

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)	Docket No. 50-346A
COMPANY)	
(Davis-Besse Nuclear Power Station,)	
Unit 1))	
)	
THE CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY, ET AL.)	Docket Nos. 50-440A
(Perry Nuclear Power Plant,)	50-441A
Units 1 and 2))	
)	
THE TOLEDO EDISON COMPANY, ET AL.)	
(Davis-Besse Nuclear Power Station,)	Docket Nos. 50-500A
Units 2 and 3))	50-501A

APPLICANTS' MOTION FOR EXTENSION OF TIME
FOR FILING PREHEARING BRIEF

1. On November 4, 1975, Applicants filed with this Board a request for an additional two weeks (until November 24, 1975) within which to file their prehearing brief and to submit their preliminary document designations and witness lists. No party opposed this request. By telephone conference call of November 5, 1975, the Chairman of the Licensing Board announced that Applicants' motion for more time would be granted in part by extending the filing date for Applicants' prehearing brief and lists of documents and witnesses 11 days, until November 21, 1975. The Board also moved the hearing date from November 20 to December 1.

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2. Applicants' earlier motion for an additional two weeks had been based on the realization that to complete Applicants' prehearing brief would require not only the time necessary to write, type and assemble the document, but also considerable additional time to coordinate this effort among the five Applicant utilities, all located outside the Washington, D. C. area. A similarly demanding task was called for to complete simultaneously Applicants' preliminary document designations and witness lists.

3. It is now clear that Applicants' original estimate of the extra time needed was too conservative. The coordination effort alone has become a far more time-consuming process than anticipated. In addition, Applicants' counsel has had to interrupt his work on the prehearing brief to prepare in time for filing on November 15, 1975, the response of The Cleveland Electric Illuminating Company to the subpoena for additional discovery filed by the Department of Justice.^{1/} Accordingly, Applicants' prehearing brief simply will not be completed by November 21, or even

^{1/} While the Board indicated in the margin of its "Order Setting Schedule For Resolution Of Applicants' Motion For Determination That Davis-Besse Unit 1 Is 'Grandfathered' For Purposes Of Operation" that Applicants' counsel had "obtained relief from response requirements" in connection with the Department's subpoena, the effect of holding Applicants' counsel to a November 15 filing date has been just the opposite. The subpoena was not served on CEI until November 10, 1975; under normal circumstances, CEI would have had until November 17 to file the present motion to quash.

by November 24, 1975. The purpose of this filing is therefore to request from this Board an extension of time for filing Applicants' prehearing brief, and Applicants' lists of witnesses and documents, until December 1, 1975.

4. This request for additional time is both necessary and reasonable in the circumstances. This Board, in granting to the other parties, over Applicants' partial opposition,^{2/} an extension of 17 days within which to submit a responsive pleading (normally due 5 days after receipt), noted that "all parties are operating under stringent time requirements."^{3/} Recognizing this, we would hope that the Board would be equally receptive to the request for relief in the present motion.

5. Even with the extra 10 days now requested, Applicants have only called upon the Board for a total extension of 21 days from the original November 10 filing date within which to make the filings now under discussion. This

^{2/} While the Licensing Board characterized Applicants' opposition as "unreasonable", it neglected to state for the record that Applicants opposed granting to the NRC Staff and the Department of Justice any additional time to respond to "Applicants' Motion For Determination That Davis-Besse Unit 1 Is 'Grandfathered' For Purposes Of Operation" only because the Department and Staff have just recently prepared and filed comprehensive briefs on the identical "grandfathering" question in the Farley proceeding. Applicants did not oppose granting the City additional time to brief this issue since it had made no such filing in Farley.

^{3/} See "Order Setting Schedule For Resolution Of Applicants' Motion For Determination That Davis-Besse Unit 1 Is 'Grandfathered' For Purposes Of Operation," dated November 6, 1975.

should be compared with the 30 extra days granted by the Board to the City of Cleveland in order to allow it to complete discovery and the 22 extra days separately granted by the Board to the Department of Justice in connection with the filing of expert testimony. If the present motion is granted, we would propose that the prehearing schedule be adjusted to take into account the requested extension in the following manner:

<u>Item</u>	<u>From</u>	<u>To</u>
Filing of Prehearing Briefs and designations of documents and witnesses by parties other than Applicants	November 17	November 26
Filing of Applicants' Prehearing Brief and designations of documents and witnesses	November 21	December 1
Prehearing Conference	November 24	December 4
Hearing commences	December 1 ^{4/}	December 11

The Department of Justice has advised Applicants' counsel that it does not oppose the revised schedule requested in this motion; the NRC Staff has advised that it takes no position with

^{4/} Applicants have been advised that office space in the building where the evidentiary hearing is to be held will not be available for the installation of files and office equipment until December 1, 1975. In light of this development, the December 1 date for commencement of the hearing seems premature in any event.

regard to the motion; the City of Cleveland has advised that it is opposed to the motion but does not anticipate filing a written opposition with the Board.

WHEREFORE, Applicants request that their motion for an additional ten days within which to file their pre-hearing brief and to submit their preliminary lists of witnesses and documents, until December 1, 1975, be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

Wm. Bradford Reynolds

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Gerald Charnoff

Counsel for Applicants

Dated: November 14, 1975.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Motion For Extension Of Time For Filing Pre-hearing Brief" were served upon each of the persons listed on the attached Service List, by hand delivering a copy to those persons in the Washington, D. C. area and by mailing a copy, postage prepaid, to all others, all on this 14th day of November, 1975.

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

Wm. Bradford Reynolds

Wm. Bradford Reynolds
Counsel for Applicants

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