

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE (SPECIAL) ATOMIC SAFETY AND LICENSING BOARD

9/2/76

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
(Perry Nuclear Power Plant,)	
Units 1 & 2))	

MINUTES OF CONFERENCE CALL
HELD SEPTEMBER 1, 1976

On September 1, 1976 at 11:00 a.m. a conference call was convened with the following participants: Special Board Chairman Robert M. Lazo, Esq., Robert Hart, Esq. for the City of Cleveland, Michael Gallagher, Esq., for Squire, Sanders & Dempsey (SS&D), William Bradford Reynolds, Esq. for the Applicants and Jack R. Goldberg, Esq. for the NRC Staff.

Mr. Goldberg convened the conference call and stated that the City of Cleveland wished to ask for an extension of time in which to answer the Motion of SS&D to dismiss disqualification proceedings, dated August 26, 1976. Mr. Hart stated that the City of Cleveland would like to request an extension until September 15, 1976 to answer the SS&D dismissal motion. Mr. Hart further stated that he believed that Mr. Gallagher and the Staff approved of the extension. Mr. Gallagher responded that his approval was conditional in that he would agree to an extension for the City only if discovery were stayed until after the disposition of the dismissal motion. He further stated that he objected to any extension being

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granted to the Staff since expedition of the disqualification issue was critical, but in his opinion the expedition had been pointed only towards SS&D. Mr. Gallagher felt that the City and the Staff should also expedite this matter. He explained that engaging in discovery was expensive and a large effort and it would be unfair to SS&D to require it to continue to engage in discovery while the dismissal motion is pending.

Mr. Goldberg stated that he did approve of an extension for the City until September 15, 1976 and also requested an extension for the Staff until September 24, 1976. Mr. Goldberg stated that the Staff was concerned with delay in the disqualification proceeding but that these extensions in which to answer SS&D's dismissal motion were necessary in light of the significance of that motion. Mr. Goldberg further stated that the Staff was still opposed to staying discovery until final disposition of SS&D's dismissal motion for the reasons in Staff's August 19, 1976 answer to the motion of SS&D to stay temporarily further discovery. Mr. Goldberg explained that the Commission's Rules of Practice provide the Staff with additional time beyond what all other parties have to answer motions. The intent and purpose of these rules is to give the Staff an opportunity to formulate its position with the knowledge of all other parties' positions. The Staff, in addition to representing itself, represents the public interest and therefore, according to Mr. Goldberg, it is appropriate to allow the Staff additional time to answer motions beyond that which the other parties have. Mr. Goldberg stated that his request for an extension until September 24 was consistent with the intent and purpose of the Commission's

Rules of Practice.

Chairman Lazo asked the City and SS&D if they would agree to a temporary suspension of discovery until SS&D's dismissal motion were disposed of. Mr. Hart stated that he would agree to such a temporary suspension of discovery because discovery was at a standstill anyway. Mr. Hart stated that this necessitated the City's filing a motion to compel discovery which is still pending. Chairman Lazo stated that the Staff was in a difficult position since it was resisting delay by opposing the stay of discovery but was also asking for additional time in which to answer the dismissal motion. Chairman Lazo then stated that it was aware of the Appeal Board's desire for this disqualification proceeding to be expedited but he thought it would be in everyone's best interest to stay further discovery until SS&D's dismissal motion has been disposed of. He further stated that the Board wanted the benefit of the Staff's position on SS&D's dismissal motion. Chairman Lazo then set September 15, 1976 as the last date upon which the City of Cleveland could file its answer to SS&D's dismissal motion and set September 24, 1976 as the last date upon which the Staff could answer SS&D's dismissal motion. Mr. Reynolds stated that he had not contemplated filing an answer to SS&D's motion because the disqualification issue was mainly a dispute between the City and SS&D. Mr. Reynolds stated, however, that since the Staff will be answering the dismissal motion and since the Applicants' status in this disqualification proceeding was the same as the Staff's, the Applicants will file an answer to the dismissal motion and would like until September 24, 1976 to do so. Mr. Goldberg objected to allowing Applicants until September 24, 1976 to answer

because the very purpose contemplated by the rules is to give the Staff an opportunity to respond to motions after all other parties have responded. Mr. Goldberg further objected to Mr. Reynold's characterization of the Applicants' status in this proceeding being the same as Staff's since the Staff also represents the public interest. Mr. Goldberg further stated that the Staff's role in this disqualification proceeding is and has been the same as the Staff's role in other proceedings, namely to represent the Staff's position on the issues, to represent the public interest, and to advise and assist the Board in whatever way it can. Mr. Reynolds stated that it would be a hardship for him to answer the dismissal motion by September 15 and so he requested until September 24, 1976.

Chairman Lazo then set the following schedule for the filing of answers to SS&D's motion to dismiss the disqualification proceeding:

- (1) The City of Cleveland must file its answer by September 15, 1976.
- (2) The Staff and the Applicants must file their answers by September 24, 1976.
- (3) The Staff has an additional 5 days in which to respond to Applicants' answer, if the staff deems it necessary.

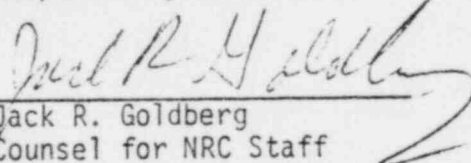
Mr. Gallagher then inquired as to how long he would have to file a reply to the Staff's answer to his dismissal motion. Mr. Goldberg objected to the filing of a reply by SS&D since replies to answers to motions are expressly not permitted by the Commission's Rules of Practice and he saw no reason to depart from that policy in this case. Chairman Lazo noted that allowing a reply would be further extending the disqualification proceeding and asked Mr. Gallagher whether he couldn't respond to the Staff's answer in the context of an oral argument. Chairman Lazo

further asked Mr. Gallagher whether Mr. Gallagher thought oral argument would be required. Mr. Gallagher responded that he believed an oral argument was required and could respond to the Staff's answer in the context of an oral argument, or if necessary, by filing a motion with the Board for leave to file a reply.

Chairman Lazo concluded the conference call by stating that discovery will be stayed until the Board rules on SS&D's motion to dismiss the disqualification proceeding and that he would subsequently initiate a conference call for the purpose of setting a date for oral argument, probably in the beginning of October. He added that the answers to SS&D's dismissal motion should be hand delivered to the extent possible.

There being no further business the conference call was concluded.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of September 1976.

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CERTIFICATE OF SERVICE

I hereby certify that copies of MINUTES OF CONFERENCE CALL HELD SEPTEMBER 1, 1976, in the above captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of September 1976:

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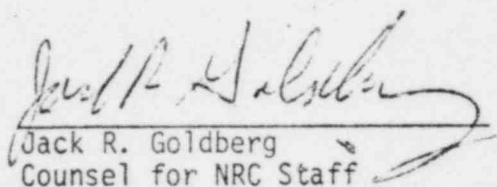
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