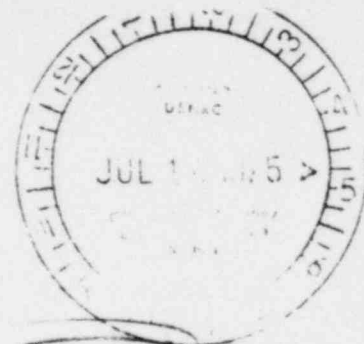


5/11/75
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))

NRC Docket No. 50-346A

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

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

MOTION BY NRC STAFF TO STRIKE
APPLICANTS' PROPOSED LICENSE CONDITIONS

On March 14, 1975, Applicants filed a motion entitled "Applicants' Proposal For Expediting The Antitrust Hearing Process". The Motion was opposed by NRC Staff, the Department of Justice, the City of Cleveland, and the State of Ohio. By Order dated June 30, 1975, subsequent to the filing of briefs, reply briefs, and the presentation of oral argument this Board denied Applicants' proposal and motion.

Pursuant to the terms of Applicants proposal,^{1/} Applicants intend that the unilateral proposed License Conditions contained therein remain in the record of this proceeding in that they "represent policies observed by each Applicant". However, pursuant to the proposal, Applicants "assumptions arguendo" would be subject to withdrawal in order to permit Applicants an opportunity to submit proof on the question of the existence of a situation inconsistent with the antitrust laws.

1/ Particularly n. 3 on page 5 of applicant's Motion of March 14, 1975.

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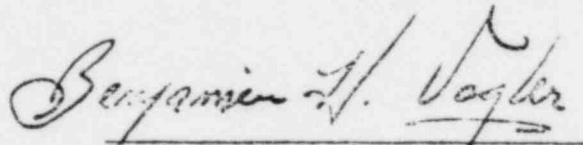
The Board's attention is specifically directed to Page 13 of Prehearing Conference Order #2 in which the Board sets out as a matter in controversy the following:

Whether Applicants policy or policies with respect to providing access to their nuclear facility to other electric entities in the CCCT, that are or could be connected to Applicants, deprive these other electric entities from realizing the benefits of nuclear power.

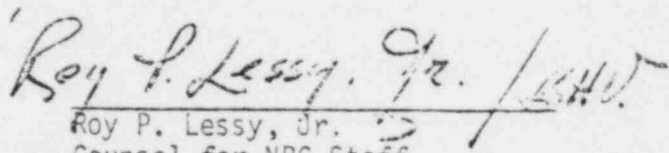
Accordingly, Staff submits that the policies of Applicants remain a fundamental issue in this proceeding. Just as Applicants intend to withdraw their assumptions arguendo and submit proof, it is Staff's position that the license conditions should also be withdrawn and the question of Applicants' policies respecting access to facilities also be subject to proof, not assertion. It is Staff's position therefore that if Applicants have policies with respect to access to nuclear power, these policies should properly be proven by Applicants and subjected to cross-examination and rebuttal in the evidentiary hearing. Such a hearing is now scheduled to commence on October 23, 1975. Permitting these license conditions to remain on the record as "policies observed" deprives the other parties of an opportunity to properly test that assertion.

Accordingly, Staff moves the Board pursuant to 10 CFR §2.730 to strike from the record all of applicant's proposed license conditions which are contained in its motion of March 14, 1975 as "representing policies observed by each Applicant".

Respectfully submitted,



Benjamin H. Vogler
Assistant Chief Antitrust
Counsel for NRC Staff



Roy P. Lessy, Jr.
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of July 1975.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	
THE TOLEDO EDISON COMPANY and)	NRC Docket Nos. 50-346A
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(Davis-Besse Nuclear Power Station)	
)	
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY, ET AL.)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of MOTION BY NRC STAFF TO STRIKE APPLICANTS' PROPOSED LICENSE CONDITIONS, dated July 11, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail, this 11th day of July 1975:

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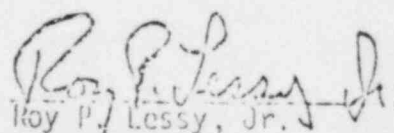
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