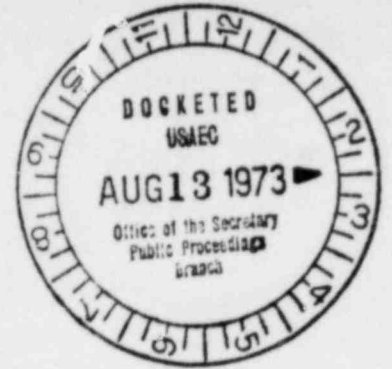


UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION



In the Matter of )  
 )  
TOLEDO EDISON COMPANY AND )  
THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY )  
 )  
(Davis-Besse Nuclear Power )  
Station) )

Docket No. 50-346-OL

MEMORANDUM AND ORDER

By Memorandum and Order dated July 10, 1973, this Board ruled on a Petition to Intervene filed by the City of Cleveland, a Petition to Intervene filed by Ms. Evelyn Stebbins on behalf of the Coalition for Safe Electric Power, and a Motion from the State of Ohio requesting an extension of time within which to determine whether to file a Petition to Intervene. We will discuss the status of each, seriatim.

A. The Board denied the Petition of the City of Cleveland on the ground that it related only to antitrust matters which are the subject of a separate antitrust proceeding established by the Commission.

B. The Board denied the Petition to Intervene filed by the Coalition for Safe Electric Power for reasons stated,

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including the failure to file its petition timely. However, the Board provided the Coalition a period of 15 days to show good cause for the Coalition's untimely filing. In addition, the Board noted that it had reviewed all the contentions filed by the Coalition, and for reasons stated found that only two of the contentions were admissible and concluded that if the Coalition were to show sufficient good cause for failing to file timely, the Board would be prepared to admit Intervenor's contentions numbered 19 and 25 and to declare a hearing.

By response dated July 25, 1973, the Coalition submitted its reasons for late filing. The Board has reviewed same and finds that good cause has been shown. Accordingly, the Board concludes that the Coalition for Safe Electric Power shall be admitted as a party Intervenor, and that a hearing will be held on Intervenor's contentions numbered 19 and 25.

C. By "Motion for Reconsideration of Foreclosure of State of Ohio's Participation in the A.E.C. Operating Proceedings", undated, served on July 30, 1973, the State of Ohio, represented by its Office of Attorney General,

responded to the Board's Order. Apparently, the Motion as filed is based on some misunderstanding.

First, it should be noted that, contrary to the State's understanding, the Board did not issue the ". . . order of April 19, 1973 (38 F.R. 10661) . . ." Rather, we assume the State is referring to the "Notice of Receipt of Application for Facility Operating License; Notice of Consideration of Issuance of Facility License and Notice of Opportunity for Hearing", dated April 19, 1973, issued by the Atomic Energy Commission and published in the Federal Register on April 30, 1973. It is this Notice, which, inter alia, provides opportunity for petitions to intervene; and under which this Board is delegated its responsibility and authority. Accordingly, we assume that the State did not suggest that this Board "reconsider" the Commission's said Notice.

The State's motion apparently is based in part on some confusion as to the existence of a construction permit for the Davis-Besse Facility. It should be noted that a construction permit has in fact been granted and that the subject Facility is presently being constructed

pursuant to such a permit. Thus, it should be made clear that the proceedings required by the ". . . order of the U. S. Court of Appeals for the District of Columbia Circuit" as referenced in the State's motion have been completed, and two Initial Decisions were issued thereon, on May 19, 1972, and July 9, 1972, pursuant to said Court Order. In contradistinction, the Hearing currently pending relates to a Commission-initiated proceeding pursuant to 10 CFR Part 50, Appendix D, Section B, which sets forth procedures applicable to review of environmental considerations on facilities for which construction permits were issued in the period January 1, 1970-September 9, 1971.

Furthermore, the Board notes that unless good cause for delay is shown, it has no discretion to waive the Commission's direction that ". . . a petition for leave to intervene must be filed with . . . [Commission] not later than thirty (30) days from the date of publication of this Notice in the Federal Register" (Emphasis supplied). The only reason advanced by the State in support of its request for a second

extension of time is the intent of the State to delay its determination to file a petition to intervene until after the ". . . AEC has defined the issues to be considered at an operating license proceeding as reflected in its pending construction licensing proceeding determination" (presumably the State is referring to the "Section B" hearing now in progress). If this represents the State's position, it should be recognized as being in direct conflict with the Rules of Practice of the Commission. For example, see § 2.104, § 2.105, § 2.760(a), § 2.714, etc.

In other words, it appears the State's position is that the AEC is required to conduct a hearing on an application for an operating license on issues which the Commission must define based on the Commission's findings made during the construction licensing proceedings. The State cites no authority in support of this position; nor do we find any.

The motion of the State further ignores the Commission's mandate to this Board to consider and rule on the sufficiency of the petitions to intervene timely filed. The State's motion suggests that the State intends to file a petition

to intervene only if issues in the present proceeding are not resolved to the State's satisfaction. If this is a motive in the State's consideration of the matter, then the Board will immediately reject it. If the State has any basis for concern on health and safety or environmental aspects which it thinks should be raised with respect to the Davis-Besse Facility, then it has a responsibility -- indeed, a duty -- to raise these facts at the earliest possible time.

The position of the State would also suggest that additional motions will be forthcoming from the State requesting additional extensions of time. Since the Initial Decision of the Board in the pending Davis-Besse proceeding is expected about September 15, 1973, and considering the additional time that would be required by the State to review said Decision, we can, therefore, expect delay in the State's decision well into October.

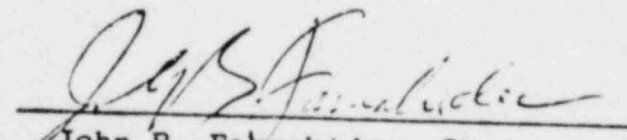
Apparently, because of the confusion previously noted, the State also failed to submit a timely response within the fifteen (15) day period initially set by the Board, which expired on July 25, 1973. However, in view



of the discussion above, this Board is of the opinion that the State should be given a final opportunity to determine whether it wishes to intervene in the Noticed proceeding. Recognizing that the State has already enjoyed a de facto extension of approximately 75 days, we will permit the State seven (7) additional days within which to file a petition to intervene. Except as so provided, the State's motion for reconsideration is denied. In any event, as we noted in our earlier Order, the State is invited to participate in the proceedings in accordance with Section 2.715(c). In addition, while the Applicant's rights under the Rules may be materially affected by the State's motion, we have not considered that aspect at this time, in this Order.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
John B. Farmakides, Chairman

Issued at Washington, D. C.,  
this 13th day of August, 1973.

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

In the Matter of )  
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TOLEDO EDISON COMPANY, ET AL. ) Docket No. 50-346-OL  
)  
(Davis-Besse Nuclear Power )  
Station, Unit 1) )

CERTIFICATE OF SERVICE

I hereby certify that copies of MEMORANDUM AND ORDER dated August 13, 1973 in the captioned matter have been served per the attached Service List by deposit in the United States mail, first class or air mail, this 13th day of August 1973.

*Peggy A. Downing*  
Office of the Secretary of the Commission

Attachment: Service List

cc: Mr. Farmakides  
Mr. Scinto  
ASLBP  
E. Goulbourne  
N. Brown  
Reg. Files  
ASLAB



UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

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THE TOLEDO EDISON COMPANY, ET AL.) Docket No. 50-346  
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