

6-16-75

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
THE TOLEDO EDISON COMPANY and)	NRC Docket No. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY)	
(Davis-Besse Nuclear Power Station,)	
Unit 1))	
THE CLEVELAND ELECTRIC ILLUMINATING)	NRC Docket Nos. 50-440A
COMPANY, ET AL.)	50-441A
(Perry Nuclear Power Plant,)	
Units 1 and 2))	
and)	
THE TOLEDO EDISON COMPANY,)	NRC Docket Nos. 50-500A
ET AL.)	50-501A
(Davis-Besse Power Station,)	
Units 2 and 3))	

MOTION BY NRC STAFF TO AUTHORIZE THE
ATOMIC SAFETY AND LICENSING BOARD TO
CONSIDER AND RULE ON CONSOLIDATION

By Memorandum and Order dated January 21, 1974 ^{1/} the Atomic Energy Commission ("Commission") designated an Atomic Safety and Licensing Board ("Board") to assume jurisdiction and to rule on the petition of the City of Cleveland for a hearing and for leave to intervene in the above captioned Davis-Besse 1 proceeding. At the same time, the Commission denied the petition by American Municipal Power - Ohio, Inc. (AMP-0) for a hearing and intervention in the said Davis-Besse 1 proceeding.

The Commission also directed the Board to rule on all petitions to intervene filed in the above captioned Perry proceeding and to decide

1/ RAI 74-1, pp. 15-18.

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whether consolidation of that proceeding with the Davis-Besse 1 proceeding would be in order.

Pursuant to that delegation, the Board, on April 15, 1974, ruled as follows: (1) that a hearing was warranted in the Davis-Besse 1 proceeding with the City of Cleveland as sole intervenor; (2) that a hearing as requested by the Department of Justice in its advice letter ^{2/} was warranted in the Perry proceeding. Intervention in the Perry proceeding was granted to the City of Cleveland and AMP-0. In addition, the State of Ohio's petition to participate as a matter of right pursuant to 10 CFR §2.715(c) of the Commission's Rules of Practice was also granted in the Perry proceeding.

By Memorandum and Order dated March 15, 1974, the Board concluded that in order "to eliminate waste of time and in order to reduce cost and duplication of effort, the Board agrees [with the parties] that consolidation should be effected" in the Davis-Besse 1 and Perry proceedings.

By Board Order dated July 25, 1974 with respect to the consolidated Davis-Besse 1 and Perry proceedings certain issues and matters in controversy were admitted as issues in that consolidated proceeding.

II. DAVIS-BESSE 2 & 3

On April 9, 1975, an Atomic Safety and Licensing Board was established to rule on petitions and/or request for leave to intervene in the Davis-Besse Power Station, Units 2 & 3 proceeding, Docket Nos. 50-500A, 50-501A.

^{2/} Letter from Hon. Thomas E. Kauper to Howard K. Shapar, Esq. dated December 12, 1972.

The Order designated the Board in the Davis-Besse 2 & 3 proceeding with the same membership as the Board presiding over the Perry and Davis-Besse 1 proceeding. By Order dated May 6, 1975 the Davis-Besse 2 & 3 Board ruled that an antitrust hearing be held and granted petitions for leave to intervene filed by the City of Cleveland and the State of Ohio (the latter pursuant to 10 CFR 2.715(c)).

By Order dated May 22, 1975 and subsequent to a prehearing conference in which all the parties participated, the Board in the Davis-Besse 2 & 3 proceeding adopted as the issues in controversy in that proceeding the identical issues as in the consolidated Perry 1 & 2 and Davis-Besse 1 proceeding. ^{3/} At that prehearing conference Staff indicated its intention to request the Commission to consolidate the Davis-Besse 2 & 3 proceeding with the previously consolidated Perry 1 & 2 and Davis-Besse 1 proceeding.

III.

Accordingly, Staff notes that the Davis-Besse 2 & 3 proceeding will address the identical issues, with essentially the same parties participating, and with the same Board membership as in the previously consolidated Perry 1 & 2 and Davis-Besse 1 proceeding. The Applicants for all of the units are the same (although the lead Applicant may be different) and counsel for each party remains the same in both proceedings.

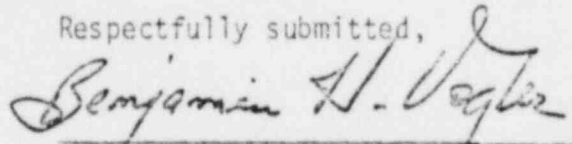
^{3/} At the prehearing conference, all parties indicated that they were in a position to proceed in the Davis-Besse 2 & 3 proceeding with the Perry 1 & 2 issues, although certain objections to these issues were noted for the record.

It is Staff's position that these factors taken together constitute good cause for consolidation.

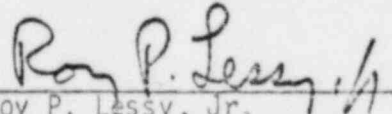
Accordingly, pursuant to 10 CFR Section 2.716 of the Commission's Rules of Practice, and in furtherance of the proper dispatch of the Commission's business and the ends of justice, Staff hereby respectfully moves the Commission to direct and authorize the Atomic Safety and Licensing Board to decide whether consolidation of the Davis-Besse 2 & 3 proceedings with the ongoing Perry 1 & 2 and Davis-Besse 1 proceedings would be in order.

Inasmuch as the discovery phase of the Perry proceeding is scheduled to be completed by July 1, 1975 with an evidentiary hearing to commence on October 23, 1975, Staff also requests that the Commission act on this Motion in advance of the July 1 date, if answers to this Motion have been filed by Applicants, the Department of Justice, the City of Cleveland, and the State of Ohio.

Respectfully submitted,



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Dated at Bethesda, Maryland
this 16th day of June 1975.

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and

THE TOLEDO EDISON COMPANY,
ET AL.
(Davis-Besse Power Station,
Units 2 & 3)

NRC Docket Nos. 50-500A
50-501A

CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION BY NRC STAFF TO AUTHORIZE THE ATOMIC SAFETY AND LICENSING BOARD TO CONSIDER AND RULE ON CONSOLIDATION, dated June 16, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail, this 16th day of June 1975:

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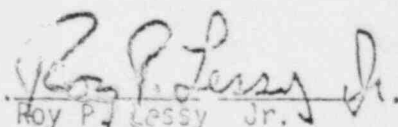
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