

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE (SPECIAL) ATOMIC SAFETY AND LICENSING BOARD

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 and 3)	)	
THE CLEVELAND ELECTRIC ILLUMINATING	)	NRC Docket Nos. 50-440A
COMPANY, ET AL.	)	50-441A
(Perry Nuclear Power Plant,	)	
Units 1 & 2)	)	

STAFF'S ANSWER TO THE MOTION OF SQUIRE,  
SANDERS AND DEMPSEY TO STAY TEMPORARILY  
FURTHER DISCOVERY

On November 20, 1975, the City of Cleveland (City) moved the Atomic Safety and Licensing Board (Board) presiding over the above-captioned antitrust proceeding to disqualify the law firm of Squire, Sanders & Dempsey (SS&D) from participating in this proceeding as counsel for The Cleveland Electric Illuminating Company (CEI) or any other Applicant. That motion is based on an alleged conflict of interest arising from SS&D's prior dual representation of CEI and the City and its current representation of CEI in this proceeding. A similar motion to disqualify SS&D was filed by the City in its private antitrust suit against CEI and others in the United States District Court for the Northern District of Ohio. <sup>1/</sup> On August 3, 1976, the district court entered an order denying the latter motion. On August 6, 1976, SS&D moved this Special Board to stay further discovery in the disqualification proceeding pending before it until SS&D filed, and

<sup>1/</sup> City of Cleveland v. The Cleveland Electric Illuminating Co., Civil Action No. C75-560.

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the Special Board considered, a motion which SS&D will file to dismiss the disqualification proceeding based on the doctrine of collateral estoppel. The Staff opposes this motion for the reasons set forth below.

On June 11, 1976, the Atomic Safety and Licensing Appeal Board (Appeal Board) issued a decision on the disqualification issues which were certified to it by the Board and remanded the proceeding to this Special Board for a full evidentiary hearing on the issues. The Appeal Board concluded its decision by noting the already advanced stage of the ongoing antitrust proceeding and urging the Special Board to give the disqualification issue "expedited consideration."<sup>2/</sup> In light of this, it is the Staff's position that staying further discovery pending the preparation and disposition of a dismissal motion has the potential for substantially delaying final resolution of the disqualification issue. There is no certainty that disposition of the dismissal motion will be favorable to SS&D. In the event the Special Board were to deny that dismissal motion, then staying further discovery now until that final disposition will have accomplished nothing but delaying final resolution of the disqualification issue on its merits. Therefore the Staff submits that staying further discovery now would be inconsistent with the Appeal Board's decision remanding this proceeding for expedited consideration.

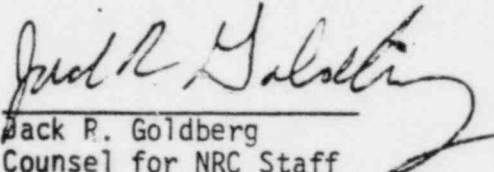
<sup>2/</sup> ALAB-332 at 34 (June 11, 1976).

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In the Staff's view, it does not appear to be unduly burdensome for SS&D to prepare its motion concurrently with conducting discovery. Furthermore, the Staff perceives no prejudice to SS&D and the City in their continuing these discovery efforts during the period the dismissal motion is pending before the Special Board.<sup>3/</sup>

For the above reasons, the Staff opposes SS&D's motion to stay further discovery and requests the Special Board to deny that motion.

Respectfully submitted,

  
Jack R. Goldberg  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 19th day of August 1976.

<sup>3/</sup> The Staff has been cognizant of the Special Board's ruling that while the Appeal Board has held that the Staff has a right to participate in this disqualification proceeding, the Special Board would expect our participation to be kept to a minimum. Prehearing Conference Order, July 2, 1976, citing ALAB-332 at 29 (June 11, 1976). Consistent with that, the Staff has not engaged in, and does not intend to engage in, discovery. However, the Staff does believe it is most proper for it to resist the possibility of any further delay in this disqualification proceeding.

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CERTIFICATE OF SERVICE

I hereby certify that copies of STAFF'S ANSWER TO THE MOTION OF SQUIRE, SANDERS AND DEMPSEY TO STAY TEMPORARILY FURTHER DISCOVERY, in the above captioned matter 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 19th day of August 1976:

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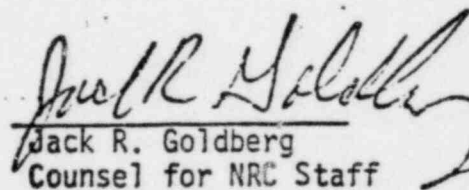
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