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March 22, 1976

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Washington, D.C. 20555



In the Matter of
The Toledo Edison Company and
The Cleveland Electric Illuminating Company
(Davis-Besse Nuclear Power Station, Unit 1)
NRC Docket No. 50-346A

Re: Oral Argument on Applicants' Motion For Determination
That Davis-Besse Unit 1 is "Grandfathered" For Purposes
Of Operation

Dear Sirs:

At the outset of its oral presentation in the above-captioned proceeding, the Department of Justice, without prior notice to the Appeal Board or to counsel for the other parties, referred the Appeal Board to certain previously non-referenced portions of the legislative history of Section 105c of the Atomic Energy Act of 1954, as amended. (Transcript of Oral Argument at 43-44).

In reply, and based on a hasty, preliminary review of the newly cited legislative history, Applicants noted that the cited material did not support the Justice Department contention

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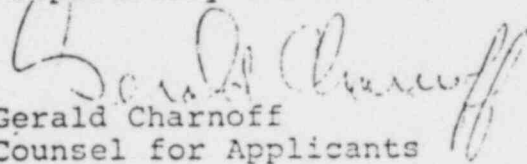
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that a proposal for grandfathering an operating license in a situation such as that now confronting Davis-Besse Unit 1 was presented to the Joint Committee on Atomic Energy and rejected by it. (Tr. 97-98) Nevertheless the Appeal Board granted Applicants ten days to review the newly cited legislative history and to file a reply to the Department's belated assertion.

Applicants' careful scrutiny of the legislative history has confirmed its preliminary observation made during the oral argument on March 18, 1976. While the referenced statements of Messrs. Knapp and Ward were concerned with delays to plants then under construction or review and with duplicative reviews of both the construction permit and operating license stages, neither statement anticipated that an antitrust review initiated on a grandfathered construction permit application would be so protracted that it would not be completed by the time the plant would be ready for fuel loading.

Respectfully submitted,


Gerald Charnoff
Counsel for Applicants

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Appeal Board

In the Matter of)
)
THE TOLEDO EDISON COMPANY and)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)
(Davis-Besse Nuclear Power Station,)
Unit 1))

NRC Docket No. 50-346A

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