

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of:)

THE TOLEDO EDISON COMPANY and)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)
(Davis-Besse Nuclear Power Station,)
Unit 1))

Docket Nos. 50-346A
50-440A
50-441A

THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)
(Perry Nuclear Power Plant,)
Units 1 and 2))

APPLICATION TO THE SPECIAL MASTER FOR
RECONSIDERATION OF CEI'S CLAIMS OF
PRIVILEGE AS TO DESIGNATED DOCUMENTS

1. In a conference call with counsel for the parties on June 25, 1975, the Chairman of the Licensing Board ordered that there be a hearing before the Special Master on June 30, 1975, for purposes of providing limited review of the Special Master's report on privilege claims, dated June 19, 1975. The Chairman stated that, in light of the parties express agreement on December 6, 1974, to be bound by the Special Master's decision, any reconsideration was to be restricted to the narrow area of what the respective parties believed to be a clear error of categorization of specific documents, but was not to provide an opportunity for a wholesale assault on the Special Master's report or be a basis for reargument of the fact determinations already made.

2. In accordance with the Chairman's ruling, Applicants designate the following few documents as warranting reconsideration:

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<u>Attachment 4</u> <u>Part 1</u>	<u>Attachment 4</u> <u>Part 2</u>	<u>Attachment 4</u> <u>Part 3</u>
23 60	2027	31(a)
33 174		32
34 207		48
57		

Applicants submit that these documents--which, as the Special Master states, are "reports of events, facts or circumstances which are within the knowledge of the parties" and were "written by or to an attorney" (Master's Report, p. 2)-- were prepared for use by attorneys in this proceeding and, therefore, constitute the work product of the attorneys in this proceeding. As such, we believe they are entitled to protection from disclosure under the express terms of Rule 26 (b)(3) of the Federal Rules of Civil Procedure and in accordance with the explicit directive in Section 2.740(b)(2) of the Commission's Rules.

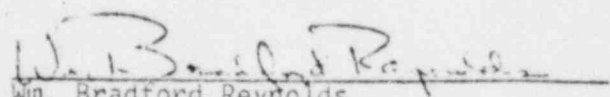
3. With the exception of the above documents, Applicants have made available to counsel attending the depositions in Cleveland, Ohio, copies of the communications listed in Attachment 4 of the Special Master's report. A second copy of this material will be placed in the Central Depository in Washington, D.C., as soon as possible next week.

4. As to the documents under a claim of privilege asserted by Duquesne Light Company, Applicants will continue to retain possession of this material until the Special Master has had an opportunity to rule on these claims.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


Win. Bradford Reynolds

Gerald Charnoff

Counsel for the Applicants

Dated: June 27, 1975

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Application to the Special Master for Reconsideration of CEI's Claims of Privilege as to Designated Documents" were hand delivered to the Special Master, Frederic J. Coufal, and to those persons listed on the attached Service List who are in the Washington, D.C., area, and that service on the remaining persons listed on the attached Service List was accomplished by mailing the same, postage prepaid, all on this 27th day of June, 1975.

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Wm. Bradford Reynolds
Wm. Bradford Reynolds

Counsel for the Applicants

Dated: June 27, 1975

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