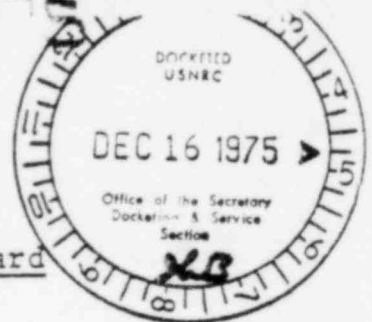


12/16/75



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, )  
Units 1, 2 and 3) )  
 )  
THE CLEVELAND ELECTRIC ILLUMINATING )  
COMPANY, ET AL. )  
(Perry Nuclear Power Plant, )  
Units 1 and 2) )

Docket Nos. ~~50-346A~~ )  
50-500A )  
50-501A )  
 )  
Docket Nos. 50-440A )  
50-441A )

MEMORANDUM AND ORDER

By this Order the Board sustains, in part, the motion dated October 30, 1975 by Applicants Ohio Edison Company and Pennsylvania Power Company for additional discovery from the Department of Justice (Justice) and the NRC Staff (Staff). The moving Applicants state that the allegations filed by Justice and the Staff on September 5, 1975 charged them with many acts of anticompetitive conduct not previously asserted and that additional discovery is required to meet the new charges. Justice and the Staff respond by stating that (1) Applicants were sufficiently apprised of the nature of the charges by the Matters in Controversy adopted by the Board on July 25, 1974 in Prehearing Conference Order No. 2; that (2) the joint request by Justice and the Staff that Ohio Edison and Pennsylvania Power answer interrogatories and produce documents provided further and adequate

notice to them of the nature of the allegations; and that (3) the instant motion is untimely and, on the eve of the evidentiary hearing, burdensome.

The Board has ruled that the Matters in Controversy adopted in Prehearing Conference Order No. 2 set forth the evidentiary boundaries of these proceedings. However, the Staff and Justice concede that the facts underlying the specific allegations covered by the pending discovery request predicated, in part, upon the product of their discovery efforts against Applicants after the formulation of the Matters of Controversy.

Applicants' motion, filed October 30, 1975, almost eight weeks after the filing of the September 5 allegations, is very late. No explanation has been offered for this and we are unable to find that good cause exists for Applicants' delayed motion. On the other hand, the relief we now order is not nearly so burdensome as feared by the Staff and Justice. We permit further discovery despite Applicants' untimely action because of the seriousness of the charges and the need for a complete record.

The Board does not agree that the moving Applicants require the detailed responses they seek. There is no need for the Staff or Justice now to explain the import of the evidence they intend to offer. Applicants are capable of evaluating the evidence for themselves. Therefore, we will require Staff and Justice only to identify the documents and the witnesses they

presently\* intend to rely upon in support of each of the respective allegations set forth in Applicants' motion. Where substantial portions of large documents, if any, are irrelevant to the allegation, the relevant portions shall be designated. A brief summary of the witnesses' testimony relevant to the allegation shall also be provided.

In ordering this limited discovery, we note that the parties adverse to Applicants filed their tentative lists of documents and witnesses on November 21, 1975. These filings should have been helpful to Applicants in understanding the evidence to be presented against them. Moreover, in its Pre-hearing Brief filed November 26, 1975, Justice has already done partially what this order requires by designating documents supporting many of the allegations now considered in this motion. The Board does not intend to require the Staff and Justice to duplicate work already done. A referenced response, if otherwise adequate,\*\* will be acceptable.

We previously have indicated that the presence of numerous counsel on both sides of the issues permits us to order limited additional discovery (under the supervision of the Board)

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\* As customary, amendments will be permitted for good cause.

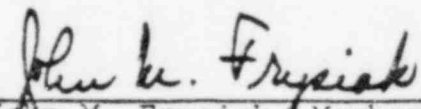
\*\* A reference response must be expanded, however, to include requested material not contained in the reference.

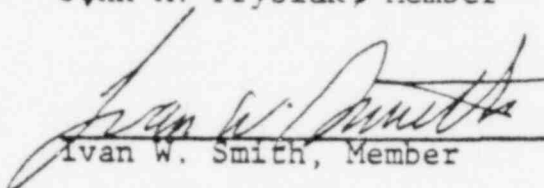
without disruption or delay of the hearings. This is such a case. Moreover, the necessity for limited discovery during hearings is necessitated partly by Ohio Edison's delay in filing its request.

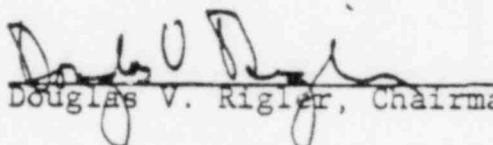
The Department will comply with this order no later than 14 days from date of order.

IT IS SO ORDERED.

ATOMIC SAFETY AND LICENSING  
BOARD

  
\_\_\_\_\_  
John M. Frysiak, Member

  
\_\_\_\_\_  
Ivan W. Smith, Member

  
\_\_\_\_\_  
Douglas V. Rigler, Chairman

Dated at Bethesda, Maryland

this 16th day of December 1975.