



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

PDR

50-346

February 24, 1986

The Honorable Richard F. Celeste  
Governor, State of Ohio  
Columbus, Ohio 43266-0601

Dear Governor Celeste:

Your letter of January 27, 1986 requested that the Commission convene a hearing regarding the disposal of low-level radioactive waste at the Davis-Besse nuclear power station. On February 20, 1986, the Commission issued an order that addresses the concerns expressed in your letter. That order refers various hearing requests concerning low-level waste disposal at Davis-Besse to an Administrative Judge for consideration in an informal adjudicatory proceeding. The order, a copy of which is attached, also directs that a notice be issued inviting interested persons desiring to intervene in the proceeding to file a petition with the NRC. Thereafter, the Administrative Judge is to consider the concerns of those persons found to have standing and to have presented issues appropriate for litigation in the proceeding.

In the event that the State of Ohio wishes to participate in this hearing, it can do so by making further filings in accordance with the forthcoming notice regarding intervention in the proceeding.

Sincerely,

Nunzio J. Palladino

Attachment:  
As stated

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PDR COMMS NRCC  
CORRESPONDENCE PDR

DOCKETED  
USNRC

UNITED STATES OF AMERICA '86 FEB 20 P4:52  
NUCLEAR REGULATORY COMMISSION

OFFICE OF THE  
DOCKETING & SERVICE  
BRANCH

COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Thomas M. Roberts  
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Lando W. Zech, Jr.

SERVED FEB 21 1986

In the Matter of  
TOLEDO EDISON COMPANY, et al.  
(Davis-Besse Nuclear Power  
Station, Unit No. 1)

Docket No. 50-346

ORDER

By letter dated July 14, 1983, as supplemented on July 30, 1984, and January 29, 1985, Toledo Edison Company (Toledo Edison) requested authorization under 10 CFR § 20.302(a) to dispose of byproduct material on the site of its Davis-Besse Nuclear Power Station, Unit 1. The materials in question are radioactively contaminated resins from the plant's secondary system demineralizer. On October 9, 1985, the NRC staff published in the Federal Register an "Environmental Assessment and Finding of No Significant Impact" relating to Toledo Edison's request (50 Fed. Reg. 41265), and by letter dated October 15, 1985, approved the licensee's request for disposal authorization. Thereafter, in November 1985, various groups and individuals, including Save Our State From

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Radioactive Waste (SOS), Toledo Coalition for Safe Energy (TCSE) and Susan A. Carter, the Western Reserve Alliance (WRA), and the Consumers League of Ohio (CLO), filed petitions for a hearing regarding the Toledo Edison disposal authorization request. Also, in early December 1985, the Commission received petitions from City of Mentor, Ohio, and the Ohio Citizens for Responsible Energy (OCRE) asking that the agency rescind its October 15, 1985 approval of Toledo Edison's disposal authorization request.

We have decided that, in the circumstances of this case, interested persons should be afforded a hearing under section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a). In making an initial disposition of the pending hearing requests, we note that in our decision in Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982), aff'd, City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983), the Commission indicated that there was no entitlement to a formal, trial-type hearing under either the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Further, neither these particular hearing requests nor any other information now available to us, give us cause to exercise our discretion and grant a formal hearing under the "public interest" standard of 10 CFR §§ 2.104(a) and 2.105(a)(7) or to find due process concerns require that a formal hearing must be convened. Therefore, only an informal hearing will be instituted.

With regard to the conduct of the informal proceeding, we direct the Chairman of the Atomic Safety and Licensing Board Panel to designate a single member of that Panel to act as the presiding officer. In order to ensure that all interested persons are identified and heard on a

timely basis, the presiding officer should arrange for publication in the Federal Register of a notice of opportunity for hearing that notes the pendency of the hearing requests regarding the Toledo Edison authorization application and invites all interested persons desiring to intervene in any hearing proceeding to be conducted to file a petition to intervene with the Docketing and Service Branch of the Office of the Secretary within thirty days of the publication of the notice. The intervention statement must set forth with particularity (1) the interest of that person in the proceeding; (2) how that interest may be affected by the results of the proceeding, including a delineation of the reasons why that person should be permitted to intervene that makes particular reference to (a) the nature of the person's right under the Atomic Energy Act to be made a party, (b) the nature and extent of the person's property, financial, or other interest in the proceeding, and (c) the possible effect of any order that may be entered in the proceeding on the person's interest; and (3) the specific aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated. Statements by those seeking to intervene as parties will be deemed filed when personally delivered to the Office of the Secretary or when deposited in the United States mail, properly addressed and first-class postage prepaid.

The parties to the informal adjudication shall be applicant Toledo Edison; SOS, TCSE, Susan A. Carter, WRA, CLD, OCRE, and the City of Mentor, if their petitions are found to be adequate; and any other person found to have filed a proper intervention statement. The NRC staff also can appear as a party if it so desires.

Determinations by the presiding officer on the standing of persons seeking to intervene as parties to the proceeding will be governed by existing agency precedents regarding 10 CFR § 2.714(d). See Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), ASLPS No. 83-488-01 ML, at 4-5 (Admin. Judge Oct. 7, 1983). If the presiding officer finds that the hearing petitions or any intervention petition should be denied in toto on the basis of lack of standing or any other reason, such determination, which must be in writing, will become final agency action within thirty days unless the Commission, on its own, undertakes a review of that decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision on such matters.

In carrying out his responsibility under this delegation, the presiding official also will have the authority to request and receive whatever written submissions and documents he deems necessary from any party on any schedule he deems proper. Such requests can include requirements that petitioners or intervening parties provide additional information relative to their standing to participate or further particularize the aspects of the subject matter of the proceeding they wish to litigate or that the parties answer specific questions, with supporting materials, that the presiding officer poses to them. In addition, at such time as may be specified by the presiding officer, persons who do not desire to become parties or cannot fulfill the requirements for party status can file a statement indicating they wish to make a limited appearance regarding any issue in the proceeding. The presiding officer will have the authority to fix such limitations and

conditions as appropriate on the participation of those making limited appearances and they are not otherwise to participate in the proceeding.

In his discretion the presiding officer also can entertain oral presentations from the parties or those making a limited appearance. Any oral communications between the presiding officer and any party or any person making a limited appearance concerning any matter at issue in the proceeding will be conducted in the presence of the parties or memorialized in a written memorandum that is served on all parties and made a part of the docket file on the proceeding.

If, on the basis of the parties' presentations and other information that the adjudicator is entitled to rely upon as discussed below, the presiding officer believes that additional procedures are necessary to ensure the full development of the agency record or to resolve any material factual issues that could not be resolved through the procedures set forth in this order, he should seek authority from the Commission to implement any additional procedures.


The presiding officer's decision, which is to be in writing, should be made on the basis of the written submissions of the parties, any oral presentations by the parties, and other technical or factual information that is publicly available in the docket file. The presiding officer's decision will become final agency action thirty days after the date of issuance unless the Commission, on its own motion, undertakes a review

of the decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision.

It is so ORDERED.



For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 20<sup>th</sup> day of February, 1986.