

7-25-75
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
Company
(Davis-Besse Nuclear Power Station,
Unit 1)

Docket No. 50-346A

The Cleveland Electric Illuminating
Company, et al.
(Perry Nuclear Power Plant,
Units 1 and 2)

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

APPLICATION FOR RECONSIDERATION OF THE BOARD'S
RULING ON THE MOTION OF THE CITY OF CLEVELAND
TO CHANGE PROCEDURAL DATES

The Department of Justice requests the Board's reconsideration of its Ruling on Motion of the City of Cleveland to Change Procedural Dates (Ruling), dated July 21, 1975. Such reconsideration is sought because of the substantial hardship the revised schedule will cause the Department. This hardship is occasioned by the Board's Ruling having allowed a four and one-half week extension of discovery, while extending the remaining procedural deadlines by only two weeks for informing Applicants of the nature of the case to be presented, and by only one week for filing of written testimony and pretrial briefs.

Since virtually all of the depositions and supplemental document review have taken place outside Washington, the Department's attorneys have not been available to complete

ATH

8002130791

M

their review of documents and deposition transcripts. After completing review of these discovery materials, the Department must still formulate its position on the detailed issues in controversy after consultation with its expert witnesses. */ Under the Board's Prehearing Conference Order No. 4 (Order), the Department was to be allowed a six week period in which to complete these steps in the preparation of its case. The Ruling allows only four weeks from the end of discovery to the filing of a detailed statement of issues. Due to the manpower limitations previously recognized by this Board, this is not a sufficient period for the Department to effectively frame the relevant issues in this proceeding in the required detail.

Since the Department, at the Board Chairman's request previously made no filing on this issue, we will set out in detail below our proposal, together with the schedules set forth in the Order and the Ruling:

	<u>Order</u>	<u>Ruling</u>	<u>Department Proposal</u>
Completion of all Depositions	July 1	Aug. 2	Aug. 2
Parties Other Than Applicants to Inform Applicants of Nature of case to be Presented	Aug. 15	Aug. 29	Sept. 5
Applicants May Respond To Delineation of Issues	Aug. 22	Sept. 5	Sept. 12
Prehearing Conference to Consider Motions to Curtail Or Eliminate Issues	Sept. 4	Sept. 12	Sept. 25

*/ These difficulties are not solely due to the highly compact deposition schedule, but also due to a limited extent to the four week delay in receipt of deposition transcripts which can only be avoided at a cost of at least four times what is currently being paid.

	<u>Order</u>	<u>Ruling</u>	<u>Department Proposal</u>
Parties Other Than Applicants File Direct Written Testimony of Expert Witnesses	Sept. 12	Sept. 26	Oct. 3
Applicants File Direct Written Testimony of Expert Witnesses	Sept. 17	Oct. 3	Oct. 8
All Parties File Pretrial Briefs	Oct. 1	Oct. 15	Oct. 22
Hearing Begins	Oct. 23	Oct. 30	Nov. 10

The Board in its Order recorded the awareness of all the parties that "the schedules proposed are stringent in terms of time allowances." (Order at p. 4). That "stringent" schedule had allowed for a little over 16 weeks from the conclusion of discovery (July 1) until the commencement of the hearing (October 23). The Ruling has truncated this time period into one of less than 13 weeks (August 2-October 30) by postponing the hearing a mere week while allowing an extra month of discovery.

Although the Ruling does allow for an extension for the filing of a statement of issues from August 15 to August 29, this two-week extension is misleading since the August 15 deadline was based upon there being over a six-week period from the end of discovery. Consequently, under the Ruling, the six-week period established in the Order has been whittled down to about four weeks.

The Department of Justice's proposed schedule seeks to compromise between the "stringent" schedule embodied in the Order and the new schedule handed down in the Ruling by setting a

five-week period from the end of discovery until the filing of the statement of issues. Thereafter, the Department's proposal maintains the same time periods established in the Order, with the exception of allowing three less days from the time of filing briefs to the hearing's commencement than was allowed in the Order.

Respectfully submitted,

Steven M. Charno
STEVEN M. CHARNO

Melvin G. Berger
MELVIN G. BERGER

Anthony G. Aiavalasit, Jr.
ANTHONY G. AIUVALASIT, JR.

Attorneys, Department of Justice
Washington, D.C. 20530

July 25, 1975

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))	

CERTIFICATE OF SERVICE

I hereby certify that copies of APPLICATION FOR RECONSIDERATION OF THE BOARD'S RULING ON THE MOTION OF THE CITY OF CLEVELAND TO CHANGE PROCEDURAL DATES have been served upon all of the parties listed on the attachment hereto by deposit in the United States mail, first class, airmail or by hand delivery, this 25th day of July 1975.

Anthony G. Aiuvalasit, Jr.

Anthony G. Aiuvalasit, Jr.
Attorney, Antitrust Division
Department of Justice

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
1800 M Street, N.W.
Washington, D.C. 20036

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

Andrew Popper, Esquire
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