

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

MINUTES OF CONFERENCE CALL WITH  
BOARD CHAIRMAN HELD JUNE 20, 1975

On Friday, June 20, 1975 the Chairman of the Atomic Safety and Licensing Board initiated a conference call at approximately 2:30 p.m. concerning the report of the Special Master dated June 19, 1975. Participating in the call were Chairman Douglas V. Rigler; Gerald Charnoff, Counsel for Applicants; Roy P. Lessy, Jr., Counsel for Nuclear Regulatory Commission Staff; Steven M. Charno, Counsel for Department of Justice; and Reuben Goldberg, Counsel for the City of Cleveland. Mr. Lessy was designated as Secretary.

The Chairman opened the conference call by stating that he had received the report of the Special Master with respect to the privileged documents. The report reviewed substantially all of the documents to which privilege had been claimed with respect to all categories of documents except those documents of the Department of Justice and the Duquesne Light Company.

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The Chairman indicated that four categories of documents had been established by the Special Master and that with respect to those four categories the Special Master had determined that documents included within three of those categories were privileged. Documents that were privileged in the Chairman's estimation constituted 80-90% of all the documents submitted to the Special Master.

The Chairman was interested in establishing a schedule for making the pertinent documents available to the parties and was also interested in inquiring first as to whether Applicants would challenge all or part of the designations which were deemed not to be privileged, and secondly whether each of the other parties would challenge those documents deemed to be privileged. The Chairman stated for the record that the Board was not desirous of reviewing the approximately thousand documents reviewed by the Special Master but if there were to be challenges he anticipated some form of limited appeal. The Chairman indicated that a brief prehearing conference or other record session might be appropriate.

Mr. Charnoff inquired as to whether the Master's Report had been made available to the parties. In response to that the Chairman indicated that the Report had been received by the Docketing Section on June 20th and was in the process of being mailed to interested parties. The Chairman also stated that he would have copies of the Report available for any party on the next business day. Mr. Charnoff

subsequently inquired as to whether the Report itself avoided disclosure of the contents of some of the documents and the Chairman indicated that it did.

Mr. Goldberg inquired as to the scope of appeal that might be available to parties desiring to appeal the decision of the Special Master and the Chairman indicated that he anticipated something less than a blanket appeal of the approximately one thousand documents.

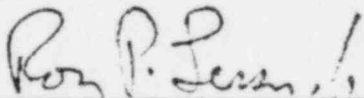
Mr. Lessy then inquired as to what the four categories established by the Master were and the Chairman responded as follows: The first three categories were those which the Special Master found contained privileged documents. Category 1 included draft agreements, leases, letters, testimony and other papers which received either no distribution or distribution only to other attorneys within the Company. These documents were privileged within the work product rule as found by the Master. Category 2 were found to be communications among attorneys employed by CEI or between CEI attorneys and their consultants or between CEI officers and CEI attorneys which were made for the purpose of obtaining or giving legal advice and were therefore found to be within the attorney-client privilege. Category 3 were documents similar to those in category two but which were originated with and distributed among some or all of CAPCO members. Relying on Wigmore Section 23.12, the Special Master found these to be within the attorney-client privilege. Category 4 as reported by the Chairman was divided into four subparts and these were found not to be privileged. Part 1

included documents which may have been written by or to an attorney but which contained essentially reports of events, facts or circumstances which were in the knowledge of the parties or which were letters transmitting materials which may or may not be privileged. Part 2 listed documents not privileged because they originated with or have been distributed to persons outside the privileged group. Part 3 listed documents found to be business matters rather than attorney-client or work product related and category four listed waived documents.

After a general discussion amongst the parties it was concluded that no party could respond to the Chairman's questions concerning appeal and distribution without having an opportunity to review the Report of the Special Master.

Accordingly, the parties agreed that a conference call would be initiated by Staff on Tuesday, June 24th at approximately 2:30 p.m. at which time the discussion with respect to the privileged documents would continue.

Respectfully submitted,

  
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Roy P. Lessy, Jr.  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 10th day of July 1975.



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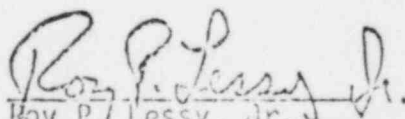
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