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U.S. ATOMIC ENERGY COMMISSION

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SECRETARY, U.S. ATOMIC ENERGY COMMISSION, ATTN CHIEF PUBLIC PROCEEDINGS
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UNITED STATES OF AMERICA ATOMIC ENERGY COMMISSION
BEFORE ATOMIC SAFETY AND LICENSING APPEAL BOARD
DUCKET NO 50-346

POOR
ORIGINAL

IN THE MATTER OF THE TOLEDO EDISON COMPANY AND THE CLEVELAND
ELECTRIC ILLUMINATING CO (DAVIS-BESSE NUCLEAR POWER STATION
EXCEPTION TO INITIAL DECISION (JULY 9, 1972) SUBMITTED BY THE
TOLEDO EDISON COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY.

1. THE TOLEDO EDISON COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY (PERMITTEES) BELIEVE THAT THE INITIAL DECISION (JULY

9, 1972) IS CLEARLY CORRECT AND IS SUPPORTED BY SUBSTANTIAL
EVIDENCE. HOWEVER, PERMITTEES SUBMIT THE FOLLOWING EXCEPTION
IN THE NATURE OF A CLARIFICATION.

2. IN PARA. 12 OF THE INITIAL DECISION (JULY 9, 1972), THE
LICENSING BOARD STATED THAT "MATTERS INVOLVING NON-RADIOACTIVE
MATERIALS ARE NOT IN ISSUE IN THE PRESENT CASE." CONVERSELY,
THE LICENSING BOARD, PARA. 17, INDICATED THAT RADIOACTIVE ASPECTS
OF DAVIS-BESSE OPERATION ARE "THE ONLY MATTER AT ISSUE IN THE
CURRENT PROCEEDING." THE APPEAL BOARD SHOULD CLARIFY THIS LANGUAGE
TO REFLECT THE LICENSING BOARD'S DIVIDED INTENT, WHICH WAS
TO INDICATE THAT THE ONLY ISSUES WHICH INTERVENOR SOUGHT TO
CONTROVERT WERE THOSE RELATING TO RADIOLOGICAL MATTERS. MATTERS
RELATING TO NON-RADIOLOGICAL ASPECTS OF OPERATION AND POST-NEPA
REVIEW CONSTRUCTION WERE ISSUES IN THE PROCEEDING, AS INDICATED

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BY APAR. 8-15 OF THE INITIAL DECISION, BUT WERE NOT CONTROVERTED BY INTERVENOR.

3. THE RECORD OF THE HEARING CLEARLY DEMONSTRATES THAT INTERVENOR STIPULATED THAT EVIDENCE ON NON-RADIOLOGICAL ASPECTS COULD BE ADMITTED WITHOUT THE NECESSITY FOR SPONSORING WITNESSES AND THAT INTERVENOR WAS NOT INTERESTED IN CROSSEXAMINATION WITH RESPECT TO SUCH TESTIMONY. TR. 2802, 2803, 2807, 2886, 2830. BASED UPON THIS STIPULATION, A LARGE VOLUME OF NON-RADIOLOGICAL TESTIMONY WAS ADMITTED INTO THE RECORD. TR2832-2857. IT IS THEREFORE CLEAR THAT NON-RADIOLOGICAL MATTERS WERE "NOT IN ISSUE" IN THAT THESE ISSUES WERE NOT OF CONCERN TO INTERVENOR. INTERVENOR'S "LACK OF CONCERN" IS PARTICULARLY NOTEWORTHY IN THAT ITS PRIMARY COMPLAINT, EVER SINCE INTERVENOR FILED WITH THE COURT OF APPEALS ITS PETITION FOR REVIEW OF THE CONSTRUCTION

PERMIT FOR THE DAVIS-BESSE PLANT FOURTEEN MONTHS AGO, HAS BEEN A DESIRE TO HAVE A HEARING ON NON-RADIOLOGICAL ENVIRONMENTAL MATTERS.

4. PERMITTEES RESPECTFULLY REQUEST THAT THE APPEAL BOARD MODIFY THE INITIAL DECISION ACCORDINGLY. RESPECTFULLY SUBMITTED

GERALD CHANOFF

JAY E. SILBERG

COUNSEL FOR THE TOLEDO EDISON COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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