

6-26-75

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	)	Docket No. 50-346A
Company	)	
(Davis-Besse Nuclear Power Station,	)	
Unit 1)	)	
	)	
The Cleveland Electric Illuminating	)	Docket Nos. 50-440A
Company, et al.	)	and 50-441A
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

MINUTES OF CONFERENCE CALL  
WITH BOARD CHAIRMAN ON JUNE 24, 1975

On Tuesday, June 24, 1975, the Licensing Board Chairman initiated a conference call at 2:30 p.m. concerning the Report of the Special Master. Participants in the call were: Licensing Board Chairman Douglas V. Rigler; Mr. Wm. Bradford Reynolds, counsel for Applicants; Mr. Roy P. Lessy, Jr., counsel for Nuclear Regulatory Commission Staff; Mr. Reuben Goldberg, counsel for the City of Cleveland; and Mr. Steven M. Charno, counsel for Department of Justice.

Mr. Rigler opened the call by inquiring whether the parties wanted the documents delivered or if they had any objections to the ruling of the Special Master.

Mr. Goldberg indicated that he was dismayed by the Report, and that he could not explain some of the things done by the Master. He gave as examples the Master's granting of privilege for thirty documents on which the Applicants had waived their claims of privilege, and the Master's holding that a document prepared by the City was privileged. He stated that Cleveland wished to have the Report reviewed. The Chairman inquired whether the parties could supply a specific list detailing possible errors of this nature.

Mr. Charno stated that the degree of error appeared to be far broader than could be demonstrated by merely listing the clear errors contained in the attachments to the Report. He noted, however, that over 100 documents were held to be privileged on grounds other than the ones asserted by Applicants; that the Master made no rulings at all concerning 26 documents; that the Master both granted and denied claims of privilege for some documents; and that the Report contained rulings on nonexistent documents.

Mr. Charno stated that the conclusory nature of the Report, which lacked specific factual findings and detailed legal conclusions, made the challenge of other probable errors extremely difficult. Mr. Goldberg stated that certain documents for which the author and addressee were unknown had been held by the Master to be communications among attorneys.

Mr. Lessy reserved comment since the NRC Staff had not participated in the briefing.

Mr. Reynolds indicated that all documents for which CEI had waived privilege would be produced. He further indicated that the waiver of privilege was not necessarily inconsistent with a finding by the Master that a privilege applied. Mr. Reynolds also stated that he believed the work product and attorney-client privilege had been claimed for all documents. He noted that the December 10, 1974 Board Order, which appointed the Special Master, appeared to state that the parties agreed to be bound by the decision of the Master. He stated that he did not want the Master's decision reopened or the Board to go over the Master's work product. Mr. Rigler asked Mr. Reynolds if the Applicants were willing to produce documents for which the Master found no privilege applicable. Mr. Reynolds indicated that one copy of the documents listed on Attachment No. 4 to the Report would be produced in Cleveland on Wednesday and that the Master's copies of such documents could be placed in the Washington, D.C., depository.

Mr. Goldberg indicated that he interpreted the agreement cited in the December 10 Order as saying that no one would seek review by the Licensing Board, not that any review by the Appeal Board was waived. Mr. Lessy indicated that the Master's decision was an interlocutory decision which could not be appealed without certification by the Licensing Board.

Mr. Rigler stated that for certain categories of documents, there appeared to be no problems. For example, no problem existed with respect to the document authored by the City of Cleveland

because the City already had a copy. As to the documents for which CEI waived privilege, no problem would exist because those documents would be turned over to the other parties. As to documents where the granted privilege had not been claimed, there was a problem which would have to be resolved.

Mr. Lessy indicated that a motion for reconsideration by the Master might be in order. Mr. Goldberg stated that reconsideration by the Master should be requested as a first step toward appeal. Mr. Reynolds stated that he wanted the right to reserve an appeal by the Applicants and that the original agreement was made to avoid delay. Mr. Goldberg and Mr. Reynolds had a brief discussion on their disagreement on the interpretation of the December 10 Order. Mr. Goldberg indicated that former Chairman Parmakides had been concerned that the Licensing Board would have to review all allegedly privileged documents, but that the agreement did not constitute a waiver of the right to appeal to an Appeal Board. Mr. Rigler indicated his preliminary feeling that if certification of the issue was to be requested, it would be denied since he saw nothing of sufficient magnitude to require consideration by the Appeal Board. He did, however, indicate that either the Master or the Licensing Board might make a limited review of the Report; and he wanted the parties to list the plain or apparent errors in the Report.

Mr. Goldberg indicated that this procedure might have an effect on the depositions presently being taken, but that the parties should endeavor to prevent resolution of this issue from

delaying these depositions. He suggested that the depositions continue and that these people be recalled later for further deposition on matters contained in any subsequently disclosed documents. The Department and the Staff agreed to this.

Mr. Reynolds indicated that the Applicants also wanted to ask for reconsideration. Mr. Reynolds said he did not have the exact number of documents for which he would challenge the decision of the Special Master, but there was one category as to which he took exception. He believed it was Part 1 of Attachment No. 4. The Applicants were willing to specifically designate documents of which they would request reconsideration.

Mr. Rigler indicated that the Master may have made a few minor errors, such as finding privilege to apply on documents for which Applicants had waived any privilege. He also indicated that the Master and/or the Licensing Board should review the Report to eliminate such possible errors. He further indicated that the agreement cited in the December 10 Order obviously had to contemplate the presence of certain minor errors and that these would be reviewable. He stated that he had seen certain documents in Part 1 of Attachment No. 4 and believed that these documents, which related to negotiating strategy involved in this case, should not have been found to be nonprivileged. He suggested that they may well be found to be privileged.

Mr. Lessy suggested that possibly a special appellate master should be appointed to review the errors. Mr. Rigler again stated that perhaps a limited review by the Special Master on specific

documents would be in order, but not a blanket review. Mr. Rigler asked if Mr. Reynolds would be willing to release all documents except those in Part 1 of Attachment No. 4. Mr. Reynolds indicated that there may be similar documents in Parts 2 and 3 of Attachment No. 4 and that he did not want those released.

Mr. Rigler asked if the parties were seeking correspondence between CEI and Mr. Reynolds' law firm. Mr. Goldberg indicated that he did not know what was in those documents, and he could not say whether he wanted them or not. Mr. Lessy stated that perhaps a briefing for the Master or a limited hearing before the Master would be in order. Mr. Charno said that since he did not know whether the documents contained nonprivileged portions relating to the case, he was unable to determine whether the Department would seek their production. Mr. Charno stated that if they relate solely to facts, they should be nonprivileged; if they relate merely to strategy, that may be another question.

Mr. Rigler suggested that he would like to speak to the Special Master and other members of the Board and reconvene the conference telephone call at 4:30 p.m.

The parties were unable to reconvene the conference call until 9:30 a.m. on June 24, 1975.

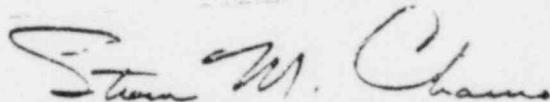
Mr. Rigler stated that he had consulted with the full Board, and that it was decided that the parties should be held to their prior agreement to be bound by the decision of the Master. However, he continued that Mr. Coufal, the Master, had acknowledged that he may have made a few miscategorizations of documents and that he

was willing to make himself available for a one-day hearing on the Report. Mr. Rigler stated that he hoped Mr. Coufal would be able to make on-the-spot rulings on any objections to his findings.

Mr. Goldberg inquired whether presently scheduled depositions should proceed with reservation of the right to recall any witnesses for further deposition if new areas of inquiry were disclosed by subsequently released documents. Mr. Rigler ruled that the procedure should be followed.

After a discussion on scheduling, it was decided to set a tentative hearing date of June 30, 1975 with an alternate date of July 10, 1975, based on the availability of Mr. Coufal. Mr. Rigler stated that the parties will be informed of the hearing date by Mr. Lessy.

Respectfully submitted,



---

STEVEN M. CHARNO  
Attorney, Antitrust Division  
Department of Justice  
Washington, D.C. 20530

June 26, 1975

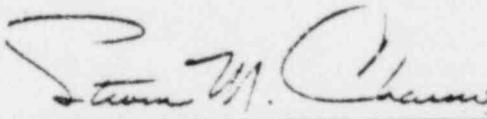
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
The Toledo Edison Company	)	
The Cleveland Electric Illuminating	)	Docket No. 50-346A
Company	)	
(Davis-Besse Nuclear Power Station)	)	
	)	
The Cleveland Electric Illuminating	)	
Company, et al.	)	Docket Nos. 50-440A
(Perry Nuclear Power Plant,	)	and 50-441A
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of MINUTES OF CONFERENCE CALL WITH BOARD CHAIRMAN ON JUNE 24, 1975 have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class or airmail, this 26th day of June 1975.

  
Steven M. Charno  
Attorney, Department  
of Justice  
Antitrust Division

ATTACHMENT

Douglas Rigler, Esquire  
Chairman  
Atomic Safety and Licensing  
Board  
Foley, Lardner, Hollabaugh  
& Jacobs  
815 Connecticut Ave., N.W.  
Washington, D.C. 20006

John H. Brebbia, Esquire  
Atomic Safety and Licensing  
Board  
Alston, Miller & Gaines  
1776 K Street, N.W.  
Washington, D.C. 20006

John M. Frysiak, Esquire  
Atomic Safety and Licensing  
Board Panel  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Frank W. Karas  
Chief, Public Proceedings  
Staff  
Office of the Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Abraham Braitman  
Office of Antitrust and  
Indemnity  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Herbert R. Whitting, Esquire  
Robert D. Hart, Esquire  
Law Department  
City Hall  
Cleveland, Ohio 44114

Reuben Goldberg, Esquire  
David C. Hjelmfelt, Esquire  
1700 Pennsylvania Avenue, N.W.  
Suite 550  
Washington, D.C. 20006

Benjamin H. Vogler, Esquire  
Roy P. Lessy, Jr., Esquire  
Office of the General Counsel  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Gerald Charnoff, Esquire  
William Bradford Reynolds, Esquire  
Shaw, Pittman, Potts & Trowbridge  
910 Seventeenth Street, N.W.  
Washington, D.C. 20006

Lee C. Howley, Esquire  
Vice President & General Counsel  
The Cleveland Electric  
Illuminating Company  
Post Office Box 5000  
Cleveland, Ohio 44101

Donald H. Hauser, Esquire  
Corporate Solicitor  
The Cleveland Electric  
Illuminating Company  
Post Office Box 5000  
Cleveland, Ohio 44101

John Lansdale, Jr., Esquire  
Cox, Langford & Brown  
21 Dupont Circle, N.W.  
Washington, D.C. 20036

Chris Schraff, Esquire  
Office of Attorney General  
State of Ohio  
State House  
Columbus, Ohio 43215

Karen H. Adkins, Esquire  
Assistant Attorney General  
Antitrust Section  
30 East Broad Street  
15th Floor  
Columbus, Ohio 43215

Leslie Henry, Esquire  
Fuller, Henry, Hodge  
& Snyder  
300 Madison Avenue  
Toledo, Ohio 43604

Thomas A. Kayuha, Esquire  
Ohio Edison Company  
47 North Main Street  
Akron, Ohio 44308

David M. Olds, Esquire  
Reed, Smith, Shaw & McClay  
747 Union Trust Building  
Pittsburgh, Pennsylvania 15219

Mr. Raymond Kudukis  
Director of Utilities  
City of Cleveland  
1201 Lakeside Avenue  
Cleveland, Ohio 44114

Wallace L. Duncan, Esquire  
Jon T. Brown, Esquire  
Duncan, Brown, Weinberg  
& Palmer  
1700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Edward A. Matto, Esquire  
Assistant Attorney General  
Chief, Antitrust Section  
30 East Broad Street  
15th Floor  
Columbus, Ohio 43215

Richard M. Firestone  
Assistant Attorney General  
Antitrust Section  
30 East Broad Street  
15th Floor  
Columbus, Ohio 43215

Victor F. Greenslade, Jr., Esquire  
Principal Staff Counsel  
The Cleveland Electric  
Illuminating Company  
Post Office Box 5000  
Cleveland, Ohio 44101