

10-9-75

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of THE TOLEDO Edison COMPANY and THE CLEVELAND ELECTRIC ILLUMINATING COMPANY (Davis-Besse Nuclear Power Station, Units 1, 2 & 3) THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL. (Perry Nuclear Power Plant, Units 1 & 2)	}	NRC Docket Nos. 50-346A 50-500A 50-501A NRC Docket Nos. 50-440A 50-441A
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ANSWER OF NRC STAFF IN OPPOSITION TO
CITY OF CLEVELAND'S PETITION FOR RECONSIDERATION

On September 29, 1975 the City of Cleveland, Ohio (City) filed a petition for reconsideration of this Board's Memorandum and Order of September 19, 1975. There are no factual or legal bases to support the City's petition and Staff opposes it.

On September 19, 1975 this Appeal Board, after a full consideration of the briefs and oral arguments thereon by all the parties, found that the appointment and role played by the Special Master herein was valid. The Appeal Board also found, inter alia,

1. City's appeal concerning the interlocutory rulings of the Licensing Board and the Special Master was impermissible under 10 CFR §2.730(f) of the Commission's Rules of Practice.
2. City's appeal concerning the validity of the role played by the Special Master warranted consideration by the Appeal Board and certification of that

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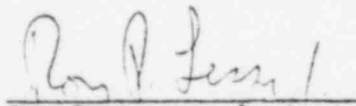
issue was appropriate under 10 CFR §2.718(i).^{1/}

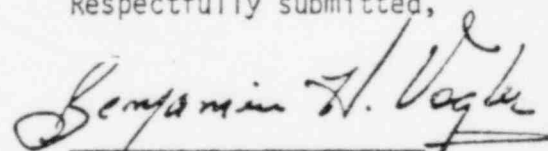
3. The agreement of the parties in appointing a Special Master did not violate §034 of Chapter 0106 of the AEC Manual as that Section must be interpreted in light of the provisions of the Commission's Rules of Practice.
4. Assuming the voluntary agreement of the parties did not bar the Licensing Board or the Appeal Board from exercising its discretion to review the rulings of the Special Master, there was still insufficient reason for the Appeal Board to undertake that review function.

In essence the Appeal Board carefully considered and rejected all of the arguments the City raised in its brief and at the oral argument thereon.

The City has failed to show that the Appeal Board's decision is not based on substantial evidence or that the findings are contrary to law so as to constitute a clear abuse of administrative discretion. In addition, the City's petition raises no new issues of law or fact. Accordingly, the City's petition for reconsideration must fail^{2/} and the Staff submits that the Appeal Board should deny City's petition.

Respectfully submitted,


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Counsel for NRC Staff


Benjamin H. Vogler
Assistant Chief Antitrust
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of October 1975.

^{1/} Citing: Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, NRCI-75/5 478 (May 21, 1975).

^{2/} NLRB v. Columbian Enameling and Stamping Co., 306 US 292 (1934).
Universal Camera Corp. v. NLRB, 340 US 474 (1951).

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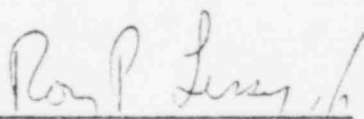
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In the Matter of)	
THE TOLEDO EDISON COMPANY and)	NRC Docket Nos. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING)	50-500A
COMPANY)	50-501A
(Davis-Besse Nuclear Power Station,)	
Units 1, 2 & 3))	
THE CLEVELAND ELECTRIC ILLUMINATING)	NRC Docket Nos. 50-440A
COMPANY, ET AL.)	50-441A
(Ferry Nuclear Power Plant,)	
Units 1 & 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF NRC STAFF IN OPPOSITION TO CITY OF CLEVELAND'S PETITION FOR RECONSIDERATION, dated October 9, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class mail, or airmail, this 9th day of October 1975:

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