2.714 where there is no indication that she has the requisite technical knowledge.

22. Since Class 9 accidents need not be discussed in the FES, and for the other reasons set forth above, this contention cannot justify the Coalition's participation in an adjudicatory hearing. See paragraph 13 above.

Contention 3 (Paragraph 5)

23. This somewhat confusing contention seems to allege that the FES did not consider a loss-of-coolant accident (LOCA), followed by a breach of the containment, releasing radioactive materials "which could contaminate Lake Erie as a public water supply". The FES does, of course, consider the environmental consequences of a postulated LOCA (as well as other accidents) and concludes, p.7-7, that "the environmental risks due to postulated radiological accidents are exceedingly small".

24. The contention provides no basis whatever for the claim that "it is not at all impossible to breach the containment vessels". It should thus be dismissed for failing to meet the requirements of Section 2.714. In fact, the

issue of whether the containment vessel for the Davis-Besse facility could be breached in the unlikely event of a LOCA was litigated in the Davis-Besse construction permit proceeding, a proceeding in which the Coalition was a party. The Initial Decision of the Licensing Board, issued March 23, 1971, para. 22, found:

> The reactor containment, consisting of a free standing steel containment vessel and a reinforced concrete shield building, completely encloses the reactor and the primary coolant system and is designed to withstand the peak pressure which could result in the unlikely event of a loss-of-coolant accident.

25. NEPA does not require consideration of every environmental impact which could be postulated. NEPA is subject to "a rule of reason". See cases cited in paragraph 17 above. The contention itself demonstrates why the FES need not deal with the chain of events which is postulated. Thus, the basis for the entire contention is the statement that "it is not at all impossible to breach the containment vessels". Even on its face, this does not constitute the kind of reasonable or probable event which an environmental review must consider. As is the case with the previous contentions, this contention provides no basis for the Coalition's participation in an adjudicatory hearing. See paragraph 13 above.

Contention 4 (Paragraph 6)

26. The Coalition's fourth contention asserts that the FES does not properly evaluate "all possible storm damage and the environmental consequences thereof, such as having the cooling tower lost due to storms, flooding of the area, or damage to buildings". It is difficult to understand the relationship between the Davis-Besse facility and "all possible storm damage". Is the Coalition claiming that a storm could knock down tne cooling tower and that this is a probable environmental impact which should have been evaluated? Or does the contention claim that continued construction or operation of the facility will result in "flooding of the area"? Or is the Coalition alleging that a storm could cause a nuclear accident at the plant? The contention sets forth no basis to support any of these possible interpretations. It is one of those "vague generalized assertions ... [which] are not appropriate for the adjudicatory process". Commission Memorandum and Order, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, RAI-73-3 at 174 (March 30, 1973). Another reason why this contention should be rejected is that it deals with the kinds of improbable, highly unusual events which, while perhaps appropriately considered in the radiological health and safety review, need not be dealt with under NEPA. See paragraph 17 above. Permittees would also note that the question of storms and flooding was dealt with at the construction permit proceeding.

> The station design takes into account site geology, meteorology, hydrology and ground water conditions and the possibility of tornadoes, floods and earthquakes.
>
> Severe storms were considered relative to the structural adequacy of the station.

Initial Decision (March 23, 1971), paras. 13, 18.

27. This contention provides no basis for the Coalition's participation in an adjudicatory hearing. See paragraph 13 above.

Contention 5 (Paragraph 7)

28. This contention claims that the FES should have considered "the effect of using Plutonium as a fuel in the Davis-Besse Reactor instead of uranium". Since the contention does not allege, let alone show any basis for the claim, that the Davis-Besse facility will substitute plutonium for uranium, the contention should be dismissed as inapplicable to this proceeding.

29. The contention is also improper because the asserted environmental impact to which the contention may be aimed arises from "large scale production of plutonium fuel rods [in] special plants, expected to go into commercial operation in 1977". Consideration of the environmental impact of these facilities, involving a different aspect of the uranium fuel cycle than that involved in the licensing of the Davis-Besse facility, would clearly be outside the scope of this proceeding. Vermont Yankee Nuclear Power Corp. (Vermont

Yankee Nuclear Power Station), ALAB-56, WASH-1218 395 (June 6, 1972); Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-60, WASH-1218 (Supp. 1) 459 (July 19, 1972); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-99, RAI-73-2 53 (February 1, 1973).

Contention 6 (Paragraph 8)

30. Paragraph 8 is difficult to understand. It claims that Applicants' "proposed Environmental Monitoring System" violates NEPA because the AEC Regulatory Staff has recommended that the Davis-Besse construction permit be continued "without the requisite prior knowledge needed to perform the substantive balancing required by [NEPA]". Neither part of the contention would seem to be related to the other. The contention in no way indicates how Permittees' "proposed Environmental Monitoring System" is inadequate. By referring to the proposed monitoring program, the contention is clearly not intended to question the adequacy of Permittees' on-going preoperational monitoring. Thus, any alleged inadequacy of a future monitoring program can have no possible effect on the base-line data on which the Staff based its environmental analysis. Furthermore, the contention fails to indicate what "requisite prior knowledge" the Staff may have overlooked in preparing the FES. Section 2.7 of the FES fully describes the ecology of the site area. The contention is one of those "vague generalized assertions" which should be rejected. Commission Memorandum and Order,

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), supra. The contention does not even put other parties on notice as to the nature of the allegation; it certainly fails to set forth with particularity the facts showing its basis.

Contention 7 (Paragraph 9)

31. This contention claims that Sections 5.9.1 through 5.9.5 of the FES "fail to evaluate the environmental consequences of a transportation accident causing the release of radiation from spent fuel elements". This statement is correct. However, the Coalition has failed to refer to Section 7.2 of the FES, which does consider the environmental consequences of the transportation accident postulated by the Coalition, as well as other transportation accidents. he contention fails to specify any factor which the FES did not consider and therefore presents no factual issue appropriate for an adjudicatory hearing. See paragraph 18 above.

32. Having had two opportunities to submit appropriate contentions and having failed to do so, the petition should be denied. ALAB-107, supra, RAI-73-3 at 192; ALAB-109, supra, at 5.

CONCLUSION

33. The Coalition has now had two opportunities to submit a suitable petition to intervene. The Licensing Board in its March 30, 1973, order found the first attempt unsatis-

factory. As shown above, the second attempt also fails even to approach the levels required by AEC's Rules of Practice. The Coalition cannot rely upon its unfamiliarity with the requirements of AEC's regulations or its lack of knowledge of the facts relating to the Davis-Besse facility for its failure to file an adequate petition. The Coalition was a party to the AEC construction permit hearing for the Davis-Besse facility, it sought review of the Initial Decision in that proceeding before the U.S. Court of Appeals for the D.C. circuit on the grounds that it was denied the opportunity to contest the "non-radiological environmental effects of the Davis-Besse Nuclear Power Plant pursuant to 10 CFR Section 50 Appendix D" (Petition for Review, May 21, 1971), it was a party to the subsequent AEC "Section E" Proceedings, and it was a party in the proceedings before the Ohio Water Pollution Control Board on the Davis-Besse facility (the "State of Ohio hearing" referred to in paragraph 5 of the Amended Petition to Intervene). The Coalition has had two chances to submit a suitable petition and has failed to do so. The petition to intervene should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By _____
Jay E. Silberg
Steven L. Parker

Dated: April 26, 1973

UNITED STATES OF AMERICA

ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of The Toledo Edison Company and The Cleveland Electric Illuminating Company to Amended Petition to Intervene of Coalition for Safe Nuclear Power" were served upon the following, by deposit in the United States mail, postage prepaid, this 26th day of April, 1973:

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By _____
Jay E. Silberg

Dated: April 26, 1973