

Reg. Files

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Richard S. Salzman
Jerome E. Sharfman

In the Matter of)
)
)
THE TOLEDO EDISON COMPANY and)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
)
(Davis-Besse Nuclear Power Station,)
Units 1, 2 & 3))
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, et al.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-346A
50-500A
50-501A

Docket Nos. 50-440A
50-441A

ORDER

January 19, 1977

The applicants have moved for an extension of time within which to file exceptions to the January 6, 1977 initial decision of the Licensing Board in this antitrust proceeding. The motion suggests a schedule for the filing of the exceptions and the briefs in support or in opposition thereto. The other parties (the City of Cleveland, the NRC staff and the Department of Justice) have responded to the motion. All agree that the time periods provided in 10 CFR 2.762 for the filing of exceptions and briefs are insufficient

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in this case. There is no agreement among them, however, respecting the appropriate briefing schedule. Each party has advanced its own proposal, differing to varying extents from that tendered by the applicants.

There are, of course, conflicting considerations which must be taken into account in resolving the disagreement. On the one hand, recognition must be given to the fact that the trial record is substantial; that the issues are numerous and apparently complex; that the initial decision is lengthy; and that the eventual outcome of the proceeding is a matter of extreme importance to all concerned. Additionally, hastily prepared (and therefore possibly inadequate) briefs may have the effect of retarding our disposition of the appeal or appeals. On the other hand, the applicants have on file a motion for a stay pendente lite of the antitrust conditions imposed upon their licenses by the initial decision.^{1/} And it is a fair assumption that counsel are already very familiar with not only the record but also the issues.

^{1/} That motion was referred by us to the Licensing Board in ALAB-364, 5 NRC ____ (January 17, 1977).

All things considered, we believe that the following schedule is reasonable:

1. Exceptions - February 7, 1977.
2. Briefs in support of exceptions - March 28, 1977.
3. Briefs in opposition to exceptions - May 23, 1977.
4. Reply briefs - June 13, 1977.

That schedule is hereby established. Counsel will be expected to make every effort to adhere to it. Requests for a further enlargement of the time will be granted only upon a showing of extraordinary cause. The press of other business will not be deemed such cause.

This Board also believes it desirable to establish a page limitation on briefs. On the assumption that an appeal from the initial decision will be taken by the applicants alone, we are hereby fixing the following limitations:

Brief or briefs for the applicants - 300 pages in total (i.e., if the applicants elect to file separate briefs, those briefs shall not collectively exceed that number of pages).

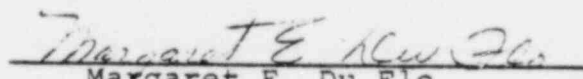
Briefs for the other parties as appellees - 200 pages each.

Reply briefs - 100 pages in total.

Requests for enlargement of these limitations will not
be favored. ^{2/}

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD


Margaret E. Du Flo
Secretary to the
Appeal Board

Mr. Salzman did not participate in the disposition
of this matter.

^{2/} In the event that exceptions are filed by some
party other than the applicants, page limitations
on the briefing of those exceptions will then
be fixed.

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this)
21st day of Jan 1977.

PA Downing
Office of the Secretary of the Commission

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)	
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(Davis-Besse Unit 1))	
CLEVELAND ELECTRIC ILLUMINATING)	50-440A
COMPANY, ET AL.)	50-441A
(Perry Units 1 and 2))	
TOLEDO EDISON COMPANY, ET AL.)	50-500A
(Davis-Besse Units 2 and 3))	50-501A

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