

11-18-75

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of

THE TOLEDO EDISON COMPANY and )	Docket Nos. 50-346A
THE CLEVELAND ELECTRIC ILLUMINATING )	
COMPANY )	
(Davis-Besse Nuclear Power Station, )	
Unit 1) )	
) )	
THE CLEVELAND ELECTRIC ILLUMINATING ) Docket Nos. 50-440A	
COMPANY, ET AL. ) 50-441A	
(Perry Nuclear Power Plant, )	
Units 1 and 2) )	
) )	
THE TOLEDO EDISON COMPANY, ET AL. ) Docket Nos. 50-500A	
(Davis-Besse Nuclear Power Station, ) 50-501A	
Units 2 and 3) )	

MINUTES OF CONFERENCE CALL OF  
NOVEMBER 14, 1975

On November 14, 1975 at 4:15 p.m. the Chairman of the Licensing Board initiated a conference call with counsel for all parties, including Messrs. Charno, Hjelmfelt, Lessy, Reynolds, Berger and Benbow, principally to discuss two items: (1) the request of the Department of Justice to amend its interrogatory answers by adding a new allegation against Ohio Edison Company, and (2) the request of Applicants for an extension of time for filing their prehearing brief and preliminary lists of evidentiary documents and proposed witnesses.

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The Chairman indicated with respect to the first item that the Board desired to have further oral argument limited to the question of the relationships of the proposed amendment to Matter in Controversy Nos. 4, 5 and 6 set forth in Prehearing Conference Order No. 2; the Department was advised that since it had the burden it should be prepared to go first. This matter was made the first agenda-item to be taken up at the prehearing conference rescheduled for November 26, 1975.

As to the second item, the Chairman stated that Applicants' motion for more time indicated that the Department was not opposed to the extension, that the Staff took no position on the question and that the City of Cleveland was opposed to any further extension. Mr. Hjelmfelt confirmed that it was the City's intention to oppose any further requests for a modification of the prehearing schedule and/or a postponement of the hearing. Mr. Lessy added that, while the Staff was taking no position on the Applicants' motion, it did want Applicants' prehearing brief before the hearing commenced. The Chairman asked Mr. Reynolds what the length of Applicants' prehearing brief would be; he was informed that it would be in the neighborhood of 200 pages. Mr. Benbow added that Ohio Edison and Pennsylvania Power were also submitting a separate brief of approximately 75 pages. When the

Chairman asked Mr. Benbow the reason for the separate brief, it was explained that the separate treatment was necessary in light of the new charges made only on September 5th of this year going for the first time to Ohio Edison's service territory and competitors. Mr. Benbow emphasized that the separate brief would not be duplicative, and that Ohio Edison and Pennsylvania Power would be joining in all relevant portions of the prehearing brief submitted by Mr. Reynolds on behalf of all Applicants insofar as it was applicable to Ohio Edison and Pennsylvania Power.

The Chairman then indicated that he did not want to extend the date for the commencement of the evidentiary hearing to December 11, 1975, as suggested in Applicants' application for an extension of time. Mr. Lessy suggested half that time, and Mr. Charno suggested December 8th. Mr. Benbow requested a December 9 date to accommodate out-of-town counsels' travel plans; the Chairman indicated that while in general he favored four-day weeks in the future with either Monday or Friday as a travel day, for this purpose he preferred tentatively to commence the hearing on Monday, December 8th.

After substantial discussion, the following was agreed to with regard to the filing of prehearing briefs and the exchange of document designations and witness lists. On November 21st, the Staff, the Department and the City would mail to the Applicants their respective designations of witnesses

and documents; copies of this material would be served by hand on Washington, D. C. counsel on November 24th. The prehearing briefs of the Department, the Staff and the City of Cleveland were to be filed on November 26, 1975. Applicants would have until December 1 to file both their prehearing briefs and their lists of documents and witnesses.

The Chairman next turned to the matter of the pre-hearing conference immediately to precede the hearing. Following some discussion, this prehearing conference was set for November 26, 1975. The Chairman asked Mr. Reynolds to indicate preliminarily what procedural matters he intended to raise at the prehearing conference. When advised that Applicants planned to request a ruling from the Board requiring that the other parties specify, both with respect to their documentary and testimonial evidence, which Applicant(s) the evidence was directed against, the Chairman stated that he doubted Applicants would obtain such a ruling. He added that this proceeding involves a joint applicant for a nuclear facility and it therefore was a general conspiracy case, so that all evidence would be received as to all Applicants.

Mr. Reynolds, Mr. Benbow and Mr. Berger voiced strong objections. In response to a request by Messrs. Benbow and Berger to allow Applicants to address this question fully at the November 26 prehearing conference, the Chairman agreed to add to the agenda

arguments on the question whether evidence offered with respect to one Applicant should be received as to all or any others. In addition, the Chairman advised the parties to be prepared on November 26 to speak to the additional questions pending with regard to the Applicants' motion to quash the Department's subpoena, the City of Cleveland's motion to reopen discovery, and the issue joined with respect to Ohio Edison and Pennsylvania Power's interrogatories. He stated that some, or all of, these matters may be resolved before that date, however. Finally, Mr. Lessy asked the Chairman if the Staff could have an opportunity at the pre-hearing conference to speak to the matter of burden of proof vs. the burden of going forward; the Chairman also added that discussion to the agenda.

As a final matter, Mr. Lessy raised a question regarding the nature of the summary statement describing testimony to be given by designated witnesses. The Chairman referred Mr. Lessy to the transcript of an earlier prehearing conference with the remark that it was his recollection that the summary of testimony was intended for the convenience of counsel and to eliminate surprise at the hearing.

The Chairman stated that the Board would issue an Order setting forth the new hearing schedule and advising as to the time and place of the prehearing conference. He asked

Mr. Lessy to prepare and circulate a summary of agenda items to be taken up on November 26; Mr. Reynolds was asked to circulate on November 25 those procedural matters that Applicants intended to discuss at the prehearing conference.

Respectfully submitted,

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Dated: November 18, 1975

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Minutes of Conference Call of November 14, 1975" dated November 18, 1975 have been served by first class U.S. mail, postage prepaid, on this 18th day of November, 1975 on the following:

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