

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 and)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)
(Davis-Besse Nuclear Power Station,)
Units 1, 2, & 3))

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

THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, et al.)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440A
50-441A

ORDER

March 19, 1976

We accept the Licensing Board's certification to us today of four questions which it has ruled upon in connection with its disposition of the motion of the City of Cleveland to disqualify the law firm of Squire, Sanders and Dempsey from further participation in this antitrust proceeding as counsel for the Cleveland Electric Illuminating Company. Further, to the extent not implicitly encompassed by those four questions, we direct the certification of the following additional questions, to be answered in light of the disclosures in the record and of Canon 5 of the American Bar

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Association Code of Professional Responsibility (in particular, Ethical Consideration 5-16 and Disciplinary Rule 5-105 under that Canon):

(1) When the City of Cleveland requested the firm of Squire, Sanders and Dempsey to represent it respecting the issuance of municipal bonds to finance construction of a new City power plant, what explanations were given to the City by the firm about potential conflicts of interest which might arise because the firm also represented its competitor, the Cleveland Electric Illuminating Company?

(2) Precisely when, by whom, and to whom were those representations made and what significance attaches to them?

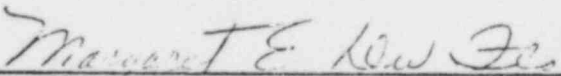
(3) What (if any) bearing does the fact that the City's lawyers retained the firm have on the application of the Canon to this case and, in particular, did it affect the firm's obligation to "explain fully to each client the implications of the common representation and [to] accept or continue employment only if the clients consent"?

The briefs of all parties which oppose the result reached by the Licensing Board in its order of certification (i.e., "that suspension of the firm [of Squire, Sanders and Dempsey]

is necessary and required") shall be filed no later than April 2, 1976. The briefs of all parties which support that result shall be filed no later than April 16, 1976. Reply briefs may be filed no later than April 23, 1976. In their briefs, the parties may, if they so choose, raise any additional points in favor or against the result below even though not encompassed within the certified questions.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD


Margaret E. Du Flo
Secretary to the
Appeal Board

