UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
THE TOLEDO EDISON COMPANY and	)	NRC Docket Nos. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING	)	50-500A
COMPANY	)	50-501A
(Davis-Besse Nuclear Power Station,	)	
Units 1, 2 & 3)	)	
	)	
THE CLEVELAND ELECTRIC ILLUMINATING	)	NRC Docket Nos. 50-440A
COMPANY, ET AL.	)	50-441A
(Perry Nuclear Power Plant,	)	
Units 1 & 2)	)	

STAFF'S APPELLATE BRIEF IN SUPPORT OF THE LICENSING BOARD'S CONCLUSION THAT SUSPENSION OF THE LAW FIRM OF SQUIRE, SANDERS, AND DEMPSEY FROM FURTHER PARTICIPATION IN THIS PROCEEDING IS NECESSARY AND REQUIRED

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I. INTRODUCTION

On November 20, 1975, the City of Cleveland (City) moved the presiding Atomic Safety and Licensing Board (Licensing Board) to disqualify the law firm of Squire, Sanders & Dempsey (SS & D), including its Washington office, Cox, Langford & Brown, from participating in this proceeding as counsel for CEI or any other applicant. After oral argument on the City's original disqualification motion, the Licensing Board, on January 20, 1976, issued its "Memorandum and Order of the Board Suspending Counsel from Further Participation as Attorney in these Proceedings" (Memorandum and Order), in which it (1) preferred charges against SS & D, stated the grounds therefor, and in accordance with 10 CFR §2.713(c) referred the charges to another Atomic Safety and Licensing Board (Special Board); and (2) granted the suspension as requested by the City, but stayed the effectiveness of its order of suspension until a report was received from the Special Board. Mr. Smith dissented from

the Licensing Board's Memorandum and Order and issued a "Dissenting Memorandum."

On February 3, 1976, the Special Board heard oral argument from the City and SS & D. The Special Board, on February 25, 1976, issued its "Board Ruling in Special §2.713 Proceeding" (Special Board's Ruling), in which: (1) it found no evidence in the record of unethical conduct by SS & D; (2) it held that CEI should be permitted to retain the legal counsel of its choice in this proceeding; and (3) it dismissed the charges preferred against SS & D by the Board and vacated the Board's suspension order. 1/

By motion dated March 1, 1976, the City moved the Licensing Board to make effective its suspension order of January 20, 1976, or, in the alternative, to certify the issue to the Atomic Safety and Licensing Appeal Board. SS & D filed a Memorandum opposing the City's motion. On March 15, 1976, the Staff filed an answer to the City's motion in which it took the position that a rule of reason should be applied to 10 CFR §2.713(c) and that required the Special Board's ruling on suspension to be accorded finality at the Licensing Board level. The Staff stated, however, that it did not object to the City's alternative motion to certify the suspension issue to the Appeal Board.

By order of March 19, 1976, the Licensing Board determined that, pursuant to Rule 2.713(c), suspension of SS & D is "necessary and required," but stayed the suspension order so that the Appeal Board could consider four

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1/ Mr. Luton issued a separate concurring "Opinion".

questions certified to it by the Licensing Board. Those four questions are:

(1) Whether the jurisdiction of the NRC under Rule 2.713 extends to situations covering attorney conduct outside of the NRC forum which has an impact on representation within that forum.

(2) Whether the Special Board has the ultimate authority to put into effect or to vacate an order of suspension under Rule 2.713.

(3) Whether a showing of either actual injury or specific exchange of information of a confidential nature is required to enforce a finding of attorney misconduct based upon the exchange of some information supplied by one client of an attorney to another client of that attorney whose interests are adverse to the original client.

(4) Assuming the answer to question two is negative and three is affirmative, whether in the circumstances now before us the order of disqualification may be upheld.

The Appeal Board accepted the certification of the above questions on March 19, 1976, and further directed the certification of the following three additional questions:

(1) When the City of Cleveland requested the firm of Squire, Sanders, and Dempsey to represent it respecting the issuance of municipal bonds to finance construction of a new City power plant, what explanations were given to the City by the firm about potential conflicts of interest which might arise because the firm also represented its competitor, the Cleveland Electric Illuminating Company?

(2) Precisely when, by whom, and to whom were those representations made and what significance attaches to them?

(3) What (if any) bearing does the fact that the City's lawyers retained the firm have on the application of the Canon to this case and, in particular, did it affect the firm's obligation to "explain fully to each client the implications of the common representation and (to) accept or continue employment only if the clients consent"?

II. THE FACTS

A. BACKGROUND

Squire, Sanders and Dempsey (SS & D) has openly and continuously represented the Cleveland Electric Illuminating Company (CEI) as outside general counsel for approximately 65 years. The relationship is such that some of the same people who are senior partners of SS & D are also directors of CEI. 2/

SS & D, during the same period, has also represented the City, primarily as bond counsel. Having one of the largest, if not the largest, municipal law departments in the United States, SS & D was often employed by the City because of its expertise in municipal bond law. In contrast to SS & D's general and continuing representation of CEI, SS & D's representation of the City was intermittent and almost always dealt with a particular bond ordinance or issue.

2/ E.g., John Lansdale and Ralph Besse.

With this background in mind, we examine the factual situations as developed in the record which form the basis of the Licensing Board's suspension of SS & D.

B. THE "LITTLE HOOVER COMMISSION" 3/

In 1965, the City of Cleveland's Mayor Locher and the City's Council President Stanton instituted a "Little Hoover Commission" to conduct a comprehensive study of all City operations, including the Municipal Electric Light Plant (MELP). Mr. Carl White was one of the leading analysts in charge of preparing a report on the financial aspects of MELP. In 1966, as part of the investigation of MELP, Mr. White called John Lansdale, a senior partner of SS & D and a director of CEI, concerning opinions SS & D had given to CEI regarding the terms of the trust indenture under which the revenue bonds of MELP are issued. Mr. White and his associate then met with Mr. Lansdale and Mr. Brueckel, the SS & D partner who counseled the City with respect to its bond work, to discuss the matter. In addition, Lansdale and Brueckel reviewed a February 21, 1966 memorandum written by Mr. White concerning the use of MELP funds to alleviate the critical situation of the City's general fund. The memorandum contained information concerning MELP's cost of service, rate of return, and sales revenues. This situation was cited by the Licensing Board as an instance of specific cross fertilization within SS & D of information jointly affecting CEI and the City concerning a matter in which the interests of CEI and the City were or could have been opposed. 4/

3/ See the October 27, 1966 letter from John Lansdale to Mr. Donald Hauser and the October 26, 1966 Memorandum to File (Re: MELP Rates) by John Lansdale, both attached as Exhibit E to the City of Cleveland's Brief In Support Of Motion To Disqualify And Declare Counsel Ineligible To Further Participate In These Proceedings, dated December 1, 1975 (hereinafter cited as City's Brief).

4/ Memorandum and Order, p. 9.

C. THE GIBBON MEMORANDUM [5/]

On February 18, 1965, John Lansdale wrote a letter to Ralph M. Besse, then president of CEI, concerning CEI's proposed interconnection between CEI and MELP. Enclosed with the letter was a memorandum written by Ralph Gibbon, head of SS & D's municipal law department who served the City in connection with bond financing. In the memorandum, Mr. Gibbon stated that the heart of CEI's proposal to the City was that MELP increase its rates to private customers, thus permitting a reduction in the payments to MELP from the City's general fund, and to assist the City in this regard, CEI would sell power to MELP under an appropriate rate schedule. The significance of these facts is that they support a finding of a direct relationship between CEI's proposal that MELP increase its rates to private customers and MELP's ability to compete with CEI because of MELP's lower rates. [6/]

D. THE 1972-73 BOND ISSUE [7/]

In 1971 or 1972, Howard Holton of the City's Department of Financing approached John B. Brueckel of SS & D's municipal law department and requested SS & D to handle an issue of notes under a 1971 bond ordinance. Because SS & D represented CEI as outside general counsel, and CEI was in competition with the City, SS & D advised the City that they were reluctant to continue handling MELP financing matters. As a result, the City went to the New York firm of

5/ See the February 18, 1965, letter from John Lansdale to Ralph M. Besse, President, The Cleveland Electric Illuminating Company, and the enclosed Memorandum by R.H. Gibbon for Mr. Randell Luke, Legal Department, Cleveland Electric Illuminating Company, both attached as Exhibit G to the City's Brief.

6/ See Memorandum and Order, p. 11.

7/ See the Affidavits of Howard J. Holton, Daniel J. O'Loughlin and John B. Brueckel attached to the Answer Brief of John Lansdale, Jr. Opposing Motion To Disqualify and Declare Counsel Ineligible To Further Participate In These Proceedings, dated December 12, 1975.

Wood, King, Dawson, Love and Sabatine. Then in June, 1972, Richard D. Hollington, then Law Director of the City, telephoned Mr. O'Loughlin of SS & D's municipal law department and stated that the City had decided not to further retain the Wood firm. Mr. Hollington further stated that because of the existing controversies between CEI and the City, 8/ the City would prefer not to retain SS & D for MELP financing. In response to a request from Mr. Hollington, Mr. O'Loughlin recommended two other law firms in Ohio that could handle the City's bond work. Of the two firms recommended by Mr. O'Loughlin, the City contacted one. That firm, Bricker, Evatt, Barton and Eckler of Columbus, Ohio, informed the City that it was unable to do the work requested by the City. Hollington then asked O'Loughlin if SS & D would do the bond work. O'Loughlin stated that he believed SS & D would accept the employment, but because of the existing controversy between CEI and the City, he would like to have the City's Director of Utilities, Raymond Kudukis, request SS & D employment in writing. After receiving a letter from Mr. Hollington requesting SS & D to represent the City and stating that such request was with the concurrence of Mr. Kudukis, and after obtaining the consent of CEI to SS & D's representing the City as bond counsel, SS & D agreed to represent the City as bond counsel for the proposed financing of MELP. Thereafter, John B. Brueckel of SS & D had the primary responsibility for drafting the $9.8 million bond ordinance for the improvement of MELP and the retirement of indebtedness incurred pursuant to an earlier bond ordinance.

8/ CEI and the City were engaged in litigation before the FPC, and the City had petitioned to intervene in this proceeding on July 6, 1971.

The City of Cleveland has charged that SS & D, while acting as bond counsel for the City, undermined City Council consideration of a proposed bond ordinance which would have made the bonds issued thereunder more saleable, and instead supported an amendment presented by Mr. Hauser, a general attorney of CEI, which allegedly made the bonds less saleable. 9/ The City has further charged that Mr. Brueckel may have supplied other SS & D partners who represented CEI with information about the City which he learned in connection with his bond representation. 10/ These charges demonstrate the significance of the situation surrounding the 1972-73 bond issue as it relates to the suspension issue and the issues in this proceeding.

E. THE BRUECKEL TO LANSDALE MEMORANDUM OF MAY 21, 1974 11/

On June 17, 1974, John Lansdale sent a letter to Donald Hauser, a general attorney for CEI, with which was enclosed a memorandum of May 21, 1974 from Brueckel to Lansdale. Mr. Lansdale stated in the letter that he spoke with Mr. Brueckel before Brueckel wrote the memorandum, and also stated that Mr. O'Loughlin concurred in the memorandum. The memorandum, a copy of which was sent to Mr. O'Loughlin, concerned the proposed agreement between the City and CEI for the supply to the City by CEI of nuclear generated electricity and the desire of CEI to emphasize MELP, rather than the City, in that proposed agreement as much as possible. The Licensing Board found that these two documents "are crucial documents in that in and of themselves they demonstrate an abuse of the Firm's

9/ See Memorandum and Order, p. 12.

10/ Id.

11/ See the June 17, 1974, letter from John Lansdale to Mr. Donald H. Hauser and the May 21, 1974, Memorandum from J.B. Brueckel to John Lansdale, attached as Exhibits A and B, respectively, to the Licensing Board's Memorandum and Order, dated January 20, 1976.

client relationship with the City and they contradict the implications if not the direct language of the Lansdale and Brueckel Affidavits." 12/ The Licensing Board further stated that the Brueckel Memorandum made it clear "that there is a direct nexus between these proceedings and the information being exchanged in that the agreement specifically contemplates supply of nuclear power which would have to be from either the Davis-Besse or Perry units." 13/

The factual situations summarized above form the basis of the Licensing Board's suspension of SS & D from further participation as counsel in this proceeding and are a part of the established record on the disqualification issue.

12/ Memorandum and Order, p. 16.

13/ Id. at 16-17.

III. THE LICENSING BOARD'S GROUNDS FOR DISQUALIFICATION

The Licensing Board characterized the basis of the City's motion to disqualify SS & D as "an asserted conflict of interest arising from the Firm's prior dual representation of CEI and the City and its current representation of CEI in these proceedings."[14/] Based on its consideration of the record on the disqualification issue as it existed at the time the Board issued its Memorandum and Order, the Board concluded that it was required to prefer charges against SS & D for suspension and disqualification as requested by the City. The Board stated six grounds for suspension which are summarized as follows:

(1) Since at least 1965 or 1966, there has been cross-fertilization of information concerning MELP financing within the firm of SS & D, specifically between bond counsel who represented the City and members of the firm who represented CEI.

(2) SS & D's representation of the City in connection with the 1972-73 bond issue gave rise to a potential conflict of interest in the event that information concerning the bond counsel advice became relevant to a later controversy between the City and CEI. This potential conflict was known to SS & D when it agreed to represent the City. SS & D should have realized that absent an express waiver by the City, SS & D could possibly be precluded from representing CEI in a later controversy in which that information concerning the bond counsel advice was relevant.

14/ Memorandum and Order, p. 1.

(3) SS & D failed to fully disclose to the City the possible future conflict. The City did not consent that SS & D represent CEI and not the City in the event of such a conflict.

(4) There was an actual transmittal of information relating to SS & D's advice to the City concerning the 1972-73 bond financing to attorneys in the firm representing interests of CEI adverse to the City, specifically, the Lansdale letter to Hauser of June 17, 1974, and the enclosed Brueckel memorandum to Lansdale of May 21, 1974.

(5) CEI introduced into these proceedings the issue of the City's financial position.

(6) Ethical Consideration 5-16 [15/] is applicable to the present situation and it requires suspension of SS & D in accordance with 10 CFR §2.713(c)(2).

15/ Ethical Consideration 5-16 states:

> In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires. Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.

IV. ARGUMENT

A. THE JURISDICTION OF THE NRC UNDER RULE 2.713 EXTENDS TO SITUATIONS COVERING ATTORNEY CONDUCT OUTSIDE OF THE NRC FORUM WHICH HAS AN IMPACT ON REPRESENTATION WITHIN THAT FORUM

The Atomic Energy Act of 1954, as amended, authorizes the Nuclear Regulatory Commission[16/] (Commission) to "prescribe such regulations or orders as it may deem necessary ... to govern any activity authorized pursuant to this Act...."[17/] and to "make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the purposes of this Act."[18/] Pursuant to that rulemaking authority, the Commission promulgated section 2.713 of its Rules of Practice,[19/] which, in its entirety, provides:

> (a) Representation. A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. An attorney appearing in a representative capacity shall file with the Commission a written notice of appearance which shall state his name, address, and telephone number; the basis of his eligibility; and the name and address of the person on whose behalf he appears.
>
> (b) Standards of conduct. An attorney shall conform to the standards of conduct required in the courts of the United States.
>
> (c) Suspension of attorneys. A presiding officer may, by order, suspend or bar any person from participation as an attorney in a proceeding if the presiding officer finds that such person:

16/ See the Energy Reorganization Act of 1974 for the transfer of functions and powers of the Atomic Energy Commission to the Nuclear Regulatory Commission.

17/ §161i(3), 42 U.S.C. §2201(i)(3).

18/ §161p, 42 U.S.C. §2201(p).

19/ 10 C.F.R. §2.713.

> (1) Is not an attorney at law in good standing admitted to practice before any court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States;
>
> (2) Has failed to conform to the standards of conduct required in the courts of the United States;
>
> (3) Is lacking in character or professional integrity;
>
> (4) Engages in dilatory tactics or disorderly or contemptuous conduct; or
>
> (5) Displays toward the Commission or any of its presiding officers conduct which, if displayed toward any court of the United States, would be cause for censure, suspension, or disbarment.
>
> Any such order shall state the grounds on which it is based. Before any person is suspended or barred from participation as an attorney in a proceeding, charges shall be preferred by the presiding officer against such person and he shall be afforded an opportunity to be heard thereon before another presiding officer.

In promulgating the above rule the Commission acted within the authority set forth in the Act. In addition, such action is consistent with numerous decisions dealing with similar actions by other regulatory agencies. For example, in Goldsmith v. U.S. Board of Tax Appeals, [20/] Goldsmith, a certified public accountant, applied to the U.S. Board of Tax Appeals (Board) for enrollment as an attorney with the right to practice before it on behalf of taxpayers. The Board's rules made both attorneys at law and certified public accountants eligible for admission to practice before it. Goldsmith's application was denied, because of prior improper conduct. The issue before the

20/ 270 U.S. 117 (1926).

Supreme Court was whether the Board of Tax Appeals had the power to adopt rules of practice which would limit those who appear before it to persons whom the Board deemed qualified to represent taxpayers. The Court affirmed the Board's determination that the power to limit those persons who represent others as attorneys to persons of proper character and qualification is so necessary and usual that the mere authority to prescribe the procedure in accordance with which the Board's business shall be conducted inherently included as a part of that procedure rules of practice for attorneys. 21/

In determining whether an attorney should be disciplined, agencies have relied upon standards set forth in the American Bar Association's Code of Professional Responsibility. Thus, in Herman v. Dulles, 22/ the Court of Appeals affirmed action taken by the International Claims Commission of the United States in revoking the right of attorney to practice before it on the ground that he "had violated certain canons of ethics of the American Bar Association." 23/ The Court of Appeals held that "[a]n administrative agency that has general authority to prescribe its rules of procedure may set standards for determining who may practice before it." 24/ The court explicitly upheld the power of an agency to regulate practice at its bar and suspend an attorney who "has failed to conform to recognized standards of professional conduct". 25/

21/ Id. at 120-22.
22/ 205 F.2d 715 (D.C. Cir. 1953).
23/ Id. at 716.
24/ Id.
25/ See also Schwebel v. Orrick, 153 F. Supp. 701 (D.D.C. 1957), where the court held that an agency has "implied authority...to take disciplinary action against attorneys found guilty of unethical or improper professional conduct..." Id. at 704 (footnote omitted). At least one federal agency has suspended the right of an attorney to practice before it based on its conclusion that the attorney "had engaged five years earlier in purportedly unethical and imporper conduct unrelated to Commission practice." Kivitz v. Securities and Exchange Commission, 475 F.2d 956, 958 (D.C. Cir. 1973). The SEC's order of suspension was reversed on other grounds by the Court of Appeals. Id at 962.

The above cases clearly establish that the action taken by the Licensing Board is within the authority of the Commission to "suspend or bar any person from participation as an attorney in a proceeding" [26/] for failing to conform to section 2.713 of the Rules of Practice. First of all, the cases support the position that is is an agency's lawful and legitimate business to set standards of conduct for persons practicing before it, and to suspend any person from practice before the agency if he fails to conform to those standards. There is always a nexus between an attorney's failure to conform to this Commission's standards of conduct for practice before this Commission and the proceeding in which that attorney is participating.

Secondly, the standards and conditions for suspension contained in section 2.713 of the Commission's Rules of Practice, when compared with the standards considered by the courts as sufficient to warrant an agency's suspension of a person from practicing before it, [27/] are unambiguous, precise, and specific.

Finally, there is no authority for the proposition expressed by the Special Board that the Commission's authority, or the language of section 2.713 itself, is limited to suspending an attorney only for conduct occurring in the presence of a Board, or which, at least, is substantially and directly related to a matter before the Board. In addition to the case law being to the contrary, the specific language of the rule makes it clear that the rule places no such limitation on suspension. Section 2.713(b) requires an attorney to "conform to the standards of conduct required in the courts of the United States." The standards of conduct required in most, if not all, federal courts require adherence to the

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26/ 10 C.F.R. §2.713(c).
27/ See the standards of conduct discussed in the cases supra.

American Bar Association's Code of Professional Responsibility. [28] Adherence to that Code is undisputably not limited to conduct in the presence of the court. Consequently, by virtue of section 2.713(c)(2), an attorney can be suspended from participating in a proceeding of this Commission for failing to conform to the standards of conduct set forth in the ABA's Code of Professional Responsibility.

Furthermore, section 2.713(c) [29] deals specifically with conduct not occurring in the presence of the Board, since in addition to providing for suspension of an attorney for engaging in "dilatory tactics or disorderly or contemptuous conduct" [30] or for displaying "toward the Commission or any of its presiding officers conduct which, if displayed toward any court of the United States, would be cause for censure, suspension, or disbarment" [31] (matters which can be categorized as "conduct occurring within the presence of the Board"), it also provides for suspension of an attorney who "is lacking in character or professional integrity" [32] or who "has failed to conform to the standards of conduct required in the courts of the United States." [33]

28/ See, e.g., Rule 4-1(b) of the Court Rules for the United States District Court for the District of Columbia; Rule 11 of the United States District Court for the Eastern District of Pennsylvania ("The canons of ethics of the American Bar Association as now existing shall be and as hereafter modified shall became standards of conduct for attorneys of this Court"); Rule 5(e) of the United States District Court for the Southern District of New York; Rule 1, §1.3(d) of the United States District Court for the Central District of California.

29/ Prior to August 27, 1972, section 2.713 authoirzed suspension only upon the grounds of engaging in dilatory tactics or disorderly or contemptuous conduct. On that date section 2.713 was amended to include as additional grounds for suspension the grounds presently contained in sections 2.713(c)(1) (2), (3) and (5). See 37 FR 15127.

30/ 10 C.F.R. §2.713(c)(4).

31/ 10 C.F.R. §2.713(c)(5).

32/ 10 C.F.R. §2.713(c)(3).

33/ 10 C.F.R. §2.713(c)(2).

The Appeal Board, in interpreting section 2.713 in other proceedings, confirms Staff's position that failing to conform to any conduct required in federal courts, and not only engaging in "contemptuous conduct" or displaying improper conduct towards a Board member, is grounds for suspension from participation in a proceeding. In Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), [34] the Appeal Board held:

> Attorneys practicing before this Commission in adjudicatory proceedings are under an express mandate to "conform to the standards of conduct required in the courts of the United States". 10 CFR 2.713(b). The failure to conform to those standards can lead to the suspension or debarment of the attorney from participation in a proceeding. 10 CFR 2.713(c). [35]

The Appeal Board, in Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear - 1), [36] admonished an attorney for unwarranted and unprofessional conduct. The Appeal Board cited the ABA Code of Professional Responsibility as a standard against which it measured the attorney's conduct. [37]

34/ ALAB-121, 6 AEC 319 (1973).

35/ Id. at 319.

36/ ALAB 204, 7 AEC 835 (1974).

37/ Id. at 838.

Accordingly, the Staff concludes that the jurisdiction of the NRC under Rule 2.713 extends to situations covering attorney conduct outside of the NRC forum which has an impact on representation within that forum.

B. THE SPECIAL BOARD HAS THE ULTIMATE AUTHORITY TO PUT INTO EFFECT OR TO VACATE AN ORDER OF SUSPENSION UNDER RULE 2.713

It is the Staff's view that the ruling of the Special Board is final at the Licensing Board level with respect to the disqualification matter. The scheme of 10 CFR §2.713(c) is to provide for a review of rulings of a Licensing Board dealing with disqualification of attorneys by another Board. To consider the ruling of this Special Board as advisory and subject to the discretionary adoption or non-adoption by the original presiding Licensing Board appears to the Staff as defeating the very purpose of establishing such a Special Board. Unfortunately, there are no precedential rulings by the Appeal Board or the Commission regarding the finality of decisions by such a Special Board. Furthermore, the regulation and the Statements of Consideration that accompany the promulgation of the present 10 CFR §2.713 do not shed any light on the matter.[38/] Accordingly, in our view guidance can be found only in the language of section 2.713(c) and the application of a rule of reason. Both clearly point out to a finding that the Special Board's ruling on the matter referred to it must be accorded finality.

Section 2.713(c) of the Commission's Rules of Practice provides that a presiding officer may suspend a person from participating in a proceeding if the presiding officer finds that at least one of the provisions of section 2.713(c) (1)-(5) apply to such person. The suspension must be by an order which

38/ 37 FR 15127.

states the grounds on which it is based. The rule further provides, however:

> Before any person is suspended or barred from participation as an attorney in a proceeding, charges shall be preferred by the presiding officer against such person and he shall be afforded an opportunity to be heard thereon before another presiding officer.

The phrase "charges shall be preferred by the presiding officer against such person" is not only limited to situations where the presiding officer wants to suspend an attorney because of "conduct occurring in the presence of the Board", but also applies where a party to the proceeding requests the Board to take affirmative action with regard to suspension of an attorney. 39/

Before the presiding officer can take action with respect to suspension of an attorney, that attorney "shall be afforded an opportunity to be heard thereon before another presiding officer". Since it is always the original presiding officer who prefers charges against the attorney, that presiding

39/ As stated in Estates Theatres, Inc. v. Columbia Pictures Industries, Inc.:

> When the propriety of professional conduct is questioned, any member of the Bar who is aware of the facts which give rise to the issue is duty bound to present the matter to the proper forum, and a tribunal to whose attention an alleged violation is brought is similarly duty bound to determine if there is any merit to the charge.

345 F. Supp. 93, 98 (S.D.N.Y. 1972).

officer cannot be said to be neutral and impartial with respect to suspension, and thus it is proper and necessary to allow the charged party to be heard before another presiding officer who should issue the final decision on the preferred charges.

Thus Staff believes that when a rule of reason is applied to the procedure set forth in 10 CFR §2.713(c), the inescapable conclusion is that the Special Board's ruling on disqualifiction is to be the final decision at the Licensing Board stage of the proceeding. Consequently, the Special Board has the ultimate authority to issue an order disqualifying, or refusing to disqualify, the law firm of SS & D. This position on the procedure of Rule 2.713(c) is entirely independent of Staff's position on the merits of the Special Board's substantive rulings.

C. NEITHER A SHOWING OF ACTUAL INJURY NOR A SPECIFIC EXCHANGE OF INFORMATION OF A CONFIDENTIAL NATURE IS REQUIRED TO ENFORCE A FINDING OF ATTORNEY MISCONDUCT BASED UPON THE EXCHANGE OF SOME INFORMATION SUPPLIED BY ONE CLIENT OF AN ATTORNEY TO ANOTHER CLIENT OF THAT ATTORNEY WHOSE INTERESTS ARE ADVERSE TO THE ORIGINAL CLIENT

The Staff believes that the law clearly does not require either a showing of actual injury or a specific exchange of information of a confidential nature in order to enforce a finding of attorney misconduct based upon the exchange of some information supplied by one client of an attorney to another client of that attorney whose interests are adverse to the original client.

Judge Kaufman of the Second Circuit Court of Appeals in Emle Industries, Inc. v. Patentex, Inc., [40/] stated that because of the dynamics and subtleties of litigation, the attorney's critical role in that process, and the public's great

40/ 478 F.2d 562 (2d Cir. 1973).

interest in the outcome, there is no room for any doubt concerning even the slightest possibility that confidential information acquired during a previous representation of a client may be used to that client's disadvantage. The Court held:

> [T]he court need not, indeed cannot, inquire whether the lawyer did, in fact, receive confidential information during his previous employment which might be used to the client's disadvantage... [W]here "it can reasonably be said that in the course of the former representation the attorney might have acquired information related to the subject matter of his subsequent representation," [quoting T.C. Theatre Corp. v. Warner Bros. Pictures, 113 F. Supp. 265 (S.D.N.Y. 1953) emphasis added by Judge Kaufman], it is the court's duty to order the attorney disqualified... [A] "lawyer should avoid representation of a party in a suit against a former client, where there may be the appearance of a possible violation of confidence, even though this may not be true in fact." American Bar Association, Standing Committee on Professional Ethics, Informal Opinion No. 885 (Nov. 2, 1965). 41/

Furthermore, in Marketti v. Fitzsimmons, 42/ the court held:

> Disqualification should not be limited to situations in which confidential information has been received by the attorney from the former client. The ethical code of the legal profession requires an attorney to "avoid even the appearance of professional impropriety."... Proof that no confidential information had been disclosed during the

41/ Id. at 571. (emphasis added). Judge Kaufman further stated:

> [O]ur duty...is owed not only to the parties.. but to the public as well. These interests require this court to exercise its leadership to insure that nothing, not even the appearance of impropriety, is permitted to tarnish our judicial process. The stature of the profession and the courts, and the esteem in which they are held, are dependent upon the complete absence of even a semblance of improper conduct.

Id. at 575.

42/ 373 F. Supp. 637 (W.D. Wis. 1974).

> prior representation would not remove the taint of disloyalty. Absent a clear waiver of objection to potential conflicts, the undivided fidelity owned a former client requires disqualification in the subsequent situation whenever the following criteria are satisfied:
>
> ". . . (1) the former representation, (2) a substantial relation between the subject matter of the former representation and the issues in the later lawsuit, and (3) the later adverse representation." 43/

These cases, as well as numerous others, 44/ make it clear that there need be no showing of a specific exchange of confidential information for a finding of a conflict of interest arising from a law firms present representation of a client against a former client. In fact, not only is it

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43/ Id. at 639, (emphasis added) quoting E.F. Hutton & Co. v. Brown, 305 F. Supp. 371, 394 (S.D. Tex. 1969).

44/ See e.g., Richardson v. Hamilton International Corp., 333 F. Supp. 1049, 1052 (E.D. Pa. 1971), aff'd, 469 F.2d 1382 (3d Cir. 1972) ("the courts presume that confidences have been revealed" *** "the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are subtantially related to the matters or causes of action wherein the attorney previously represented him, the former client."); Marco v. Dulles, 169 F.Supp. 622, 629-30 (S.D.N.Y.) appeal dismissed, 268 F.2d 192 (2d Cir. 1959) ("It is unnecessary on a motion to disqualify for a former client to show that his former attorney is in the possession of specific secrets or conficences." * * * There is "'an irrebuttable inference' that confidences material and relevant to the pending case were reposed in the attorney if the subject matter of the former representation is substantially related to the issues and subject matter of the current litigation." * * * "The disclosure or use of confidences is forbidden even though there are other available sources of such information . ... And this is true '[a]lthough all of the information obtained by the attorney from his former client may be available to his present client***'"); Empire Linotype School, Inc. v. U.S., 143 F. Supp. 627, 632 (S.D.N.Y. 1956) (No showing of disclosure of confidential information is necessary. It is sufficient if the attorney "had access to material that is substantially related to the subject matter of the suit in which disqualification is sought.")

unnecessary to show the specific exchange of confidential information, but it is also unnecessary to show actual injury from the alleged conflict of interest. As stated in City of New York v. General Motors Corp.: [45]

> No specific impropriety or prejudice need be shown to prove a violation of these provisions. The "Ethical Considerations" give substance to the Canon by describing some of these practices which do in fact appear improper. [46]

Similarly, it was held in Estates Theatres, Inc. v. Columbia Pictures Industries, Inc. [47] that:

> Once a conflict of interest appears from the facts, and where the matters embraced in the pending action are substantially related to those in the other actions, the law will not inquire into the force of the impact or its potential damage. [48]

These cases illustrate a fundamental principal of the American Bar Associations Code of Professional Responsibility: A lawyer should avoid not only the fact of professional impropriety but also even the appearance of professional impropriety. [49] For this reason, and to preserve the integrity of, and confidence in, our judicial system, "in the disqualification situation, any doubt is to be resolved in favor of disqualification." [50]

45/ 60 F.R.D. 393 (S.D.N.Y. 1973), rev'd on other grounds, 501 F.2d 639 (2d Cir. 1974).
46/ Id. at 400-01 (emphasis added).
47/ 345 F. Supp. 93 (S.D.N.Y. 1972).
48/ Id. at 98-99 (emphasis added).
49/ See note 41 and accompanying text supra.
50/ Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975).

D. THE LICENSING BOARD'S CONCLUSION THAT THE LAW FIRM OF SQUIRE, SANDERS & DEMPSEY SHOULD BE SUSPENDED FROM FURTHER PARTICIPATION AS COUNSEL IN THIS PROCEEDING IS CORRECT

1. The Law And The Facts Require Suspension

It is the Staff's position that the law and the Commission's Rules of Practice support the Licensing Board's conclusion that suspension of SS & D from further participation as counsel in this proceeding is "necessary and required". The Staff believes that although SS & D may have acted in good faith at all times with respect to its representation of both the City and CEI, [51/] there is nevertheless an appearance of impropriety in SS & D's representing CEI's interests in this proceeding.

51/ The Staff has no reason to believe that SS & D acted otherwise. Indeed, during the course of the proceeding we have observed SS & D's apparent high degree of professional character and competence.

As argued above,[52] neither a showing of actual injury nor a specific exchange of information of a confidential nature is required to enforce a finding of attorney misconduct based upon the exchange of some information supplied by one client of an attorney to another client of that attorney whose interests are adverse to the original client. Rather, because the City and CEI are parties to this proceeding, all that need be shown to require the disqualification of SS & D in this proceeding is: (1) SS & D's prior representation of the City, (2) a substantial relationship between the subject matter of that prior representation and the issues in this proceeding; and, since the interest of CEI are adverse to those of the City in this proceeding, (3) SS & D's current representation of CEI in this proceeding.[53] There is no dispute that SS & D has represented the City in the past as bond counsel, specifically with respect to MELP financing. Similarly, no one can deny the fact that SS & D currently represents CEI in this proceeding and that CEI's interests are adverse to the City's in this proceeding. All that remains to be shown, then, is that there is a substantial relationship between SS & D's past bond work for the City and the issues in this antitrust proceeding.

The Licensing Board held that CEI introduced into this proceeding the issue of the City's financial position "and thus placed before us information also relevant to advice rendered by the Firm [SS & D] as bond counsel for the City."[54] SS & D, however, has argued[55] that it was the City who introduced

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52/ See Part IV C supra.
53/ See the quote from Marketti v. Fitzsimmons, supra at 21-22. See also the entire Part IV C of this Brief, supra.
54/ Memorandum and Order, pp. 25-26.
55/ See Trial Memorandum of Squire, Sanders and Dempsey at Evidentiary Hearing Before Special Board on Disqualification, February 3, 1976, p. 22.

that issue into this proceeding in the City's July 6, 1976, Petition to Intervene and in its "Statement of the City of Cleveland Informing Applicants of the Nature of the Case to be Presented", filed September 5, 1975. The Staff believes that it is irrelevant which party introduced the issue of the City's financial position. The important fact is that the issue indeed has been raised in this proceeding, as both the City and SS & D admit by arguing over who introduced it. Furthermore, the pleadings and evidence in this proceeding demonstrate the substantial relationship between SS & D's bond work for the City and numerous issues in this proceeding. The following matters are just some of the important aspects of this proceeding which support Staff's belief that the substantial relationship condition is satisfied as long as the City is a party:

(1) The City's financial ability to pay for its proportionate share of the construction, operation, maintenance, and all other capital and generating costs, of the five Davis-Besse and Perry units, should the City obtain access to those units.

(2) The financial ability of the City to participate as a member in the CAPCO pool.

(3) The reasonswhy the 1972-73 bond ordinance was amended, and the effect of that amendment.

(4) The reasons for the difficulty of selling the 1972-73 bond issue.

(5) The inability of the City to obtain 30 MW of low cost PASNY power due to CEI's refusal to wheel that power.

(6) CEI's attempt to cause MELP to raise its rates to private customers.

(7) The reasons for the switching of customers from MELP to CEI.

(8) The reasons why CEI, for many years, refused to interconnect with the City.

(9) The reasons why CEI avoided a parallel interconnection with MELP.

(10) CEI's interests in acquiring MELP.

(11) The general reliability of MELP.

(12) The CAPCO method of allocating reserves.

(13) The City's financial ability to pay for interconnections or transmission facilities.

(14) The reasons for the state of disrepair of MELP's equipment at times.

SS & D's prior representation of the City dealt with matters substantially related to each of the above items because SS & D's bond work for the City is directly related to the City's financial position,and the City's financial position and the reasons why the City was not in a better financial position are important aspects of these items.

The Staff thus concludes that, based on the above analysis, SS & D should be disqualified unless there was a full and complete disclosure by SS & D to the City of the basis for a potential conflict and a clear waiver by the City of objection to potential conflicts. 56/ The Staff does not believe that the record in this

56/ See Marketti v. Fitzsimmons, supra note 42; the American Bar Association's Code of Professional Responsibility: Disciplinary Rule 5-105(A), (B), and (C), and Ethical Consideration 5-16.

proceeding would support a finding that either event occurred.

When the City approached SS & D in 1971 or 1972 and requested SS & D to represent the City with respect to an issue of notes under a 1971 bond ordinance, SS & D responded that because SS & D represented CEI as outside general counsel and CEI was in competition with MELP, SS & D was reluctant to continue handling MELP financing matters. But when Mr. O'Loughlin of SS & D was approached by the City in 1972, he stated that he believed SS & D would accept the employment provided only that because of the existing controversy between CEI and the City, he would like to have a written request for employment from the City's Director of Utilities, Mr. Kudukis. These facts hardly support a finding of a full disclosure by SS & D of a potential conflict. In fact, SS & D's counsel on the suspension matter, Mr. Gallagher, admitted to the Licensing Board that there was no full disclosure by SS & D. In response to a question by Chairman Rigler at the December 31, 1975, oral argument on the City's motion to disqualify SS & D, Mr. Gallagher stated:

> I think you seem to find the record somewhat bare of express statements by Squire, Sanders & Dempsey to the respective parties of the implications of its common representation. 57/
>
> * * *
>
> I think if the obligation is on us to spell out a verbatim disclosure, we would be hard put to do it, because I think in this particular case we were not dealing with laymen, that we were not dealing with individuals.... We were dealing with Mr. Holton...an extremely sophisticated man. We were dealing with the law director. 58/

57/ Transcript, p. 2542.

58/ Transcript, p. 2544.

Neither was there any clear consent by the City that if a future conflict between CEI and the City arose which involved the subject matter of SS & D's representation of the City as bond counsel, SS & D could represent CEI against the City without an objection by the City based on the SS & D's prior representation of the City. It is true that pursuant to a request from Mr. O'Loughlin, the City's Director of Law, Mr. Hollington wrote to Mr. O'Loughlin asking that SS & D represent the City as bond counsel and stating that Mr. Kudukis concurred in the request. 59/ But a request for SS & D to represent the City falls far short of an intelligent waiver of a right to claim a conflict of interest. 60/ And Staff is unable to find in the record any other facts which could be construed as a waiver or consent by the City.

The last issue to be considered in connection with the issue of whether or not SS & D should be suspended is whether the City's motion to disqualify SS & D should fail because of the asserted untimely filing of its motion. While it can be argued that the City should have been more diligent in moving the Licensing Board to suspend SS & D, the law will not use the doctrine of laches as a basis for denying a motion to disqualify, absent unusual and extreme circumstances.

59/ See the July 24, 1974, letter from Richard R. Hollington, Jr. to David J. O'Loughlin, Esq., attached to the affidavit of John B. Brueckel, found in the Answer Brief of John Lansdale, Jr. Opposing Motion to Disqualify and Declare Counsel Ineligible to Further Participate in These Proceedings, dated December 12, 1975.

60/ Even if the written request for SS & D representation could be construed as a sufficient waiver, or consent, by the City, it would not be used as a waiver or consent with respect to any conflicts arising out of the "Little Hoover Commission" situation or the Gibbon Memorandum, since both of those matters antedate the July 24, 1972, letter from Hollington to O'Loughlin.

One court has recently had an opportunity to consider the question of delay in raising the conflict of interest issue. In Emle Industries, Inc. v. Patentex, Inc.[61] Burlington Industries requested David Rabin, a patent attorney who specializes in textile patents, to represent Burlington in certain impending patent litigation (the Supp-hose case). Rabin stated that he would have to decline in view of his representation of others with interests potentially adverse to Burlington. He was advised that no conclift would arise in the future. After obtaining the consent of his other clients, Rabin agreed to represent Burlington in the Supp-hose case as long as he maintained the right to protect and preserve any claims of his various clients. Subsequently in 1968, Emle and three affiliate companies, represented by Rabin, filed suit against Patentex and Burlington. In 1971, Patentex and Burlington filed a motion to disqualify Rabin from representing the plaintiffs on the ground that Rabin's involvement constituted a breach of professional ethics. Plaintiffs urged, inter alia, that the motion to disqualify Rabin was barred by the doctrine of laches. The Court of Appeals rejected the argument and held:

> Since, as we have noted, disqualification is in the public interest, the court cannot act contrary to that interest by permitting a party's delay in moving for disqualification to justify the continuance of a breach of the Code of Professional Responsibility. Accordingly, "the Court's duty and power to regulate the conduct of attorneys practicing before it, in accordance with the Canons, cannot be defeated by the laches of a private party or complainant." Although in an extreme case a party's delay in making a motion for disqualification may be given some weight, (nineteen year delay), such extenuating circumstances are not present here. The three-year gap between filing of the Emle action in 1968 and Patentex's motion to

61/ 478 F.2d 562 (2d Cir. 1973).

disqualify Rabin in 1971 is not extraordinary. 62/

2. Under The Assumptions Of Question (4) Certified To The Appeal Board By The Licensing Board, The Order Of Disqualification Should Be Upheld

Assuming, arguendo, (1) that the Special Board does not have the ultimate authority to put into effect or to vacate an order of suspension under Rule 2.713, and (2) that a showing of either actual injury or specific exchange of information of a confidential nature is required to enforce a finding of attorney misconduct based on the exchange of some information supplied by one client of an attorney to another client of that attorney whose interests are adverse to the original client, the Staff believes that in the circumstances now before the Appeal Board, the Licensing Board's order of disqualification should be upheld. The Staff already has argued that the record does not evidence any waiver or consent by the City. Nor does the law allow the City's motion to be defeated by laches. The record does, however, support the Licensing Board's findings (1) that there was actual cross-fertilization of information concerning MELP financing within the firm of SS & D, specifically between bond counsel who represented the City and members of the firm who represented CEI, 63/ and (2) that there was an actual transmittal of information relating to SS & D's advice to the City concerning the 1972-73

62/ Id. at 574 (emphasis added; citations omitted), quoting Empire Linotype School, Inc. v. U.S., supra note 44, at 631.

63/ See Parts II B and C of this Brief, supra.

bond financing to attorneys in the firm representing interests of CEI adverse to the City.[64] These two findings are a sufficient basis upon which the Board's disqualification order can be upheld under the assumptions arguendo because of the broad definition of the phrase "information of a confidential nature." As stated in Marco v. Dulles:[65]

> The words "confidence" and "confidences"...include more than specific matters of fact or information which come to the lawyer on a confidential basis. They include also intangibles arising from the very nature of the lawyer-client relationship which result from mutual discussion of the problems facing the client, consideration of the problems by counsel and the advice given thereon, the rationale of the solutions proposed and the legal techniques by which such solutions are arrived at. It seems to me that this is why the courts have treated the rule formulated by Judge Weinfeld in the T.C. Theatre case as creating an "irrebuttable inference" that confidences material and relevant to the pending case were reposed in the attorney if the subject matter of the former representation is substantially related to the issues and subject matter of the current litigation.
>
> The disclosure or use of confidences is forbidden "even though there are other available sources of such information". Canon 37. And this is true "[a]lthough all of the information obtained by the attorney from his former client may be available to his present client * * *". 66/

Under this broad definition, the Staff believes that the record discloses specific exchanges of information of a confidential nature.

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64 / See Parts II D and E of this Brief, supra.

65 / 169 F. Supp. 622 (S.D.N.Y.), appeal dismissed, 268 F.2d 192 (2d. Cir. 1959).

66 / Id. at 629-30 (citations and footnote omitted). See also U.S. v. Kasmir 499 F.2d 444, 453 (5th Cir. 1974), cert. granted, 420 U.S. 906 (1975).

E. THE APPEAL BOARD'S QUESTIONS

1. SS & D's Explanations To The City About Potential Conflicts Of Interest

Because the answers to the first two questions posed by the Appeal Board require knowledge of facts not in the record, the Staff is unable to respond to the Appeal Board. These two questions are most appropriate for consideration and argument by the City and SS & D, who, clearly, are the only ones who could have knowledge of the details of the dealings between the City and SS & D. Therefore, the Staff is not in a position to be able to answer these two questions except from its understanding of the record.

When the City requested SS & D to represent it with respect to the issuance of municipal bonds in 1972, no explanations were given to the City by SS & D about potential conflicts of interest which might arise because SS & D also represented CEI. Staff is aware only of the fact that SS & D stated that there was an existing controversy. This statement was made in June 1972, by Mr. O'Loughlin of SS & D to Mr. Hollington, then the Law Director of the City. A similar statement was made in 1971 or 1972 by Mr. Brueckel of SS & D to Mr. Holton of the City's Department of Financing. Beyond this, there is nothing in the record to support a finding of full disclosure by SS & D. Indeed, as noted above,[67/] Counsel for SS & D admitted that there was no full disclosure.

67/ See notes 57 and 58 and accompanying text supra.

2. The Significance Of The Fact That The City's Lawyers Retained SS & D

The fact that the City's lawyers retained SS & D would seem to have an effect on the degree of explicitness of disclosure which Canon 5 requires of SS & D, but no effect on SS & D's duty, per se, to "explain fully to each client the implications of the common representation and [to] accept or continue employment only if the clients consent." While the Code of Professional Responsibility requires an attorney to fully disclose to his potential clients the possible effect of multiple representation on the exercise of his independent professional judgment, [68/] it would not require the explanation to be more detailed than was necessary to make the clients fully aware of the situation. Undoubtedly, different clients require different degrees of explicitness in order to understand the possiblity of a conflict of interest. This means that when the client is himself an attorney, the disclosure most probably need not be as detailed and specific as would otherwise be required, so long as the client fully understands the implications of the common representation.

V. CONCLUSION

The Staff believes that the Commission has broad authority to suspend a person from participation as an attorney in a proceeding. Section 2.713 of the Commission's Rules of Practice implements that authority by setting forth definite standards of conduct and grounds for suspending attorneys from participation in a proceeding. The jurisdiction of the Commission under section 2.713 extends to situations covering attorney conduct outside of the NRC forum which has an impact on representation within that forum. Rule 2.713 also provides

68/ Disciplinary Rule 5-105(C).

a procedure for suspension which protects the rights of an attorney charged with violating the standards of conduct. Specifically, it gives the charged attorney an opportunity to be heard before an impartial "Special Board". Applying a rule of reason to 10 CFR §2.713(c), the Staff believes that the Special Board's ruling on a motion to suspend an attorney from participating in a proceeding is final at the Licensing Board level.

The law requires neither a showing of actual injury nor a specific exchange of information of a confidential nature in order to enforce a finding of attorney misconduct based upon the exchange of some information supplied by one client of an attorney to another client of that attorney whose interests are adverse to the original client. Applying this to the facts in the record, the Staff concludes that the law firm of Squire, Sanders & Dempsey should be suspended from participation as counsel in this proceeding. The Licensing Board's conclusion that suspension of SS & D is necessary and required is correct, even if a showing of actual injury or a specific exchange of information of a confidential nature were required. In reaching this result, the Staff has kept in mind the words of Judge Kaufman in General Motors Corp. v. City of New York: 69/

> Nor can we overlook that the Code of Professional Responsibility is not designed for Holmes' proverbial "bad man" who wants to know just how many corners he may cut, how close to the line he may play, without running into trouble with the law. Holmes, The Path of the Law, in Collected Legal Papers 170 (1920). Rather, it is drawn for the "good man" as a beacon to assist him in navigating an ethical course through the sometimes murky waters of professional conduct. Accordingly, ... we must act with scrupulous care to avoid any appearance of impropriety lest it taint both the public and private segments of the legal profession. 70/

69/ 501 F.2d 639 (2d Cir. 1974).

70/ Id. at 649 (emphasis in original).

Accordingly, the Staff urges the Appeal Board to suspend the law firm of Squire, Sanders and Dempsey from further participation as counsel in this proceeding.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 21th day of April 1976.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
THE TOLEDO EDISON COMPANY and	)	NRC Docket Nos. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING	)	50-500A
COMPANY	)	50-501A
(Davis-Besse Nuclear Power Station,	)	
Units 1, 2 & 3)	)	
	)	
THE CLEVELAND ELECTRIC ILLUMINATING	)	NRC Docket Nos. 50-440A
COMPANY, ET AL.	)	50-441A
(Perry Nuclear Power Plant,	)	
Units 1 & 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of STAFF'S APPELLATE BRIEF IN SUPPORT OF THE LICENSING BOARD'S CONCLUSION THAT SUSPENSION OF THE LAW FIRM OF SQUIRE, SANDERS, AND DEMPSEY FROM FURTHER PARTICIPATION IN THIS PROCEEDING IS NECESSARY AND REQUIRED, dated April 21, 1976, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail this 21st day of April 1976.

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