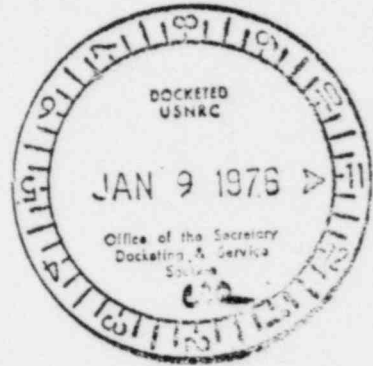


Reg Files

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Michael C. Farrar
Richard S. Salzman



_____)
In the Matter of)
)
THE TOLEDO EDISON COMPANY et al.)
)
(Davis-Besse Nuclear Power Station,)
Unit 1))
_____)

Docket No. 50-346A

ORDER

January 8, 1976

1. The Licensing Board has ruled that section 105c of the Atomic Energy Act does not permit Unit 1 of the Davis-Besse facility to be licensed for operation prior to the completion of the antitrust proceeding currently pending before that Board. LBP-76-1, January 7, 1976. In that same order the Board referred its ruling to us for consideration. We agree that the issue is a significant one and, moreover, one which might be rendered moot without prompt resolution and therefore accept the referral.

2. We have reviewed the papers filed below and have decided that full appellate briefing by each party is desirable. In addition to those matters which the individual

8002240079 M

parties believe merit our attention, their briefs should address, carefully and fully, the following points:

- (a) The considerations relied upon by the Licensing Board in reaching its decision, including those set out in footnote 3 on page 7 of its memorandum and order;
- (b) The legislative history of section 105c insofar as it bears on the question presented, including the inferences to be drawn from and weight to be given to the remarks of Representative Hosmer which appear at 116 Cong. Rec. 9446-47 (daily ed. September 30, 1970); and
- (c) Whether section 105c(6) of the Act permits the licensing of a nuclear power facility even though unfavorable antitrust consequences might result therefrom if the Commission deems it necessary to protect the public interest and, if so, the implications this has for the question presented.

3. The incorporation of all or parts of prior briefs "by reference" is a practice which we frequently find unresponsive, unhelpful, and confusing; it should be avoided here. If a party considers an argument to merit our careful consideration, it should be included in its appellate brief.

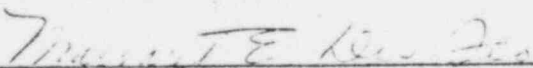
4. A not inconsiderable portion of the briefs below were devoted to attempts to establish where the responsibility lies for asserted delays in this antitrust proceeding. Such matters of "who struck John" should be omitted from the appellate briefs.

5. The briefs of the parties shall be filed and served in accordance with the following schedule; requests for additional briefing time will be looked upon with disfavor:

- (a) The Applicant: on or before January 30, 1976.
- (b) The City of Cleveland, the Attorney General, and the N.R.C. Staff: three weeks after the Applicant files and serves its brief or by February 23, 1976, whichever date is earlier.

It is so ORDERED. 1/

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD



Margaret E. Du Flo
Secretary to the
Appeal Board

1/ Mr. Rosenthal concurs in the decision to accept the referred question; he did not, however, participate in the preparation of this order.

UNITED STATES OF AMER.
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
THE TOLEDO EDISON COMPANY, ET AL.) Docket No.(s) 50-346A
CLEVELAND ELECTRIC ILLUMINATING) 50-440A
COMPANY) 50-441A
)
(Davis-Besse Nuclear Power)
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
9th day of Jan 1976.

Eugenia M. Pleasant
Office of the Secretary of the Commission

cc: ASLAB
ASLBP
Reg Files

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TOLEDO EDISON COMPANY, ET AL)	Docket No.(s) 50-346A
(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

SERVICE LIST

Douglas Rigler, Esq., Chairman
Foley, Lardner, Hollabaugh & Jacobs
815 Connecticut Avenue, N. W.
Washington, D. C. 20006

Joseph Rutberg, Esq.
Antitrust Counsel
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ivan W. Smith, Esq.
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of Antitrust & Indemnity
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

John M. Frysiak, Esq.
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Benjamin H. Vogler, Esq.
Roy P. Lessy, Jr., Esq.
Antitrust Counsel
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Alan S. Rosenthal, Esq., Chairman
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Donald H. Hauser, Esq.
Victor F. Greenslade, Jr., Esq.
Cleveland Electric Illuminating
Company
P. O. Box 5000
Cleveland, Ohio 44101

Mr. Michael C. Farrar
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Joseph J. Saunders, Esq., Chief
Public Counsel and Legislative
Section
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

Richard R. Salzman, Esq.
Atomic Safety and Licensing Appeal
Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Gerald Charnoff, Esq.
Shaw, Pittman, Potts, Trowbridge
and Madden
910 -17th Street, N. W.
Washington, D. C. 20006

Lee C. Howley, Esq., Vice President
and General Counsel
Cleveland Electric Illuminating
Company
P. O. Box 5000
Cleveland, Ohio 44101

David C. Hjelmfelt, Esq.
Michael Oldak, Esq.
1700 Pennsylvania Avenue, N. W.
Washington D. C. 20006

Reuben Goldberg, Esq.
Arnold Fieldman, Esq.
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Steven M. Charno, Esq.
Melvin G. Berger, Esq.
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

Honorable Thomas E. Kauper
Assistant Attorney General
Antitrust Division
U. S. Department of Justice
Washington, D. C. 20530

John C. Engle, President
AMP-O, Inc.
Municipal Building
20 High Street
Hamilton, Ohio 45012

Honorable Richard M. Firestone
Assistant Attorney General
Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Honorable William J. Brown
Attorney General
State of Ohio
Columbus, Ohio 43215

Honorable Edward A. Matto
Assistant Attorney General
Chief, Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Honorable Deborah P. Highsmith
Assistant Attorney General
Antitrust Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Honorable Christopher R. Schraff
Assistant Attorney General
Environmental Law Section
351 East Broad Street
Columbus, Ohio 43215

Duncan, Brown, Weinberg & Palmer
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

John Lansdale, Jr., Esq.
Cox, Langford & Brown
21 Dupont Circle, N. W.
Washington, D. C. 20036

Leslie Henry, Esq.
W. Snyder, Esq.
Fuller, Henry, Hodge & Snyder
300 Madison Avenue
Toledo, Ohio 43604

Mr. George B. Crosby
Director of Utilities
Piqua, Ohio 45350

William M. Lewis, Jr.
W. M. Lewis & Associates
P. O. Box 1383
Portsmouth, Ohio 45662

Robert D. Hart, Esq.
Assistant Law Director
City Hall
Cleveland, Ohio 44114

Anthony G. Aiuvalasit, Jr., Esq.
Antitrust Division
Department of Justice
P. O. Box 7513
Washington, D. C. 20044

Susan B. Cyphert, Esq.
Antitrust Division
Department of Justice
727 New Federal Building
2140 East Ninth Street
Cleveland, Ohio 44199

David M. Olds, Esq.
Reed, Smith, Shaw and McClay
P. O. Box 2009
Pittsburgh, Pennsylvania 15230

Thomas A. Kayuha, Esq.
47 North Main Street
Akron, Ohio 44308

Perry Public Library
3753 Main Street
Perry, Ohio 44081

Director
Ida Rupp Public Library
301 Madison Street
Port Clinton, Ohio 43452

Joseph A. Rieser, Jr., Esq.
Lee A. Rau, Esq.
Reed, Smith, Shaw & McClay
Madison Building, Suite 404
Washington, D. C. 20005

Terence H. Benbow, Esq.
A. Edward Grashof, Esq.
Winthrop, Stimson, Putnam
and Roberts
40 Wall Street
New York, New York 10005

Ruth G. Bell, Esq.
Janet R. Urban, Esq.
Antitrust Division
Department of Justice
Washington, D. C. 20530