

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)	Docket Nos. 50-346A
Station, Unit 1))	50-440A
)	50-441A
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY, ET AL.)	
)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

APPLICANTS' REPLY TO MOTION OF NRC STAFF
 TO STRIKE APPLICANTS' PROPOSED LICENSE CONDITIONS

1. On July 11, 1975, the Staff of the Nuclear Regulatory Commission ("NRC") moved to strike from the record the proposed license conditions to which Applicants have agreed to commit, as reflected in the motion of March 14, 1975, entitled "Applicants' Proposal For Expediting the Antitrust Hearing Process." Applicants submit that there is no legal basis for the NRC Staff's motion and urge that it be denied.

2. The sole reason given by the NRC Staff to support its motion is that "[p]ermitting these license conditions to remain on the record as 'policies observed' [by Applicants] deprives the other parties of an opportunity to properly test that assertion" (Motion, p.2). This position is unsound.

Whether or not this Licensing Board strikes Applicants' proposed license conditions of March 14, 1975, pursuant to a motion by the NRC Staff, it is still an undeniable fact that Applicants have offered these conditions and have expressly agreed that these conditions will not be withdrawn. Thus, to the extent that the conditions in question bear on the matter of "...Applicants' policy or policies with respect to providing access to their nuclear facility to other electric entities in the CCCT...", as encompassed in the Licensing Board's Matter in Controversy No. 10 (Prehearing Conference Order No. 2), they will continue to have the same impact on that issue irrespective of the Board's ruling on the present motion.

3. It is ridiculous for the NRC Staff to suggest that it will be deprived of an opportunity "to properly test" Applicants' policy statements with regard to the access question if its motion to strike is denied. Plainly, Applicants will be subject to cross-examination at the hearing on matters relating to their respective positions on granting other electric entities some form of participation in the designated nuclear facilities. The proposed license conditions to which Applicants have already committed in their March 14, 1975 filing go to framing that issue. Obviously, that framework will not be altered by a ruling of this Board striking the earlier pleading. Applicants' position in this regard is already a matter of record. If NRC

wishes to test that position, it will have full opportunity to do so at the hearing.

4. For the foregoing reasons, the motion to strike is not well taken and should be denied by the Licensing Board.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Wm. Bradford Reynolds
Wm. Bradford Reynolds
Gerald Charnoff
Counsel for Applicants

Dated: July 15, 1975

July 15, 1975

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Reply To Motion of NRC Staff To Strike Applicants' Proposed License Conditions" were served on the persons named in the attached Service List, by hand delivering the same to all those located in the Washington, D.C. area, and by mailing the same, postage prepaid, to all others, all on this 15th day of July, 1975.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Wm. Bradford Reynolds
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Counsel for Applicants

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