

August 28, 1973

UNITED STATES OF AMERICA  
ATOMIC ENERGY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' REPLY TO THE COALITION'S  
AND THE STAFF'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Pursuant to Section 2.754 of the Commission's Rules of Practice, Applicants herein reply to the Coalition's and the Staff's proposed findings of fact and conclusions of law. Applicants' reply is set forth below in the form of a proposed section to be incorporated in the Board's Initial Decision.

PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW SUBMITTED BY THE PARTIES

1. The proposed findings of fact and conclusions of law submitted by the Applicants and the Staff are in accord with this Initial Decision. The Coalition's proposed findings and conclusions do not reflect the record of this proceeding. The Board's rejection of the Coalition's proposals is explained below.

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2. The Board initially observes that the Coalition failed to file any proposed findings with respect to Issues 2, 5, 6 and 8. Failure to file proposed findings may be deemed to be a default. 10 CFR §2.754. The Coalition has given no explanation for failing to submit proposed findings on these issues. Particularly with respect to issues on which the Coalition took a strong position at the hearing, either by way of direct testimony or cross-examination, failure to file represents a clear default. To accord equity to all the parties, the Board must accord significance to this failure. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, RAI-73-5, 331 at 333-334 (May 18, 1973).

3. The Coalition's proposed findings as to Issue 1, paras. 1, 2, 3, 7 and 15, attempt to draw certain conclusions regarding Applicants' advertising programs. As discussed in Finding of Fact 32\*, Applicants' advertising programs do not significantly add to peak demand. The Coalition introduced no testimony to the contrary and the exhibits referenced by the Coalition do not contradict this conclusion; nor do they support the Coalition's conclusion that the advertising programs add to summer peak. For the reasons stated in Finding of Fact 33, the Board rejects the Coalition's statement in para. 3, unsupported by any citation to the record, that Applicants are not telling its customers to conserve electricity. The effect

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\* This and subsequent references to findings of fact are to Applicants' Proposed Findings of Fact and Conclusions of Law in the Form of an Initial Decision, dated August 14, 1973.

of the "Save-a-Watt" program of Consolidated Edison Co., referenced in the Coalition's para. 14, is discussed in Finding of Fact 33. The Coalition's proposed findings relating to Applicants' industrial and area development activities, paras. 4-6, are dealt with in Finding of Fact 34.

4. The Coalition's proposed findings regarding CAPCO demand projections, paras. 8-10, attempt to raise questions as to the accuracy of Applicants' forecasts. The validity of the reserve margins used by Applicants and the accuracy of their demand forecasts are fully supported by the record, as set forth in Findings of Fact 28-29. The Coalition, in paras. 10-13, relies on the testimony of Richard E. Morgan to support its belief that rate increases could reduce peak demand. The Board's observations as to the technical qualifications of this witness are stated in Finding of Fact 27. The record clearly shows that the kinds of rate changes sought by the Coalition would result in illegal discrimination and would not significantly alter growth in power usage. Findings of Fact 30-31.

5. The Board also rejects the proposed findings submitted by the Coalition with respect to Issue 9. The Coalition's proposed findings are based in large part on the testimony of Dr. Ernest Sternglass and on exhibits prepared by him. As discussed in great detail in Findings of Fact 77-93, the Board finds that the testimony of Dr. Sternglass

as to Issue 9 is entitled to no weight. This conclusion is also supported by the Board's evaluation of the testimony submitted by Dr. Sternglass with regard to Issue 8, Findings of Fact 65-74, and by the evaluation of Dr. Sternglass' arguments and methodology by other hearing boards, Finding of Fact 14. Since Dr. Sternglass' testimony on Issue 9 has been found to be lacking in merit, the proposed findings which rely upon that testimony cannot be accepted.

6. The Board also rejects those of the Coalition's proposed findings which do not directly rely on Dr. Sternglass. The Coalition's general citation to large numbers of separate reports, see e.g. para. 2(c), is so overbroad that it fails to comply with the requirement of 10 CFR §2.754 for "exact citations to the ... exhibits". The Coalition makes statements with no citation to the record. See e.g. para. 3(e) and (f). These proposed findings rely on exhibits which do not support the proposition for which they are cited. For example, paras. 4(e) and (f) cite papers by Michelson and Rosenthal (Intervenor's Exhibits 22 and 23) as showing the "high levels of radioactivity in soil, milk, and high TLD readings for Shippingport reactor area". As indicated in Finding of Fact 90, the Michelson document is based upon the erroneous NUS 1971 strontium in milk data, while the Rosenthal paper does not even mention Shippingport or the radioactivity levels around it. The Coalition's proposed findings also misinterpret cited exhibits. Thus,

the Coalition cites Applicants' Exhibit 13 for the proposition that high reported radioactivity levels around Shippingport "have not been adequately explained". In para. 4(h), the Coalition quotes half a sentence from p. 13 of that exhibit, "An effort to make definite conclusions from the reported NUS data at this late date is impossible ...", but omits the remainder of the sentence, "however, we feel the data as it was reported by NUS does not represent the actual exposure for the periods in question". Finally, notwithstanding the Coalition's attack, in the Coalition's paragraphs 4(j) - 4(o), on Applicants' Exhibit 13 (an independent report prepared by the U.S. Environmental Protection Agency), the Coalition's proposed findings do not find fault with Applicants' Exhibit 14, a report by AEC which also rejected Dr. Sternglass' allegations concerning Shippingport, nor with the data presented in Applicants' Exhibits 10 and 11, showing the reanalysis of the NUS 1971 strontium samples. Moreover, Applicants' Exhibit 13, whose reliability the Coalition questions, is the final version of a report which Dr. Sternglass had himself relied upon, which, according to Dr. Sternglass "basically ... has the same conclusions" as Applicants' Exhibit 13, and which the Coalition sought to introduce into evidence as supporting Dr. Sternglass' testimony. Tr. 790, 796, 813, 827.

7. Paragraph 2(d) of the Coalition's proposed findings on Issue 9 states that Applicants' Exhibit 15A, which

plotted annual average total activity in Lake Erie water at six locations for 1963, contained incorrect figures. A review of the Ohio Department of Health reports for that year, Intervenor's Exhibit 24P, shows that Applicants' Exhibit 15A did in fact inaccurately state that the annual average activity levels for Toledo and Port Clinton were 84 and 76 picocuries per liter, respectively. The correct levels were 91 and 100 picocuries per liter. Notwithstanding this error, the values do not show the peak at Sandusky on which Dr. Sternglass based his argument.

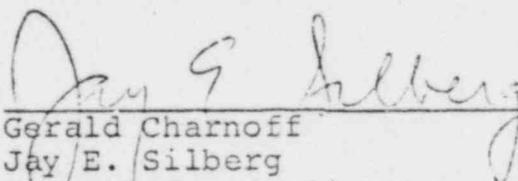
8. In a section of the Coalition's filing entitled "Findings of Fact", the Coalition attempts to present the argument that the FES has not considered "increased cancer, hearth [sic] disease, and other health effects from operation of the Davis-Besse Plant". The Coalition bases its claim that these "health effects" exist on the testimony of Dr. Sternglass which asserted that such effects have occurred near the Shippingport and Plum Brook reactors. The Board finds that the consideration given in the FES, §5.7, to the radiological effects on man is adequate. The biological effects which Dr. Sternglass attempted to demonstrate near the Shippingport and Plum Brook facilities were predicated upon the high levels of radiation which Dr. Sternglass claimed to find in the environs of those reactors. Since we have found that these alleged high levels did not

in fact exist, Findings of Fact 77-93, the conclusion which Dr. Sternglass sought to draw from these levels likewise must fall. Dr. Sternglass' attempts to show adverse health effects from the operation of nuclear reactors has already been rejected in this and other AEC proceedings. Finding of Fact 14. On the basis of res judicata (including collateral estoppel), Dr. Sternglass' allegations on the biological effects of radiation need not be litigated again.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



Gerald Charnoff  
Jay E. Silberg  
Counsel for Applicants

DATED: August 28, 1973

August 28 1973

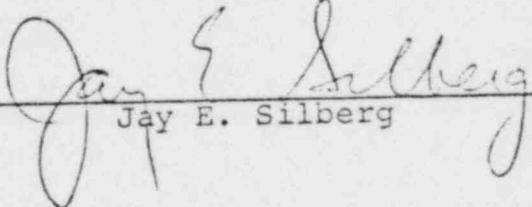
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Reply to the Coalition's and the Staff's Proposed Findings of Fact and Conclusions of Law" were served according to the attached Service List this 28th day of August, 1973.

  
Jay E. Silberg

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