

REGULATORY DOCKET FILE COPY

UNITED STATES ATOMIC ENERGY COMMISSION

IN THE MATTER OF:

THE FOLKSWORTH COMPANY AND
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
(Davis-Besse Nuclear Power Station)



REGULATORY CENTRAL FILES

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the matter of: :

THE TOLEDO EDISON COMPANY and :
 THE CLEVELAND ELECTRIC ILLUMINATING COMPANY : Docket No.
 (Davis-Besse Nuclear Power Station) : 50-346

Courtroom No. 4
Lucas County Courthouse
Toledo, Ohio

Thursday, 28 June 1973

Prehearing Conference in the above-entitled matter
came on for hearing, pursuant to notice, at 10:30 a.m.,

BEFORE:

JOHN FARMAKIDES, Esq., Chairman,
Atomic Safety and Licensing Board

DR. CADET HAND, Member.

MR. FREDERICK SHON, Member.

APPEARANCES:

For the Applicants:

GERALD CHARNOFF, Esq., and JAY E. SILBERG, Esq.,
Shaw, Pittman, Potts & Trowbridge,
910 17th Street, N.W., Washington, D. C. 20006

For the Regulatory Staff:

FRANCIS X. DAVIS, Esq.,
Office of General Counsel, USAEC,
Washington, D. C. 20545

1 APPEARANCES, Cont'd:

2 For the Regulatory Staff:

3 MYRON KARMAN, Esq.,
4 Office of General Counsel, USAEC,
5 Washington, D. C. 20545

6 For the Intervenor:

7 RUSSELL Z. BARON, Esq.,
8 Brannon, Ticktin, Baron and Mancini,
9 930 Keith Building, Cleveland, Ohio 44115
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P R O C E E D I N G S

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2 CHAIRMAN FARMAKIDES: Ladies and gentlemen, let
3 me announce that we will be delayed for ten minutes or so.
4 We are waiting for one of the attorneys to appear, and we
5 will take a recess until quarter of eleven.

6 (Recess.)

7 CHAIRMAN FARMAKIDES: The hearing will now be in
8 order.

9 The record will show that the time time is
10 now approximately 10:45, June 28, 1973. We are convened at
11 the Lucas County Courthouse, in Toledo, Ohio.

12 We have had a problem. Apparently a couple of the
13 roads coming into Toledo are flooded and one of the parties --
14 one of the counsel, I should say -- the party is here, but
15 counsel for the party is not yet here. He is scheduled to be
16 here, so we have been waiting for him, for his appearance.

17 We will wait. I understand Mr. Stebbins has
18 called his office and that he is due to be here shortly. We
19 will wait for an additional period of time.

20 It might be advisable to recess for half an hour
21 and reconve at 11:15.

22 Are there any objections from the parties?

23 MR. CHARNOFF: Mr. Chairman, I think that would be
24 agreeable to the Applicants.

25 I might submit that one of the matters that we

1 would propose to talk to this afternoon or this morning when
2 we reconvene, is the responses to the interrogatories that
3 have been addressed to the Coalition by the Applicants and the
4 Regulatory Staff. And we have received, yesterday, copies
5 of such responses, and the certificate of service shows that
6 a copy was served on the Chairman of the Licensing Board, and
7 a certificate of service was dated June 25.

8 Might I inquire whether the Licensing Board
9 Chairman and the other members of the Licensing Board have
10 received copies of those responses?

11 CHAIRMAN FARMAKIDES: Mr. Charnoff, no I have not
12 received copies.

13 Dr. Hand?

14 DR. HAND: No.

15 MR. SHON: No.

16 MR. CHARNOFF: Well, it might be well, sir, we
17 have reproduced copies of the responses, and it might be well
18 if we were to make these copies available to you since they
19 were served on you, anyway; and for the Board to review these
20 during the break pending Mr. Baron's arrival.

21 CHAIRMAN FARMAKIDES: Fine. That would be a
22 productive use of the time. No, we have not received it.

23 (Counsel handing document to the Board.)

24 MR. CHARNOFF: There are three sets here. Here are
25 the replies to the Applicant's interrogatories and the Staff.

1 We had to Xerox a rather unclear carbon; I am sorry, it is
2 a little difficult to read.

3 In that connection, do you gentlemen have copies
4 of the Applicants' and the Regulatory Staff's interrogatories?
5 We did serve those on the Board.

6 CHAIRMAN FARMAKIDES: Yes, we have that.

7 Mrs. Stebbins, do you have any information at all
8 as to when Mr. Baron might arrive?

9 MRS. STEBBINS: No, I don't. All I know is that I
10 was expecting him here this morning; and I called his office
11 and his office said that he was in Toledo and would be there
12 all day. I talked to his secretary.

13 CHAIRMAN FARMAKIDES: All right.

14 Well, I think we should wait. Obviously there has
15 been some emergency. Let us recess until 11:15. This will
16 give us time to also look at the responses to the interroga-
17 tories.

18 And at that time we will see what develops. Thank
19 you.

20 (Recess.)

21 CHAIRMAN FARMAKIDES: We will reconvene.

22 MR. BARON: Mr. Chairman, I apologize for being
23 late; something happened on the turnpike coming in, and I had
24 to stop -- an accident with a motorcycle, and I had to stop
25 to get him off the road.

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CHAIRMAN FARMAKIDES: Well, we understood the circumstances, so we delayed the hearing until you could get here.

Let me go into some of the preliminary matters that I would like to state for the record:

I believe we have already indicated the time and place, the authority: by notice published in the Federal Register on January 5, 1973 (38 FR 904) the Atomic Energy Commission directed that a hearing under 10 CFR Part 50, Appendix D, Section B, would be held at a time and place to be set by this Board, to review the environmental considerations of the construction of the Davis-Besse facility, which is presently being constructed under a construction permit issued in the period January 1, 1970 to September 9, 1971.

Toledo Edison Company and the Cleveland Illuminating Company are the holders of Construction Permit CPPR-80, issued by the Atomic Energy Commission on March 24, 1971. This permit authorizes them to conduct -- I'm sorry -- to construct a pressurized water nuclear reactor at the licensees' site at the southwestern shore of Lake Erie in Ottawa County, Ohio.

The facility is designed to operate at approximately 2633 megawatts thermal.

We identified the Board at the earlier prehearing conference; Dr. Hand on my left, Mr. Fred Shon on my right.

And I am John Farmakides.

1 This prehearing conference is called in preparation
2 for the evidentiary hearing. Today we hopefully will consider
3 simplification of the issues, admissions as to proof as to
4 documents -- authenticity of documents. Perhaps we might enter
5 into stipulations where by so doing we could expedite the
6 orderly proceeding of this matter.

7 We will also set a hearing schedule for the
8 evidentiary hearing.

9 We have previously issued an order in which we set
10 the 17th and 18th of July as the first days of the evidentiary
11 hearing to be held in Port Clinton, Ohio. We then returned to
12 Cleveland, Ohio to continue the hearing on the 23rd of July.
13 We are not firm as to the space yet either in Port Clinton
14 or in Cleveland, but, as soon as we are, we will so announce
15 it.

16 Perhaps we will firm up the space with the help
17 of counsel.

18 Before asking the parties to identify themselves,
19 and also asking for Mr. Baron to make his appearance, I might
20 note that the transcript of the last prehearing conference
21 was reissued on May 24th, 1973. The reason, as you will
22 recall, is that the acoustics in that City Hall at Cleveland
23 were impossible, and evidently the Court Reporter had difficulty
24 obtaining all of the comments.

25 Luckily there was a tape recording that they made

jrb6

1 of the session, and so they retyped the transcript based on
2 the tape recording.

3 I think the revised version is now the official
4 version, so far as the Court Reporter is concerned, and so far
5 as this Board is concerned.

6 Let me ask now for the appearances of the parties.
7 For the Applicant?

8 MR. CHARNOFF: Sir, my name is Gerald Charnoff,
9 of the law firm of Shaw, Pittman, Potts and Trowbridge, 910
10 17th Street, N.W., Washington, D. C.

11 To my left is Mr. Jay E. Silberg, of the same
12 law firm appearing for the Applicant this morning.

13 CHAIRMAN FARMAKIDES: Thank you.

14 For the Staff?

15 MR. DAVIS: Mr. Chairman, my name is Francis X.
16 Davis, representing the Atomic Energy Commission's Regulatory
17 Staff. The address is Washington, D. C. 20545.

18 On my left at the end of the table is Myron Karman
19 of the same address and the same party.

20 CHAIRMAN FARMAKIDES: Thank you.

21 For the Intervenor, Mr. Baron?

22 MR. BARON: My name is Russell Z. Baron, of the
23 law firm of Brannon, Ticktin, Baron and Mancini, 930 Keith
24 Building, Cleveland, Ohio.

25 And with me at the table here is Mrs. Evelyn

b7
1 Stebbins for the Coalition for Safe Nuclear Power.

2 CHAIRMAN FARMAKIDES: Mr. Baron, I might make one
3 request at this time:

4 When you serve the Board, please serve each
5 of the members individually. If you don't have our addresses,
6 we'll make them available to you, sir.

7 MR. BARON: Thank you.

8 CHAIRMAN FARMAKIDES: Now, let's go into prelimi-
9 nary matters on the part of the parties.

10 Does anybody wish to raise any matter at this
11 time before we get into the status reports on discovery?

12 MR. CHARNOFF: It is your intention to consider
13 now the disposition of discovery matters, is that correct?

14 CHAIRMAN FARMAKIDES: Well, we can proceed in any
15 way, really, that is most convenient to the parties. I
16 wondered if there were any preliminary matters that the parties
17 might have before we get into the status of discovery.

18 If not, let us talk about discovery.

19 Could I have a status reports on how they are
20 proceeding?

21 We have received, incidentally, the interrogatories
22 of the Staff, the Applicant, and the Intervenor. We have
23 received the responses of the Intervenor to the Applicant and
24 the Staff. And we have received nothing else.

25 Excuse me. Now that I recall, I did receive a

1 communication from the Applicant indicating that he had
2 answered certain of the oral interrogatories of the Intervenor.

3 MR. BARON: We did receive material at the office
4 from the Applicants, which Mrs. Stebbins had earlier requested
5 by telephone conversation.

6 CHAIRMAN FARMAKIDES: Yes, we have received that.
7 I don't believe that the two members of the panel have received
8 it. I am the only one who has received that.

9 Obviously there are problems with the mail and
10 this is one of the trials and tribulations of a hearing. We
11 are not always able to receive the material in timely fashion.
12 So, if you can give us two additional copies, Mr. Charnoff,
13 I would appreciate it.

14 MR. CHARNOFF: We will do that this afternoon.

15 CHAIRMAN FARMAKIDES: All right.

16 Mr. Davis?

17 MR. DAVIS: Mr. Chairman, I would like to add that
18 the Intervenor's interrogatories and request for production
19 of documents to the AEC was received by the Staff just yester-
20 day, and the Staff fully intends to respond to this, today,
21 as much as possible, on the record, and also subsequently
22 in writing. We received the request just yesterday.

23 CHAIRMAN FARMAKIDES: Yes, I think it is dated
24 21 June, and we received it, I think, the day before yesterday.
25 At least, I did.

1 Have you received it?

2 DR. HAND: No.

3 DR. FARMAKIDES: Dr. Hand has not received it and
4 Mr. Shon has not received it; so I think the reason for that
5 is service, as I mentioned earlier, Mr. Baron. Service has
6 been primarily to me. So from now on if we could have service
7 on all members, I would appreciate it, Mr. Baron.

8 MR. BARON: Yes, sir.

9 MR. CHARNOFF: I think the record, Mr. Chairman,
10 should also show the dates of these discovery requests,
11 because just as the AEC just received the Intervenor's
12 interrogatories, we received our copy -- I believe it was on
13 Monday morning.

14 Those interrogatories contained some of the
15 previous orally-given interrogatories to which we have
16 replied.

17 There were some questions that we had with respect
18 to some of the interrogatories, and on Tuesday of this week,
19 Mr. Silberg talked to Mr. Baron and requested clarification of
20 those interrogatories; and this morning Mr. Baron handed to
21 Mr. Silberg some statements purporting to clarify those
22 interrogatories.

23 It is the Applicants' position that we, too, will
24 respond to the interrogatories by July 5 or on July 5.

25 There are, however, a number of questions with regard to some

1 of the interrogatories to which we would like to raise some
2 objections at a later point in the proceeding this morning,
3 and perhaps get some rulings on those objections today.

4 CHAIRMAN FARMAKIDES: Well, the Board is having
5 serious problems here. Now, we did not receive any
6 interrogatories submitted by the Intervenors to the Applicants.
7 In other words, we are up here now without any portfolio,
8 full portfolio, of the interrogatories that have been exchanged.

9 So if the parties think that the Board is going
10 to rule on these interrogatories this morning, you are
11 mistaken. I would like to have a full set of the interroga-
12 tories before me before I rule.

13 We are prepared to rule today, but I want the
14 interrogatories.

15 MR. CHARNOFF: Mr. Chairman --

16 CHAIRMAN FARMAKIDES: Mr. Baron, do you have another
17 set or two of the interrogatories?

18 MR. BARON: Yes, we have additional copies,
19 Mr. Chairman.

20 I am puzzled because we did mail copies, certainly
21 to you.

22 CHAIRMAN FARMAKIDES: When did you mail them, sir?

23 MR. BARON: The 21st of June.

24 I'm sorry. I'm looking at the Atomic Energy
25 Commission's, sir.

1 CHAIRMAN FARMAKIDES: Well, I have the ones you
2 sent to the Atomic Energy Commission; but I don't have the
3 ones that you sent to the Applicant.

4 MR. BARON: It was mailed on the same day.

5 CHAIRMAN FARMAKIDES: I beg your pardon. Sorry,
6 sorry.

7 MR. BARON: Because I personally dropped them in
8 the mail.

9 CHAIRMAN FARMAKIDES: I'm sorry. We have seen
10 another paper here that was somehow or other attached to an
11 earlier paper. Yes, we do have both of yours, but only myself.

12 MR. BARON: Yes.

13 I agree, I did not send them to the rest of the
14 panel.

15 CHAIRMAN FARMAKIDES: Do you have two extra copies,
16 sir?

17 MRS. STEBBINS: I don't think I have extra copies
18 of those particular things. I have extra copies of the
19 answers to the Applicant, and my answers to the AEC. But of
20 that, I don't have extra copies.

21 MR. BARON: I am afraid we do not.

22 CHAIRMAN FARMAKIDES: Mr. Baron, I think on
23 second thought here this is a clean copy, and during lunch
24 hour, I will have two copies made.

25 From now on I would like to have all three members

1 of the Board served.

2 MR. BARON: Yes, sir.

3 CHAIRMAN FARMAKIDES: So we have received then the
4 Intervenor's interrogatories to the Staff and to the
5 Applicant.

6 We have received the Staff's interrogatories to the
7 Intervenor, and the Applicants' interrogatories to the
8 Intervenor, and we have received two responses by the
9 Intervenor to the Staff and to the Applicant.

10 By "we," I mean me. So that is not enough.

11 Now, Mrs. Stebbins, you say --

12 MRS. STEBBINS: I said I had some extra copies
13 of my responses.

14 MR. CHARNOFF: That's what we gave you this
15 morning.

16 CHAIRMAN FARMAKIDES: Oh, okay.

17 MRS. STEBBINS: I have responses to the Applicants'
18 interrogatories, and I have extra copies of the responses
19 to the AEC interrogatories.

20 CHAIRMAN FARMAKIDES: All right, we have that.

21 All right, then, we are not as bad off as I
22 thought.

23 MR. CHARNOFF: I have an extra set, Mr. Chairman,
24 of Intervenor's interrogatories to the Staff and to the
25 Applicant, if that will help you.

1 CHAIRMAN FARMAKIDES: That would help us.

2 (Document handed to the Board.)

3 CHAIRMAN FARMAKIDES: And if you have an extra
4 set, that will solve the problem.

5 All right, I guess then we are home.

6 We have received the interrogatories of the three
7 parties, and we have received the responses of the Intervenor
8 to the Staff's and the Applicants' interrogatories.

9 Now, Mr. Charnoff, you had some questions you
10 wanted to raise with respect to the interrogatories submitted
11 to you.

12 MR. CHARNOFF: Yes, sir.

13 We would like to observe -- I recognize that the
14 Board has only had a very brief time to review those replies
15 to the interrogatories -- we have received the replies to the
16 interrogatories which we had mailed to the Intervenors on
17 June 8, and on Monday of this week, June 25, the Intervenors
18 filed responses to those interrogatories.

19 By and large, Mr. Chairman, I think it is important
20 to observe that first there has been no Coalition objection
21 to the interrogatories.

22 Secondly, as a general matter, we believe that
23 the responses were essentially nonresponsive. In part the
24 responses indicated that information necessary to make responses
25 was not yet available to the Intervenors; in part they were

1 relying upon or allege that they were relying upon responses
2 that they might get to their interrogatories which they had
3 addressed to the Regulatory Staff.

4 In part the responses indicated that the responses
5 would be forwarded later in the form of testimony when that
6 is filed.

7 And in specific response to specific inquiries by
8 the Applicants requesting a statement of basis for any of
9 the contentions, we received no response to any of that line
10 of inquiry for any of the contentions.

11 As a consequence, we find it difficult to deal
12 with further particularizing or clarifying of the contentions.
13 It puts the Applicant in a difficult and strained position
14 for preparing testimony, and, as you know, we had agreed
15 in a telephone conference call with the other parties,
16 counsel and yourself, with regard to future schedules that
17 joint submission of testimony -- all written direct testimony
18 -- was to be filed, I believe, on July 11.

19 And that was on the assumption that we would have
20 responses that would be meaningful to our numerous interroga-
21 tories.

22 So that at this point, Mr. Chairman, if you like
23 I would be prepared to go down the responses, one-by-one.
24 That may take a considerable time.

25 The reason I was pleased that the Board had some

1 time to review these interrogatories is that I believe that a
2 reading of the interrogatories demonstrates the nonresponsive-
3 ness at least as of this date to the interrogatories, and
4 therefore, we would move, Mr. Chairman, for an order from
5 the Licensing Board compelling responses by the Intervenor
6 to our interrogatories by July 2, 1973, so that we can adhere
7 to the schedule that has been established.

8 The contentions, of course, were the contentions
9 of the Intervenors. It is not unreasonable to presume that
10 there was at least partial information with respect to those
11 contentions that could have been submitted for any basis in
12 fact for any of the contentions. And therefore we think it
13 is not unreasonable to put a short time limit on getting
14 the responses to the interrogatories, recognizing that the
15 interrogatories were addressed to the Intervenors on June 8 --
16 three weeks ago.

17 In addition to that, Mr. Chairman, we would move
18 at this point to strike Contention 3 based upon responses to
19 the interrogatories. Contention 3 deals with a challenge to
20 the AEC's regulations with respect to casks for shipment of
21 spent fuel. The criteria for those casks is set forth in
22 10 CFR Part 71, in particular, Section 71.40, and Appendix B.
23 And under the provisions of 2.758 of the Atomic Energy
24 Commission's regulations with respect to challenges to
25 Atomic Energy Commission regulation in adjudicatory proceedings

1 there has to be some showing of special circumstances together
2 with a supporting affidavit to get such a challenge off the
3 ground.

4 Certainly the Board's characterization of that
5 contention in its special prehearing conference order requested
6 that showing of special circumstances, and we would submit
7 that certainly the responses to date contain none of the
8 requirements of Section 2.758.

9 In addition, I would mention in passing that the
10 provisions of 2.740(b) require responses to interrogatories be
11 under oath or affidavit, and none of the responses in this
12 case complied with that form of the requirement.

13 So I would like to table at this time for the
14 Board's consideration some time today two motions, one:

15 To compel the responses to the interrogatories
16 by July 2, 1973;

17 And, two, striking Contention 3.

18 CHAIRMAN FARMAKIDES: For failure to show a
19 special situation?

20 MR. CHARNOFF: Yes, sir, for failure to comply
21 with the provisions of 2.758 relating to special circumstances
22 and the support therefor.

23 CHAIRMAN FARMAKIDES: Mr. Baron, would you respond
24 to those two motions, please?

25 MR. BARON: With respect to the compelling of the

1 responses, Mr. Chairman, by the 2nd of July, I certainly can't
2 quibble with that because if nothing more it will give us the
3 opportunity to attach the notarization which is lacking from
4 them originally.

5 As to the time, of course, that would be I believe
6 Monday; and I don't believe -- well, I will have to say
7 Mrs. Stebbins cannot reply that quickly.

8 But if I can back up for a moment and reflect upon
9 something -- I am sure the Board is totally aware of it --
10 I think, Mr. Chairman, you commented at the hearing at Cleveland
11 that you recognized that she was without benefit of counsel
12 at that time.

13 I might submit that even though I am an attorney
14 admitted to the Bar of Ohio, you might say she is without
15 counsel as far as Atomic Energy matters are concerned still.
16 I can assist her in matters of rules and pleadings, et cetera;
17 but, as far as the merits of these issues, I am of no greater
18 help to her than any other attorney practicing before the Bar
19 of this State.

20 I can counsel with her. I can pick my brains, you
21 might say as a lay person, to spur ideas and thoughts of how
22 to approach some of these problems. But the real issues,
23 she has to rely on her own knowledge, which she has accumulated
24 over a considerable length of time, plus the other people who
25 are active with her in this Coalition.

1 I have observed her spend considerable hours --
2 I shouldn't say actually "observed" her. But I have knowledge
3 of the amount of time she did spend, and diligently so, to
4 get together what has been gotten together and submitting it.
5 And I know that she will follow the direction of this Board
6 to further respond.

7 But -- by the second of July -- I would submit to
8 you, it would not be humanly possible.

9 CHAIRMAN FARMAKIDES: What would be a time?

10 I take it from what you say, Mr. Baron, that
11 an order compelling you to respond is not necessary? You
12 intend to respond, but the time is the problem.

13 MR. BARON: Yes, sir.

14 CHAIRMAN FARMAKIDES: What date would you suggest
15 would be more fair, thinking, of course, of the July 17
16 beginning date?

17 MR. BARON: A week from today.

18 CHAIRMAN FARMAKIDES: A week from today.

19 Mr. Charnoff?

20 MR. CHARNOFF: That would be July 5.

21 MR. BARON: Assuming, of course, that it will have
22 been completed before then and in the hands of all concerned.

23 CHAIRMAN FARMAKIDES: July 5, and we can perhaps
24 move the filing of direct testimony to July 12 and 13.

25 MR. CHARNOFF: Yes. I think that would involve,

1 perhaps, a change in one other matter, Mr. Chairman.

2 Under the regulations, I think it is 2.749, there is
3 a provision for motions for summary disposition to be filed.

4 CHAIRMAN FARMAKIDES: Hold fast, Mr. Charnoff.

5 Mr. Baron, you had better be alert to this because
6 this is a pleading and also a procedural matter that might
7 have quite a bit of consequences.

8 Mr. Charnoff, proceed, sir.

9 MR. CHARNOFF: If we were to delay the Intervenor's
10 reply to July 5, which, incidentally, is the date that we will
11 file replies to their interrogatories -- as far as the Board
12 rules that they are appropriate interrogatories -- and if we
13 move the filing of testimony until the 13th, that would be
14 acceptable; on the assumption, Mr. Chairman, that the
15 responses will be fully responsive to the interrogatories.

16 Otherwise, with respect to the filing of testimony,
17 I would submit that we should consider the possibility of
18 first a filing of direct testimony by the Intervenors,
19 followed by a filing of testimony by the Regulatory Staff
20 and the Applicant, consistent with the ruling in Appeal Board
21 Decision ALAB-123.

22 It was the Midland proceeding where, on page 345
23 of Regulatory Adjudication Issuances for May 1973, RAI 73-5,
24 page 345, the Appeal Board said that where one of the parties
25 contends that for a specific reason the permit or license

1 should be denied, that party has the burden of going forward
2 with evidence to buttress that contention.

3 Once he has introduced sufficient evidence to
4 establish a prima facie case, the burden then shifts to the
5 Applicant who, as part of his overall burden of proof, must
6 provide a sufficient rebuttal to satisfy the Board that it
7 should reject the contention as a basis for denial of the
8 permit or license.

9 CHAIRMAN FARMAKIDES: Is that an antitrust or is
10 that a construction --

11 MR. CHARNOFF: This is a licensing construction
12 hearing for the Midland Reactors #1 and #2, and it is not
13 antitrust. It is Docket No.'s 50-329 and 50-330.

14 CHAIRMAN FARMAKIDES: Are you saying, then, that
15 you, the Applicant, do not have the burden of proof to
16 proceed?

17 MR. CHARNOFF: No, sir.

18 I am saying that we have the burden of proof, but
19 the Intervenors, with respect to their contentions have the
20 burden of going forward, and if they then demonstrate that they
21 have made a prima facie showing, then as the Appeal Board
22 wrote, the burden then shifts to the Applicant who, as part
23 of his overall burden of proof -- which we have-- must provide
24 a sufficient rebuttal.

25 CHAIRMAN FARMAKIDES: At what time then would you

1 show or meet your burden?

2 MR. CHARNOFF: Well, my thought would be, Mr.
3 Chairman, without regarding dates that what that says is that
4 instead of a joint -- a date for filing of testimony by all
5 of the parties, that it seems to me that the first date for
6 filing of written testimony should be with respect to the
7 contentions and should be a date to which the Intervenors have
8 to submit -- or on which the Intervenors have to submit
9 their direct testimony.

10 And then, perhaps five days later, the Applicant
11 and Regulatory Staff submit their direct testimony, because
12 if the Intervenors submit no direct testimony, therefore, they
13 have not met the burden of going forward; with respect to that
14 contention to which there is no testimony, there need not be
15 any reply testimony.

16 CHAIRMAN FARMAKIDES: Mr. Charnoff, how about
17 the concept, however, that look, all that the Applicant has
18 to do is submit his prima facie case?

19 MR. CHARNOFF: The Applicant in this case --

20 CHAIRMAN FARMAKIDES: Excuse me.

21 He submits his prima facie case -- once there is a
22 contention then the Applicant submits his prima facie case.
23 He may do nothing more than that. He might do it simply by
24 citing the FSAR, the PSAR, what-have-you. At that point the
25 burden shifts --

1 MR. CHARNOFF: Sir --

2 CHAIRMAN FARMAKIDES: -- to the Intervenor.

3 MR. CHARNOFF: That's not how I read the ALAB
4 opinion.

5 CHAIRMAN FARMAKIDES: Well, you have the benefit of
6 doing that. I haven't read it for some time, but, at that
7 point then the burden does shift, and the burden of going
8 forward I would suspect rests on the Intervenor. He has got
9 to show where you have not made a prima facie case; or he
10 has to rebut your prima facie case somehow.

11 MR. CHARNOFF: I believe, sir, that that's the
12 way in which hearings have been conducted over protest
13 of a number of counsel over the years.

14 What is significant is that is not what the Appeal
15 Board is saying now in the Midland decision.

16 CHAIRMAN FARMAKIDES: Now that wasn't a construc-
17 tion --

18 MR. CHARNOFF: It was a licensing proceeding just
19 as this one. And interestingly it was in connection with an
20 issue called "alleged synergism," that was apparently one of
21 the issues which the Intervenor would have here. And I would
22 be pleased to make available to the Board this document --
23 provided it is returned.

24 (Laughter.)

25 (The Board conferring.)

1 CHAIRMAN FARMAKIDES: We are going to take your
2 counsel under advisement, Mr. Charnoff. I have got to go
3 back and read that decision again.

4 What is the date of that, sir, do you recall?

5 MR. CHARNOFF: May 18, I believe. May 18, 1973,
6 and again, subject to the qualification I made before, sir,
7 I would make this available to you.

8 CHAIRMAN FARMAKIDES: Why don't you let Mr. Baron
9 read it, because I will be asking for his comments in a
10 few minutes.

11 Meanwhile, Staff, what is your position on the
12 procedure outlined by Mr. Charnoff?

13 MR. DAVIS: I view Mr. Charnoff's statements --
14 well, on sort of a larger plane, I feel that taking his
15 reasoning and other comments that I will be making, I would
16 propose that certain changes be considered in the scheduling,
17 for exchange of testimony just as is being discussed; and also
18 in the actual dates of the hearing.

19 CHAIRMAN FARMAKIDES: Well, go ahead and propose
20 them now. Let's get all this out on the table quickly.

21 What do you have in mind?

22 MR. DAVIS: Certain of the interrogatories --
23 excuse me. All of the interrogatories addressed to the
24 Regulatory Staff in the June 21 filing from the Coalition are
25 subject to the provisions of Section 2.720(h)(2)(ii), wherein

1 the interrogatories have to be addressed to the presiding
2 officer of the Board.

3 CHAIRMAN FARMAKIDES: Are you talking 2.720,
4 Subpoenaes?

5 MR. DAVIS: Excuse me.

6 That's 2.720 and it deals also with interrogatories

7 CHAIRMAN FARMAKIDES: All right. Go ahead.

8 MR. DAVIS: Following the procedure, then, followed
9 by the Interervenor in filing the interrogatories directly
10 to the Staff was erroneous, and we would object, therefore, to
11 the interrogatories as presently submitted to the Staff for
12 failure to comply with the procedures laid down in said
13 section.

14 Following the procedures as laid down in this
15 section would take some amount of time, more than was contem-
16 plated by the discovery order, certainly; since the discovery
17 was to have been completed by the 22nd. This would occasion
18 some delay. How much delay, I don't know.

19 In addition, the schedule as agreed to in our
20 telephone conference subsequent to the May 22nd special
21 prehearing conference was contingent, I think, upon completion
22 of discovery by the 22nd. It obviously has not been
23 completed, and the dates, then, that were hinged upon
24 discovery being completed by the 22nd, will be somewhat
25 delayed -- including the exchange of testimony and the start

1 of the conference.

2 I concur with the Applicant's citation of ALAB-123.
3 I think that since the Intervenors have the burden of going
4 forward, they should have the full benefit of responses from
5 the Regulatory Staff and responses from the Applicant -- the
6 request for documents and the interrogatories -- assuming that
7 the Staff is ordered to supply the responses to the interro-
8 gatories, because then this information should be available
9 to the Coalition before their preparation of their direct
10 testimony and the submission of the direct testimony.

11 I just fail to see how it could follow the schedule
12 as previously laid down. The schedule of just delaying the
13 testimony by a couple of days would not be realistic at this
14 time.

15 CHAIRMAN FARMAKIDES: Well, Mr. Davis, what you
16 are saying is we probably won't be going to hearing much
17 before October if we are going to comply with all the rules
18 as you see them, and as you are anticipating it. Well, I
19 can imagine what is going to happen.

20 We are going to be moving along at a snail's
21 pace all through the summer. We may get into the evidentiary
22 hearing in October.

23 Now, look, people, this is just -- I had hoped
24 that the three counsel would be able to get together to discuss
25 some of these problems. All right, fine; we recognize there

1 are problems. We recognize that the Intervenor was without
2 benefit of counsel. Mr. Baron is now representing the
3 Intervenor, and I think that, frankly, the three of you can
4 sit down informally, work out some of the issues that you
5 raised.

6 If you can, great.

7 Something else: I thought it was evident at the
8 prehearing conference call that a lot of these procedures
9 would be worked out informally between the three of you.
10 Obviously they have not. And we are just wasting our time
11 and I can pretty well imagine we are going to be wasting the
12 entire summer.

13 This will not be condoned by the Board.

14 And we will move that we are going to give
15 you what we think is a reasonable time, and very frankly
16 the rules are to be interpreted within reason by this Board;
17 and we will interpret them the way we think it is reasonable.

18 It is now five minutes until 12:00. I would like --
19 before I ask Mr. Baron to proceed, and I am giving Mr. Baron
20 actually the opportunity of thinking this over longer during
21 lunch.

22 But, look: from now until 12:30 and thereafter
23 if you all would like it is perfectly fine with me. Let me
24 know if you need additional time. I would like for the three

1 counsel to use that room (indicating), sit down, and talk to
2 each other informally, and see what you can work out.

3 I think we all have one thing in common: we want
4 to expedite this hearing in an orderly way.

5 I would appreciate that very much.

6 Let us break. We will reconvene at 1:30, after
7 lunch. And I would hope that the three counsel can talk for
8 half an hour or so. If you need more time, the Board would
9 be very pleased to consider an extension of time.

10 Let us do that.

11 (Whereupon, at 11:55 a.m., Thursday, 28 June 1973,
12 the hearing was recessed, to reconvene at 1:30 p.m.,
13 this same day at the same place.

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AFTERNOON SESSION

(1:30 p.m.)

1
2
3 CHAIRMAN FARMAKIDES: It is now approximately
4 1:30. We are going to recess until two o'clock, the reason
5 being that the parties are continuing their negotiations.
6 They have indicated to me that they have stipulated times and,
7 hopefully, they will probably stipulate the proof that will
8 be offered by each party, and take other actions to expedite
9 the orderly proceeding.

10 Therefore, we will reconvene at two o'clock.

11 (Recess.)

12 CHAIRMAN FARMAKIDES: We will go back on the record
13 for a minute.

14 I have just received a telephone call from the
15 parties, and they are continuing their discussions, the
16 three counsel plus Mrs. Stebbins; and we have allowed them to
17 continue until 2:30.

18 We will reconvene at 2:30.

19 (Recess.)

20 CHAIRMAN FARMAKIDES: Gentlemen, can we proceed?
21 We will reconvene the session.

22 I will recognize Mr. Charnoff as standing, and
23 I would ask you, Mr. Charnoff, to tell us what you have done
24 so far?

25 MR. CHARNOFF: Thank you, Mr. Chairman.

1 Following your suggestion of an informal conference
2 of the attorneys we had a session at the intermission, and
3 it was very useful.

4 The parties were able to reach agreements with
5 respect to the schedule.

6 The parties were also able to reach agreement with
7 respect to clarification and disposition of certain objections
8 to interrogatories.

9 And we are prepared to report on both of those
10 as stipulations of the parties, following which we will request
11 another short recess to deal with just a very few items
12 relating to clarification of contentions which we were unable
13 to reach during the break.

14 But if I may report on the schedule --

15 CHAIRMAN FARMAKIDES: Let me clarify one thing:
16 When you say "report," you in fact are going to be reciting
17 a stipulation as agreeable to Mr. Baron and Mr. Davis?

18 MR. CHARNOFF: That's right.

19 MR. DAVIS: That's right.

20 MR. CHARNOFF: With respect to the schedule, the
21 Applicant this morning made a motion to compell responses to
22 our interrogatories. We will for the time being withdraw
23 that motion, because we have been able to reach agreement with
24 respect to Intervenor responses to the interrogatories that
25 have been previously filed.

1 CHAIRMAN FARMAKIDES: I am sorry to interrupt.
 2 Let's delete the words "for the time being," if you
 3 don't mind.

4 MR. CHARNOFF: I withdraw the motion.

5 CHAIRMAN FARMAKIDES: You are withdrawing the
 6 motion. All right.

7 MR. CHARNOFF: With regard to any order to compel
 8 responses.

9 The agreement with regard to schedules is as
 10 follows, sir -- and all of these dates that I will give you
 11 with respect to discovery or filing of testimony relate to
 12 dates upon which the action will be completed; so that when
 13 I say that certain matters will be filed, we mean on that
 14 date it will be transferred to the other parties and to the
 15 members of the Board. And the Applicants will arrange for
 16 transporting the various documents upon receipt to the
 17 Intervenors or from the Intervenors to the Regulatory Staff
 18 in Washington, and to the Board members in Washington.

19 We will handle that by air deliveries rather than
 20 relying upon the United States mail.

21 On July 5, the Regulatory Staff and the Toledo
 22 Edison Company will complete their responses to the Coalition's
 23 interrogatories and request for documents.

24 In connection with this matter, the Regulatory
 25 Staff has agreed that it will either produce documents

1 or advise the Intervenor of the location of the documents
2 requested of the Regulatory Staff by the Intervenor.

3 Intervenor in turn are withdrawing their interro-
4 gatories to the Regulatory Staff. This therefore eliminates
5 the concern that the Regulatory Staff had expressed before
6 the break this morning as a result of the provisions of
7 Section 2.720.

8 On July 9, the Coalition, the Intervenors, will
9 complete their responses to the Regulatory Staff and the
10 Applicants' interrogatories. They will make that information
11 available to the Applicant in Cleveland, and the Applicant,
12 as I indicated, will deliver the responses to the Regulatory
13 Staff and to myself in Washington.

14 Copies will also be given to the Board members in
15 Washington.

16 On July 11, the Coalition will file their direct
17 written testimony.

18 On July 17, the Applicant and the Regulatory Staff
19 will file their direct written testimony with respect to the
20 contentions.

21 On July 16, the parties, Regulatory Staff and the
22 Applicant, may file, pursuant to Section 2.749, motions for
23 summary disposition. The Intervenors, of course, if they have
24 any motions for summary disposition, are also free to file
25 such motion, and would do so on July 16.

1 The replies to such motions for summary disposition
2 will be filed by the close of business on July 20; that is a
3 Friday evening. The Applicant has undertaken that if the
4 material is made available to the Cleveland Illuminating
5 Company personnel in Cleveland, we will on Monday morning,
6 July 23, at 10:00 a.m., deliver to the Regulatory Staff and
7 to the Board members in Washington copies of the Coalition's
8 replies to the motions for summary disposition.

9 And similarly, if there are any AEC answers which
10 are put in our hands by the close of business on Friday,
11 the 20th, we will get those to the Intervenors by 10:00 a.m.,
12 on Monday, the 23rd.

13 The public hearing will proceed or commence on
14 July 24, at 10:00 a.m. And it was stipulated by the parties
15 that the hearing will be held in Cleveland, and then we would
16 proceed continuously, subject to weekends, to a conclusion
17 with respect to this particular proceeding.

18 I think this is the schedule, Mr. Chairman, that
19 accommodates the interests of the Board and promises an
20 expeditious hearing, and recognizes the needs of the various
21 parties to prepare for this hearing.

22 CHAIRMAN FARMAKIDES: Do you so stipulate, then,
23 to this schedule?

24 MR. CHARNOFF: Yes, sir.

25 CHAIRMAN FARMAKIDES: Mr. Baron?

1 MR. BARON: We stipulate.

2 CHAIRMAN FARMAKIDES: Mr. Davis?

3 MR. DAVIS: Yes, Mr. Chairman.

4 (The Board conferring.)

5 CHAIRMAN FARMAKIDES: The Board very much appre-
6 ciates what counsel has done. I think this is a very clear
7 indication of the type of cooperation we need here, and we
8 thank you for it.

9 We approve the stipulation, subject to one modifi-
10 cation.

11 We would like to perhaps have a session in Port
12 Clinton, Ohio, on the 23rd of July to allow limited appearances
13 on the part of those who have indicated a desire to make
14 limited appearances. And we are proposing that perhaps we
15 could do this on the afternoon of July 23rd, commencing, say,
16 at 1:30 at Port Clinton; we can limit the hearing to an
17 opportunity to receive limited appearances only.

18 So, if, for example, the Intervenor or the Applicant
19 or the Staff does not wish to appear, why, there is no need
20 to. I will not have any evidentiary session on that day; but
21 it will allow the people of Port Clinton to express their
22 views. And I think that would be valuable.

23 How does that modification sound?

24 MR. CHARNOFF: That would be agreeable -- with the
25 obvious difficulty some of us may have is that I would assume

1 that when the hearing opens on the 24th, the first item of
2 business would be disposition of the summary disposition
3 motions; and I think the counsel for the parties would have to
4 use the day of the 23rd to prepare for it.

5 But with the indications you have made that there
6 would only be limited appearance statements, I think that
7 would be agreeable to the Applicant.

8 CHAIRMAN FARMAKIDES: Mr. Barron?

9 MR. BARRON: That would agreeable.

10 CHAIRMAN FARMAKIDES: Mr. Davis?

11 MR. DAVIS: That would be agreeable.

12 MR. CHARNOFF: Then I understand that would be the
13 only date for limited appearances?

14 CHAIRMAN FARMAKIDES: Yes, just that day; and my
15 order will make that very clear.

16 MR. CHARNOFF: Thank you.

17 CHAIRMAN FARMAKIDES: All right. The stipulation
18 will be so modified and accepted by the Board.

19 Let us proceed.

20 MR. CHARNOFF: Mr. Chairman, we also reached
21 agreement with respect to some of the objections that each
22 of us had with regard to some of the other parties' interroga-
23 tories, and I will like to call on Mr. Silberg to discuss
24 the understandings reached with respect to Applicants'
25 objections to the Coalition's interrogatories, and then

1 probably that would be sufficient. I think the other under-
2 standings need not be put on the record.

3 CHAIRMAN FARMAKIDES: All right.

4 After we do that, of course, I am still -- we have
5 given time to Mr. Baron to reply to your motion to compel;
6 so therefore, that's moot.

7 We have also given time to him to reply to the
8 motion to strike Contention 3, which you can proceed to do,
9 Mr. Baron, after this recital by Mr. Silberg; is that all
10 right?

11 MR. BARON: We will talk about that at that time.

12 CHAIRMAN FARMAKIDES: So you will; all right,
13 fine.

14 Mr. Silberg, proceed.

15 MR. SILBERG: The following comments relate to
16 interrogatories filed by the Intervenor on Applicants dated
17 June 21, 1973.

18 With respect to Issue 1, Interrogatories 10 and
19 11, are dropped.

20 CHAIRMAN FARMAKIDES: Are dropped?

21 MR. SILBERG: Withdrawn.

22 MR. BARON: Withdrawn.

23 MR. SILBERG: Also under Issue 1, Interrogatory
24 No. 32 is withdrawn.

25 With respect to Interrogatories under Issue 2,

1 Numbers 16, 17, and 18 are limited to the wave protection
2 dike which immediately surrounds the Davis-Besse plant, as
3 distinguished from the marsh dikes.

4 CHAIRMAN FARMAKIDES: All right.

5 MR. SILBERG: And Interrogatory No. 29, also in
6 Issue 2, the words "land surrounding" are deleted.

7 In the interrogatories under Issue No. 3, in several
8 of those interrogatories, the question relates to radioactive
9 wastes, and spent fuel or wastes and spent fuel.

10 In all of those interrogatories, the references
11 to wases, or radioactive wastes are deleted.

12 Interrogatory No. 5, under Issue 3, is withdrawn.

13 Under Issue 4, Interrogatory No. 7 is withdrawn.

14 Now, going back to Issue 1, there were several
15 interrogatories with respect to which a statement entitled
16 "Clarification of Intervenor's Interrogatories to Applicants,"
17 was served by hand on Applicants and the AEC Staff today.

18 Have copies of this document been given to the
19 Board, Mrs. Stebbins?

20 MRS. STEBBINS: I don't believe so.

21 MR. DAVIS: The Staff has not received this
22 document.

23 CHAIRMAN FARMAKIDES: The Board has not received
24 the document, either.

25 MR. SILBERG: While the Coalition is looking for

1 additional copies of this document, these were filed in
2 response to a telephone conversation which I had with
3 Mr. Baron, confirmed by a letter from me to Mr. Baron dated
4 June 26 in which Applicants asked several clarifying questions
5 with respect to the Coalition's interrogatories.

6 With respect to Issue No. 1, Interrogatory No. 28,
7 as modified by the clarification which has just been furnished
8 to the members of the Board, that interrogatory is modified
9 by deleting in the clarification the reference to "advantages
10 of investor-owned utilities". And it is further limited
11 so that it applies only to materials which were sent out
12 to schools, libraries and the public after September 1970.

13 CHAIRMAN FARMAKIDES: Mr. Silberg, let me under-
14 stand one thing. The thrust of what you are saying is in
15 effect you are willing to be replying to all these interroga-
16 tories except for those that have been withdrawn and those
17 that have been modified?

18 MR. SILBERG: What is correct, sir.

19 CHAIRMAN FARMAKIDES: Okay.

20 MR. SILBERG: With respect to Issue No. 2,
21 Interrogatory No. 9, the Coalition has agreed to identify
22 the specific dates on which they are interested as to when
23 supervisory personnel would have been on the plant site.

24 MR. BARON: I think that also applies to Question
25 No. 2, under Issue 2, a specific date?

1 MR. SILBERG: That is correct; Question 2, Issue 2,
2 the Coalition will provide the specific date of the June 1973
3 storm.

4 CHAIRMAN FARMAKIDES: You will do this reasonably
5 promptly, Mr. Baron?

6 MR. BARON: Yes.

7 MR. SILBERG: With respect to those items the
8 understanding was that these dates would be provided by
9 tomorrow morning.

10 CHAIRMAN FARMAKIDES: All right.

11 MR. SILBERG: Again with respect further to
12 Interrogatory No. 9, Applicants would provide this information
13 as with all of the responses to all of these interrogatories
14 to the best of their ability.

15 Under Issue 2, Interrogatory No. 22, is withdrawn,
16 with leave for the Coalition to resubmit within a day or two
17 a more precise interrogatory, one identifying with more
18 precision the people to whom -- identification of the people
19 they wish.

20 Interrogatory No. 31 under Issue 2 is limited to
21 those buried lines, buried pipelines, on the Davis-Besse site
22 with particular reference to the underground pipes to and
23 from the cooling tower. The pipelines which are being referred
24 to are those which carry liquid or gaseous materials rather
25 than those which might be carrying an electrical cable.

1 Finally, under Issue No. 5, Interrogatory No. 6,
2 the time period to which the projection would apply is
3 limited to the lifetime -- projected lifetime of the Davis-
4 Besse Plant, Unit #1; and Applicants' answer would be based
5 on the present state of knowledge as to plants planned,
6 announced or in operation, without speculating as to those
7 plants which are as yet unannounced and unknown.

8 That ends our clarifications on Interrogatories.

9 CHAIRMAN FARMAKIDES: Thank you.

10 Again, then, Mr. Davis, with respect to your
11 interrogatories served by the Intervenors on the AEC Staff,
12 those interrogatories by the stipulation have been withdrawn;
13 but you will agree to make certain documents available to
14 the Intervenors?

15 MR. DAVIS: That is my understanding, Mr.
16 Chairman.

17 I wish a little bit later on today to deliver
18 the documents that we have available now to the Intervenor,
19 and list them on the record if I might.

20 CHAIRMAN FARMAKIDES: I don't believe it's
21 necessary so long as the two parties can get together, why,
22 you don't have to have them on the record.

23 MR. SILBERG: Mr. Chairman, before we move from
24 this topic, can I just ask that the record reflect Mr. Baron's
25 agreement with the understandings that we have reached on the

1 interrogatories?

2 CHAIRMAN FARMAKIDES: Well, he nodded his head,
3 and I think that's enough, that the record will show that.

4 (Mr. Baron nodding affirmatively.)

5 CHAIRMAN FARMAKIDES: Mr. Baron, there is one more
6 item now involved here, and that is your response to the
7 motion of the Applicant to strike Contention or Issue No. 3.

8 MR. BARON: Yes.

9 CHAIRMAN FARMAKIDES: I'd like to have your
10 response to that.

11 MR. BARON: I talked to Mr. Charnoff on that among
12 the other items we discussed during the recess, and with all
13 due respect to the Board I am not in a position to respond
14 to it at the moment.

15 I asked Mr. Charnoff what he thought of the idea
16 of this being submitted in the form of written briefs. I
17 personally would feel, shall we say, at a disadvantage to
18 respond at this time to these issues.

19 CHAIRMAN FARMAKIDES: All right.

20 MR. BARON: But if it can be done in a day or two,
21 I certainly would respond that quickly.

22 CHAIRMAN FARMAKIDES: Thank you.

23 MR. CHARNOFF: Mr. Chairman?

24 CHAIRMAN FARMAKIDES: Mr. Charnoff?

25 MR. CHARNOFF: I would indicate for the record

1 that what Mr. Baron said is correct. We were making our motion
2 on the basis of the filings made today, including the answers
3 to the interrogatories, and the position of 2.758, all are
4 reasonably clear that there has to be some affirmative showing
5 to support a challenge to the regulations.

6 And for our part, in the spirit of cooperation
7 we are dealing with here today with Mr. Baron, if Mr. Baron
8 needs more time to accommodate that purpose, we would be
9 willing so see some reasonable time set for a written
10 submittal.

11 CHAIRMAN FARMAKIDES: Thank you.

12 Mr. Davis, did you want to say anything on this
13 point, sir?

14 MR. DAVIS: No, Mr. Chairman.

15 (The Board conferring.)

16 CHAIRMAN FARMAKIDES: The Board has very mixed
17 feelings with respect to this Contention No. 3. We had
18 admitted it on the basis of certain statements made by the
19 Coalition at the prehearing conference. We are fully aware
20 that there is a rulemaking proceeding now in the area of
21 transportation; but we were under the impression that there
22 certain specific situations involving Davis-Besse.

23 And we decided that we would hear what it was
24 that causes concern to the Coalition. And after reviewing
25 the replies of the Coalition to the Applicants' interrogatories,

1 the Board feels that Issue No. 3 is essentially a challenge
2 to the Commission's regulations, and we are predisposed to
3 grant the motion, and to have it cancelled.

4 We will not rule today based on the request made
5 by Mr. Baron, and the reply of Mr. Charnoff. We will permit
6 Mr. Baron opportunity to respond, in light of our comments,
7 by July 5th; and we will then rule soon thereafter.

8 Now, we want to be clear what the Board's concern
9 is, and again I say that the special situation -- contention --
10 raised by the Intervenors had to do with the uniqueness of
11 the problem to the Davis-Besse plant; and we wanted to hear
12 more about it.

13 Well, the special situation as we now understand
14 it as alleged by the Intervenor appears to be only the presence
15 of bridges which are more than 30 feet in height on possible
16 routes for transport of fuel.

17 The assumption that the height of such bridges
18 represents a special situation is apparently founded on the
19 30-foot drop requirement for cask design, which is a part of
20 the regulatory requirement for shipment of large sources.
21 Clearly, that regulation was meant to apply throughout the
22 country.

23 The presence of a bridge more than 30 feet high
24 is scarcely special in the sense of 2.758(b). We don't
25 see the uniqueness of that allegation.

1 So, therefore, we see no basis for that contention,
2 especially in view of the fact that there is a rulemaking
3 proceeding at this time on the transportation of fuel.

4 Therefore, if the Coalition wishes to pursue that
5 as a challenge, they must pursue it under 2.758. Again, we
6 want to hear what the Coalition will say as to the thinking
7 of the Board -- and what the Applicants' response will be;
8 and perhaps the Staff might want to take a position.

9 We would like to have all of these by July 5,
10 all responses.

11 MR. CHARNOFF: Mr. Chairman, I believe that until
12 we see more from the Intervenor, that the Applicant certainly
13 -- and I assume the Regulatory Staff -- cannot reply to that.

14 CHAIRMAN FARMAKIDES: I don't see --

15 MR. CHARNOFF: I think we should have a very short
16 period of time. If the only delineated special circumstances
17 are the bridges in excess of 30 feet, we can deal with that.

18 CHAIRMAN FARMAKIDES: Well, my problem, is of course
19 that the Board wishes to issue an order with respect to this
20 prehearing; and we've got a date problem. We would like to
21 include in that order a resolution of this contention.

22 And I was looking at the dates, and my thought is
23 that the only fact that has been put into the contention is
24 the fact that it is a 30-foot bridge. The Board is saying
25 clearly: this is not enough. Unless there is some other

1 argument which the Intervenor has that it can reply to the
2 position of 'the Board, I just don't see why we need to have
3 any additional briefs filed by anyone, really, other than the
4 Intervenor.

5 I am giving you the opportunity of making any
6 further observations you wish to make on the record by July
7 5th.

8 All right, that is enough on that point.

9 I am sorry. I didn't mean to cut you off,
10 Mr. Charnoff. Did you have anything more? Let's not rehash
11 the argument you just made; I accept it. But we in effect have
12 made our decision on it.

13 MR. CHARNOFF: I don't rehash arguments,
14 Mr. Chairman.

15 (Laughter.)

16 MR. CHARNOFF: And there eas no hash for lunch.

17 (Laughter.)

18 MR. CHARNOFF: We would like to request another
19 brief recess so that the parties could confer with respect
20 to clarification of the contentions, and then I believe the
21 only other matter that needs to be taken care of today is
22 we are going to propose a stipulation by the parties that the
23 Final Environmental Statement of the Staff, the Applicants'
24 Environmental Reports dated August 3, 1970, and the Supplement
25 to it, which was dated November 5, 1971, Amendment 1 to the

1 Supplement dated July 13, 1972, and a Cost-Benefit Analysis
2 Supplement to it dated July 5, 1972, that those documents
3 would be stipulated and received into evidence without
4 requiring sponsoring witnesses to appear.

5 In addition, incidentally, copies of those
6 documents, of course, are available to all the parties.

7 CHAIRMAN FARMAKIDES: A stipulation, you say?

8 MR. CHARNOFF: Yes, sir. We propose this. T

9 CHAIRMAN FARMAKIDES: Have the other parties agreed
10 to it?

11 MR. CHARNOFF: Well, we talked about it, and I'm
12 not sure that we did. Could we hold this for the recess?

13 CHAIRMAN FARMAKIDES: Oh, you are going to have
14 further discussion on this.

15 MR. CHARNOFF: That's right.

16 CHAIRMAN FARMAKIDES: All right. How much time do
17 you need?

18 MR. CHARNOFF: Perhaps we can do it in 20 to 25
19 minutes.

20 CHAIRMAN FARMAKIDES: All right. Let's reconvene
21 at 3:30. We will recess until 3:30.

22 (Recess.)

23 CHAIRMAN FARMAKIDES: I would like to correct
24 the record insofar as one particular is concerned.

25 I indicated that limited appearances would be held

1 at Port Clinton July 23rd at 1:30. This does not mean --
2 and I do not intend to exclude -- whatever limited appearances
3 can be made at Cleveland, Ohio, the next day, the 24th,
4 commencing at 10 o'clock.

5 So we would entertain limited appearances in
6 Ohio at the beginning of the session on the 24th at Cleveland.

7 Any comments on that?

8 MR. KARMAN: The only comment I have on that,
9 Mr. Chairman, would be with respect to the presence of counsel
10 from the Staff, Intervenor and Applicant on the 23rd. There
11 are occasions when Limited Appearors ask questions, and some-
12 times the Board will request a response to that.

13 CHAIRMAN FARMAKIDES: Yes.

14 MR. KARMAN: If the Board would so indicate now
15 as counsel for the Applicant already has as to the time limit
16 on motions for summary disposition -- if our presence is not
17 necessary?

18 CHAIRMAN FARMAKIDES: As far as I am concerned
19 your presence is not necessary. The transcript will be very
20 clear. The questions asked will be in the transcript, and
21 you can certainly answer them on the 24th.

22 MR. KARMAN: Thank you, sir.

23 CHAIRMAN FARMAKIDES: That problem does not give
24 me any serious concern.

25 Yes, sir?

1 MR. CHARNOFF: Mr. Chairman, to the best of my
2 recollection there was a request, I believe, from the
3 County Commissioner of Ottawa County that the hearing be held
4 in Port Clinton.

5 I believe that the few limited appearance requests
6 were all from the Cleveland area. I don't believe that I
7 recall any limited appearance requests from Port Clinton.

8 CHAIRMAN FARMAKIDES: Well, I thought there was
9 one. Didn't we say last time there was one from Port Clinton,
10 or two; I am not certain.

11 Now let's correct the record again. I thought there
12 was one from Port Clinton.

13 Do you have them before you, Mr. Charnoff?

14 MR. CHARNOFF: I do.

15 I could go through them, and identify the locations
16 and maybe one of the gentlemen from Toledo Edison could
17 identify how close they are.

18 The order in which I have them -- there is a
19 limited appearance request from a Mr. Joseph Girby, G-I-R-D-Y,
20 and the address is Cleveland Heights, Ohio.

21 There is a request from the Clerk of Ottawa County
22 Commissioners simply recommending that the hearing be held
23 at Port Clinton to accommodate locally-interested personnel,
24 but not requesting or stating a desire to make a limited
25 appearance. That is dated May 14.

1 There is a request dated January 25, 1973, on
2 behalf of Mrs. -- signed by a Mrs. James H. Angel, Chairman
3 of the Citizens for Land and Water Use, with an address at
4 2084 Elbur, E-L-B-U-R, Avenue, in Cleveland, Ohio.

5 There is a request from R. M. Bimber, B-I-M-B-E-R,
6 in Painesville, Ohio. And I don't know where that is.

7 CHAIRMAN FARMAKIDES: That is near Cleveland,
8 I think.

9 MR. BARON: Yes.

10 MR. CHARNOFF: That is near Cleveland.

11 There is a request from a George -- it looks like
12 K-O-N-D-T-Z, Chesterland, Ohio, which I believe is in the
13 Cleveland area.

14 MR. BARON: That's correct.

15 MR. CHARNOFF: There is a request from the
16 Western Reserve Chapter Isaac Walton League, with an address
17 in Cleveland, Ohio.

18 There is a request from Genivive S. Cook, in
19 Westlake, Ohio, which I believe is in the Cleveland area.

20 There is a request from the Ohio Audubon Council
21 signed by Dr. Davies in Lakewood, Ohio -- and Dr. Davies is
22 here -- is that in the Cleveland area?

23 VOICE FROM SPECTATOR SECTION: I would prefer,
24 however, to give it in Port Clinton.

25 (Laughter.)

1 MR. CHARNOFF: Mr. John E. Pendleton in Vickery,
2 Ohio, V-I-C-K-E-R-Y.

3 VOICE FROM SPECTATOR SECTION: That's from the
4 Port Clinton area.

5 CHAIRMAN FARMAKIDES: Do you know where that is,
6 Mrs. Stebbins?

7 MRS. STEBBINS: It's near Port Clinton.

8 CHAIRMAN FARMAKIDES: Then there may be one, and
9 there may be two.

10 Mr. Ganis was also there. He was the gentleman
11 who sought to intervene or petition, but his petition was only
12 a letter.

13 MRS. STEBBINS: Well, as I remember, because I had
14 a copy of that, I think he was from the Cleveland area.

15 MR. CHARNOFF: Lawrence Heights, Cleveland.

16 Shall I continue?

17 CHAIRMAN FARMAKIDES: Yes.

18 MR. CHARNOFF: There is an Allen Rhodes of
19 Willoby Hills, Ohio.

20 MR. BARON: That's a suburb of Cleveland.

21 MR. CHARNOFF: Sandy Nichols, N-I-C-H-O-L-S,
22 Citizens for Safe Environment, in Mentor, Ohio.

23 That is the Cleveland area.

24 MR. BARON: Yes.

25 MR. CHARNOFF: And then Steve Ganis and --

1 Lawrence Heights. So there is one request from Port Clinton.

2 MR. DAVIS: In addition, Mr. Chairman, I see
3 one letter regarding this plant from Anna Bird in Bolling
4 Green, Ohio. I don't know where that is.

5 MR. CHARNOFF: That letter just asked where
6 the hearings will be and whether they will be open to the
7 public, and it does not express an interest in making a
8 limited appearance statement. But the address is Bolling
9 Green.

10 CHAIRMAN FARMAKIDES: Well, let's continue on
11 with the schedule we suggested.

12 We will meet in Port Clinton. Counsel need not
13 be there. We will take limited appearances or that one
14 limited appearance, I believe. -- Unless there is some objec-
15 tion on the part of counsel?

16 MR. CHARNOFF: From the Applicants' standpoint,
17 Mr. Chairman, if any questions are raised at the Monday
18 session -- if we are not there -- we will respond to those
19 on the record at some time prior to the conclusion of the
20 hearing.

21 CHAIRMAN FARMAKIDES: Mr. Baron, --

22 MR. BARON: We have no objection.

23 CHAIRMAN FARMAKIDES: Mr. Davis?

24 MR. DAVIS: We are agreeable.

25 CHAIRMAN FARMAKIDES: All right. Let's do it that

1 way. I think it is to the benefit of the entire proceeding
2 that we do convene in Port Clinton on the first day, and we
3 do allow limited appearances on that day.

4 All right, gentlemen, have -- do you have another
5 stipulation to present to the Board?

6 MR. CHARNOFF: Yes, sir.

7 We had some discussion with respect to three
8 of the contentions, Mr. Chairman. First, with respect to
9 Issue No. 1 as set forth in the Licensing Board special
10 prehearing conference order on May 31, this issue deals with
11 conservation of energy, alternates; and in reply to
12 interrogatories by the Applicant and the Regulatory Staff,
13 the Intervenors have listed seven possible methods of energy
14 conservation which they believe should be considered.

15 Those seven are, first, ban on promotional
16 advertising and activities;

17 Second, conservation advertising.

18 Third, changes in rate structure -- cost-based
19 pricing rather than promotional pricing, higher rates.

20 Fourth, changes in use of electricity.

21 Fifth, changes in public attitude.

22 Sixth, energy-efficient buildings.

23 And seventh, energy-efficient appliances.

24 The parties have agreed that Issue No. 1, insofar
25 as it deals with or is concerned with alternative ways of

1 conservation of energy that should be discussed as alleged
2 by the Intervenors are limited to those seven categories.

3 With respect to Issue No. 2, the Intervenors have
4 clarified that that contention in general is limited to
5 storm damage which causes damage to the plant which in turn
6 would cause environmental damage.

7 It is not concerned with storm damage to the area
8 without affecting the plant in any way.

9 Similarly, the Intervenors have agreed that
10 that does not include any plant-induced storm damage.

11 Finally, with respect to Issue No. 8, the Applicant
12 has advised the Intervenors that insofar as Issue No. 8 refers
13 to the State of Ohio Nondegradation Clause, and insofar
14 as that contention refers to radioactivity as distinguished
15 from the other list of pollutants, that under the doctrine
16 of the Northern States Power Company versus the State of
17 Minnesota case ruled upon by the United States Supreme Court
18 under which the Federal Government, under the Atomic Energy
19 Act has preempted the control of radioactivity releases from
20 nuclear power plants, that the State of Ohio Standards do
21 not apply to radioactivity from the Davis-Besse plant.

22 And similarly, the Federal Water Pollution Control
23 Act Amendments of 1972 -- and the legislative history of
24 that Act, the Committee Reports, debates on the floor of the
25 Senate and House -- it is clear that those amendments did

1 not in any way alter the legal effect of Northern States
2 Power Company versus the State of Minnesota. Hence, we
3 understand this contention, insofar as the known degradation
4 provision of the Ohio State statute does not apply to radio-
5 activity.

6 Subject to those three clarifications, Mr.
7 Chairman, that concludes the discussion of the contentions.
8 And perhaps we ought to get on the record concurrence on those
9 three matters.

10 And then I would like to turn to the matter
11 of the stipulation of the admission into evidence of certain
12 documents.

13 CHAIRMAN FARMAKIDES: All right.

14 Is that a reasonable proposal, Mr. Baron?

15 MR. BARON: Yes, sir, we concur with the issue
16 as Mr. Charnoff has recited it.

17 I would like to ask for the record if you have
18 the citation of this Supreme Court case?

19 MR. CHARNOFF: We will provide that to you.

20 MR. SILBERG: The date of the case was September 7,
21 1971. I do not have here a citation to that case.

22 CHAIRMAN FARMAKIDES: That was a construction
23 permit case, was it?

24 MR. CHARNOFF: This is a Supreme Court case, sir,
25 dealing with -- independent of construction or operating

1 license -- it dealt with the attempt by the State of Minnesota
2 Pollution Control Agency to impose regulatory limits on
3 releases from power plants -- nuclear power plants.

4 CHAIRMAN FARMAKIDES: But it had to do with a
5 construction permit, didn't it?

6 MR. CHARNOFF: No, sir, it had to do with nuclear
7 power plants, emissions from nuclear power plants.

8 Actually the case at issue related primarily to
9 the Monticello power plant which was then in operation. The
10 utility brought a challenge to the effect that the state
11 regulation, insofar as it imposed radioactivity limits --

12 CHAIRMAN FARMAKIDES: I may be thinking of another
13 case, but one of the distinguishing features of that case
14 that has been cited, and more recent cases, is that it dealt
15 with construction, but look --

16 MR. CHARNOFF: I think you are referring to the
17 Power Reactor Development Corporation case, which is a 1961
18 Supreme Court case, which dealt with what the Atomic Energy
19 Commission has to consider at the construction permit stage
20 as distinguished from the operating license stage.

21 CHAIRMAN FARMAKIDES: Perhaps we will reread the
22 case, just to put us into context.

23 (Laughter.)

24 MR. BARON: My stipulation -- my agreement to the
25 stipulation, of course, would be predicated upon the

1 accuracy of his remarks.

2 CHAIRMAN FARMAKIDES: Yes.

3 My point, Mr. Baron, is I think too, it is accurate
4 and I think it applies to this case; this is the construction.

5 MR. BARON: I see, yes, sir.

6 CHAIRMAN FARMAKIDES: And this is the environmental
7 aspects of the construction.

8 Mr. Davis?

9 MR. DAVIS: The Staff doesn't wish to add anything.

10 CHAIRMAN FARMAKIDES: Do you concur?

11 MR. DAVIS: We agree with the stipulation and
12 the clarification that is offered by the Applicant.

13 CHAIRMAN FARMAKIDES: All right.

14 Next point, Mr. Charnoff?

15 MR. CHARNOFF: Recognizing that this is a mandatory
16 hearing case, even if there were no Intervenor, Mr. Chairman
17 and the Board, therefore, has obligations wholly apart from
18 Intervenor's contentions, and in the interests of saving time
19 of various people who may otherwise be required to be here
20 to sponsor into evidence certain documents, the parties have
21 agreed that the Board may receive into evidence the
22 Regulatory Staff's Final Environmental Statement, and the
23 Applicants' Environmental Report, and the Amendments thereto;
24 the dates of those documents are -- the Environmental Report
25 initially was August 3, 1970. There was a two-volume

1 supplement to that on November 5, 1971. There as an amendment
2 No. 1 to the supplement dated July 13, 1972. And there was
3 a Cost-Benefit Analysis Supplement dated July 5, 1972.

4 In addition, the parties have also agreed on
5 receipt into evidence of the Preoperational Radiological
6 Monitoring Study Reports by Biotest -- Industrial Biotest
7 Corporation -- the laboratory -- dated, the first one was
8 dated March 9, 1973, and covers the period of July through
9 December, '72, and the second was dated May 11th, 1973,
10 covering the first quarter of 1973.

11 Those two reports have been made available to
12 Intervenors. They have not yet been made available to the
13 Board, and we will send them to you. I believe the Board has
14 all of the other documents, however.

15 And we have agreed that the stipulation into evi-
16 dence of these documents would not in any way hinder the
17 availability of witnesses that we may have to present to be
18 available for cross-examination by any of the other parties.
19 We will have sufficient witnesses to deal with the specific
20 contentions of the other parties. In addition, I might indicate
21 Mr. Chairman, that to the extent the Licensing Board has
22 any questions of the Applicants with respect to any material
23 outside the scope of the contentions, obviously, on any notice
24 from the Licensing Board we will have the appropriate
25 personnel to testify to those matters.

1 CHAIRMAN FARMAKIDES: After we receive your direct
2 testimony there is no doubt about it, we will probably be
3 in conference call with you to let you know what we think
4 we would like to interrogate further.

5 MR. CHARNOFF: That would be very helpful.

6 CHAIRMAN FARMAKIDES: I think that might help
7 a little bit here.

8 All right, now, I take it that this is a third
9 stipulation, if you will, of the three parties. Mr. Baron,
10 is that correct?

11 MR. BARON: That is correct.

12 CHAIRMAN FARMAKIDES: Mr. Davis?

13 MR. DAVIS: Yes.

14 CHAIRMAN FARMAKIDES: Very good.

15 I am really pleased that we are getting to the
16 substance of the issues between the parties here rather than
17 getting bogged down in procedure.

18 Anything else?

19 MR. CHARNOFF: I believe the parties are agreed
20 that there is nothing else.

21 MR. BARON: We have one item.

22 CHAIRMAN FARMAKIDES: Mr. Baron?

23 MR. BARON: This would be called by the Coalition
24 with respect to the issues -- I have copies available, and I
25 will hand them to the Applicants and the Staff and the Board.

1 (Counsel distributing documents.)

2 CHAIRMAN FARMAKIDES: Fine.

3 And these lists are subject to correct in the
4 event you wish to bring in someone else?

5 MR. BARON: Yes, sir.

6 CHAIRMAN FARMAKIDES: All right. Thank you.

7 Mr. Davis, do you have anything else?

8 MR. DAVIS: Yes. May we go off the record?

9 I wanted to distribute documents.

10 CHAIRMAN FARMAKIDES: Well, no need to go off the
11 record for that. We can just go ahead and do it.

12 MR. CHARNOFF: Mr. Chairman, may I suggest that to
13 the extent after responses to Interrogatories, to the extent
14 that we have difficulties in understanding the responses or
15 considering those, the parties may wish to undertake a
16 conference call with the Board Chairman, and that you would
17 agree to that?

18 CHAIRMAN FARMAKIDES: Absolutely.

19 I encourage this, so I would like to have all
20 parties call me, but that doesn't mean that you shouldn't --
21 that you people shouldn't be talking to each other individually
22 as well.

23 But I would very much appreciate this type of
24 activity.

25 Well, I think then that that very nicely

1 concludes our prehearing conference. The schedule has been
2 laid out. We will proceed on that schedule. The Board will
3 issue an order. We will wait first for the reply with
4 respect to Contention No. 3 from Mr. Baron. I think the date
5 is July 5.

6 Do you have anything else?

7 (No response.)

8 This concludes our prehearing conference.

9 (Whereupon, at 3:50 p.m., Thursday 28 June 1973,
10 the prehearing conference was adjourned.)

endJRBjrb

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