

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISS

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL 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 and 2))	

ANSWER OF NRC STAFF TO MOTION OF DEPARTMENT
OF JUSTICE FOR AN ORDER REQUIRING SUBMISSION
OF AFFIDAVITS PRIOR TO ORAL ARGUMENT AND FOR
REOPENING OF DISCOVERY

By motion dated February 23, 1977, the Department of Justice moved the Appeal Board to (i) require submission of affidavits prior to oral argument on Applicants' "Motion to Stay Pendente Lite The Attachment of Antitrust Conditions," and (ii) reopen discovery on data underlying affidavits when filed. The Department's motion follows the Appeal Board's Order of February 15, 1977 which, inter alia, requested counsel to be prepared to address, with particularity at oral argument on March 9, 1977, the irreparable injury, if any, which Applicants or others may suffer as a result of the stay, or the denial of a stay, of antitrust conditions ordered pursuant to the initial decision (antitrust) below. Counsel was also asked to be prepared to address with particularity public interest considerations, and the details of any interconnections which would be required pursuant to the initial decision. In Supplementary Remarks, Mr. Sharfman indicated that 10 CFR 2.730 (b) and (c) contemplate

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the use of "affidavits or other evidence" in support of motions or answers. The Department asserts in its motion that unless it is able to examine in advance of argument Applicants' affidavits and record citations, it will be unable to reply meaningfully to such authorities at argument. The Department also asserts that in order to respond to Applicants' affidavits it will require discovery of the underlying data and analyses. The Department requested the submission of affidavits, underlying data, and record citations on March 2, 1977.

On February 24, 1977, the Appeal Board informed the parties that it desired responses to the Department's motion by February 25, 1977.

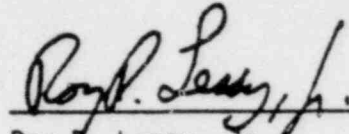
Inasmuch as all parties are familiar with the evidentiary record, and the undertakings eventually ordered by the Board such as "meaningful access" to nuclear units, transmission services, reserve sharing, and other such matters were the subject of both factual and expert testimony during the evidentiary hearing, it is the Staff's position that the parties should solely rely on evidence of record to support their arguments. That would obviate the need for both re-opening discovery and filing affidavits while providing "other evidence" as contemplated by 10 CFR § 2.730.^{1/}

Accordingly, it is the Staff's position that the Department's motion be denied but that in order to afford the parties an opportunity to prepare

^{1/} New interconnections necessitated by the license conditions were not discussed at the hearing except for the principle of apportioning the costs of interconnections. New interconnections may not be necessary if Applicants are correct in their renewed motion that there are no isolated electric entities in the CCCT. As to the use of affidavits in this proceeding, cf. Department's Motion pp. 3 and 4 with Applicants' response, p. 3, n. 3.

such record citations in lieu of affidavits, the Staff would also propose that the parties exchange record citations on Friday, March 4, 1977.

Respectfully submitted,

A handwritten signature in cursive script, reading "Roy P. Lessy, Jr.", written over a horizontal line.

Roy P. Lessy, Jr.
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25 the day of February 1977.

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(Perry Nuclear Power Plant, Units)	
1 & 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF NRC STAFF TO MOTION OF DEPARTMENT OF JUSTICE FOR AN ORDER REQUIRING SUBMISSION OF AFFIDAVITS PRIOR TO ORAL ARGUMENT AND FOR REOPENING OF DISCOVERY in the above-captioned proceeding 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 25th day of February 1977.

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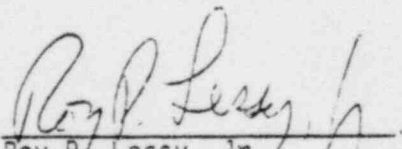
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