



DEPARTMENT OF LAW
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April 22, 1976

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Chairman
Atomic Safety and Licensing Appeals Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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Re: The Toledo Edison Company and The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station Unit 1) NRC No. 50-346A; The Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2) NRC Docket Nos. 50-440A and 50-441A; The Toledo Edison Company, et al (Davis-Besse Power Station Units 2 and 3) NRC Docket Nos. 50-500A and 50-501A.

Gentlemen:

In his Brief of Squire, Sanders & Dempsey, re: Special Section 2.713(c) Proceeding filed with the Appeal Board April 1, 1976, Mr. Gallagher, Counsel for that firm made extensive use of depositions taken in another case. This other case is a treble damage antitrust case captioned City of Cleveland, Plaintiff v. The Cleveland Electric Illuminating Company, et al, Defendants in the United States District Court for the Northern District of Ohio, Eastern Division, Civil Action No. 75-560. In that case, acting as Law Director of the City of Cleveland, the undersigned took the depositions of SS&D partners John Lansdale, Jr., John Brueckel and Daniel J. O'Laughlin as well as the deposition of former Secretary to the Cleveland Sinking Fund, Howard Holton. These

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Alan S. Rosenthal, Chairman
Atomic Safety and Licensing Appeals Board

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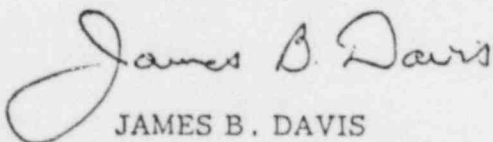
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depositions were not made part of the record below in the deliberations of the Licensing Board or the Special Board. Nevertheless since Squire, Sanders and Dempsey has opened the door by quoting those selected portions of those depositions that they deem helpful to their case, the City in self defense has further quoted from these depositions its Brief in Support of Order of Licensing Board Suspending SS&D From Further Participating in These Proceedings of April 21, 1976. Because this likewise leaves the record in a confused and unsatisfactory state, the City is now transmitting under separate cover the above four (4) depositions in their entirety to the Appeal Board for whatever use it may choose to make of them.

The City also notes with interest that Squire, Sanders and Dempsey has made use of the testimony of its partner Daniel O'Laughlin before the Special Board all of which testimony was stricken when that Special Board reversed itself and elected to decide the matter of disqualification upon the briefs, affidavits and documents originally submitted. Since the entire transcript of matters before this Special Board is presumably available to the Appeal Board, the City will leave to the Appeal Board what use it may choose to make of that transcript in view of the action of SS&D in quoting from it after it was stricken.

Respectfully,



JAMES B. DAVIS
Director of Law

JBD: anm

cc: All parties