

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD:

Algie A. Wells, Chairman
Dr. John H. Buck
Dr. Lawrence R. Quarles

IN THE MATTER OF)
)
)
 TOLEDO EDISON COMPANY AND)
 CLEVELAND ELECTRIC ILLUMINATING COMPANY)
)
 (Davis-Besse Nuclear Power Plant))

DOCKET NO. 50-346

MEMORANDUM AND ORDER

On April 21, 1971, the Coalition for Safe Nuclear Power, one of the intervenors in this proceeding, filed a motion with the Commission seeking a stay of the construction permit which was issued to the applicants following the Atomic Safety and Licensing Board's initial decision of March 23, 1971. The Commission, by Order dated April 28, 1971, referred this motion to the Appeal Board for appropriate determination, reciting the fact that the Appeal Board had been delegated the authority and the review function which would otherwise be exercised and performed by the Commission in this case.

The intervenor's motion seeks "an order staying the effective date of the construction permit issued to the applicant[s] until such time as a final judicial determination has been made upon the exceptions filed

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herein on behalf of said Intervenor." By undated letter postmarked April 8, 1971, the intervenor filed exceptions to the initial decision and this Board is currently in the process of considering those exceptions. The intervenor, in its motion, assigns as a reason for the stay that "irreparable damage will be caused to the Intervenor's rights of appeal by failure to issue a Staying Order". The applicants and the AEC regulatory staff have filed briefs opposing the motion, asserting, in essence, that no showing warranting such a stay has been made by the intervenor.

While the Appeal Board has the authority to grant a stay of a decision authorizing issuance of a construction permit, ancillary to its appellate jurisdiction, we see no basis for doing so in this case. The intervenor has made no showing of good cause and, indeed, has not asserted any cause at all for us to grant such a stay, other than the bare assertion that it will be irreparably damaged if a stay is not granted during the period of appellate consideration. We do not consider the delay attendant appellate review as constituting, in and of itself, an appropriate reason for granting a stay. This is particularly so since an applicant takes its construction permit subject to the outcome of the appellate review process. Cf. Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, AFL-CIO, 367 U. S. 396, 414-15 (1961).

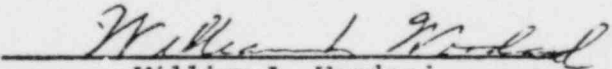
Furthermore, Commission Rules specifically provide that an initial decision authorizing the issuance of a construction permit for a nuclear power reactor shall be effective immediately upon issuance "unless the

presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective". 10 CFR § 2.764(a). Such a finding, or the refusal to make such a finding, is subject to review and further administrative decision upon exceptions filed by any party. The intervenor, despite this opportunity afforded by the Rules to seek a Licensing Board stay of construction permit issuance, made no effort to do so. The intervenor's failure - for which no explanation is offered - to resort to the administrative recourse available to it to obtain such a stay is itself a proper ground for denying the present request.

In view of the foregoing, the intervenor's motion must be denied.

It is so ORDERED.

By the Atomic Safety and Licensing
Appeal Board



William L. Woodard
Assistant Executive Secretary

Dated: 5/6/71
at Washington, D.C.

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UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

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TOLEDO EDISON COMPANY, ET AL.
(Davis-Besse Nuclear Power
Station Unit 1)

Docket No. 50-346
5-6-71

CERTIFICATE OF SERVICE

I hereby certify that copies of the MEMORANDUM AND ORDER issued by the Appeal Board on May 6, 1971 in the captioned matter have been served on the following by deposit in the United States mail, first class or air mail, this 6th day of May 1971:

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