

50-346

UNITED STATES OF AMERICA
BEFORE THE ATOMIC ENERGY COMMISSION

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

Affidavit of Raymond Kudukis, Director
Department of Public Utilities

CITY OF CLEVELAND)
) SS:
 COUNTY OF CUYAHOGA)

Raymond Kudukis files this affidavit under oath on behalf of the City of Cleveland, Ohio, and in support of its petition to intervene in AEC Docket No. 50-346. Affiant states that he is Director, Department of Public Utilities of Petitioner and is authorized to file this affidavit. Affiant further says and declares that:

1. Petitioner requests leave to intervene in AEC Docket No. 50-346 to present evidence with regard to a situation inconsistent with the antitrust laws which will be created or maintained by the granting of an unconditional operating license to Cleveland Electric Illuminating Company and The Toledo Edison Company for the Davis-Besse Nuclear Power Station.

2. The Davis-Besse Nuclear Power Station is located in north Central Ohio on the shores of Lake Erie approximately 21 miles east of the City of Toledo. The plant is proposed to be jointly owned by Toledo Edison (52.5%) and CEI (47.5%). The estimated construction cost of the unit, including the nuclear fuel inventory for the first core is \$305,742,000. It is proposed that Toledo Edison have complete

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responsibility for operation and maintenance of the unit.

3. Toledo Edison is a privately-owned integrated electric utility which serves a 2,500 square mile area in northwestern Ohio. Toledo Edison supplies electric power at retail to 47 municipalities, including the City of Toledo, and also supplies power at wholesale to 15 municipally-owned electric systems.

4. CEI is also a privately owned integrated electric utility which serves a 1,700 square mile area in northeastern Ohio. CEI supplies electric power at retail to 89 municipalities, including part of the City of Cleveland, Ohio. It does not supply power at wholesale to any municipality, and there are only two municipal electric utility operations in the area served by CEI facilities, namely the municipal electric plant of the City of Cleveland and the municipal electric system of the City of Painesville. In 1972 CEI's electric operating revenue was \$293,342,529. CEI's 1972 peak load was 2,822 Mw and its net generation in that year was 15,546,473,000 Kwh of which 14,872,213,045 was sold to ultimate consumers. In addition to a proposed 47.5% ownership of Davis-Besse, CEI has filed an application to construct and operate Perry Nuclear Plant Units No. 1 and 2 on Lake Erie. CEI has two 345 Kv interconnections with Ohio Edison Company and one each with Pennsylvania Electric Company and the Ohio Power Company. In addition it has three 132 Kv ties with Ohio Edison and a fourth underway.

5. Toledo Edison and CEI are both members of a five company power pool known as CAPCO (Central Area Power Coordination Group) which was organized in 1967. The other three members of the power pool are Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company, a subsidiary of Ohio Edison Company. Through CAPCO the member companies coordinate their operations, interchange power and share reserves. Generation units and transmission facilities for the CAPCO members are planned on the basis of the requirements of the members of the pool as though they constituted a single company. The Davis-Besse Nuclear Power Station is the fourth generating unit (the first nuclear unit) to be planned and constructed by members of CAPCO. CAPCO plans seven new generating unit projects, all scheduled for completion

during 1975-1980. Four of these units, including Perry and Davis-Besse, will be nuclear. CEI has ownership interests in six of the seven CAPCO plants. CEI's share of Eastlake No. 5, Mansfield Nos. 1 and 2, and Davis-Besse units will add 814,000 Kw to net system capability by year-end 1976, raising total capability including peaking units to more than 4.6 million Kw. CAPCO members serve approximately 2 million customers within a 14,000 square mile area. The projected 1971 peak load for CAPCO was 9,023 Mw.

6. MELP supplies about 20% of the Cleveland electric market. In 1971 MELP sold only 504 million Kwh compared to 14,065 million kwh sold by CEI. MELP is an isolated encircled system generating its own power. Its 1971 peak load was approximately 120 Mw. The largest unit in the system generates 80 Mw.

7. Large scale bulk power supply such as is available to CEI through joint ownership of CAPCO generating units results in a high degree of economy of scale. Moreover, power to be commercially marketable must have a guarantee of a high degree of reliability. Such reliability is obtained through the ownership of reserve generating capacity. It is less expensive to deal with the risk of outages and increase reliability collectively. Under the law of large numbers, it outages occur at random, a predictable, and smaller amount of reserves will supply the required degree of reliability. Interconnections, such as are available to CEI but denied to Petitioner, spreads the risk and enables each utility to maintain a smaller individual amount of idle reserve capacity. Interconnections also provide benefits in planning new generating capacity. While load growth is on a gradual curve, generating capacity needed to meet it is "lumpy" in the economic sense. Costs are incurred before the unit commences operation, and ordinarily the entire generating unit output becomes available shortly after construction and testing, long before

it is fully needed for system requirements. Arrangements to share with other systems the unneeded portion of output thus contributes substantially to the most economical operation. High voltage transmission integrates and coordinates generation to take advantage of dealing with risks collectively, and permits coordination of load so that facilities can be planned to meet pooled load growth. Reserve sharing, coordinated development, and other types of coordination available through high voltage and extra high voltage transmission make possible the economies of scale in bulk power supply to systems participating in such coordination. Existence of a generating and transmission system, together with access to the low cost energy available through coordination with other systems, may determine whether a utility will be able to compete with another utility for the retail market.

8. To a degree seldom encountered in the public utility industry CEI and MELP engage in direct competition for retail trade. Both operate parallel distribution networks throughout the City of Cleveland. They engage in street-by-street and house-by-house competition for customers. It is not unusual to find within the same block one building served by CEI and a neighboring building served by MELP. In this David and Goliath situation petitioner has 20% of the market and CEI has the remaining 80%.

9. In the competition between MELP and CEI, quality and reliability of service have been significant competitive factors. So long as MELP is forced to operate as an isolated system without access to a large bulk power supply and high voltage interconnection the deck will be stacked in favor of CEI. Operation and planning on an isolated basis does not produce power at a cost which permits successful competition for customers. In recent years CEI has steadily enlarged its share of the Cleveland market. While MELP's customers have suffered interruptions in service which could have been avoided if the MELP system were not isolated, similar interruptions did not exist on the CEI system because of its interties with CAPCO.

10. An open CEI company objective, enunciated in a CEI memorandum dated October 9, 1970, from R. H. Bridges to Lee C. Howley, Vice President and General Counsel of CEI is:

"to reduce and ultimately eliminate the tax-subsidized Cleveland and Painesville Municipal Electric System."

As noted above, these are the only two municipal electric utility operations in the areas served by CEI's facilities. CEI has long pursued a policy of anticompetitive practices to eliminate MELP.

11. Although the Federal Power Commission ordered CEI to make an immediate emergency energy open switch non-synchronous connection with MELP, to be energized on request, capable to delivery of 40 MW at 69,000 volts, when an emergency occurred on MELP's system on

December 15, 1972 and at 10:00 a.m. the same day a request was made to energize the interconnection, CEI declined to supply emergency power unless Mr. Raymond Kudukis, Cleveland's Director of Public Utilities first agreed to release for approval by the City Council a proposed contract between the City and CEI for street lighting services. The interconnection was not energized until 4 p.m. of December 15, 1972, - 6 hours after the emergency developed.

12. On February 6, 1973, MELP again experienced an outage and requested that the 69 Kv interconnection be energized. MELP needed only 30 MW of electricity from CEI, but the President of CEI refused to energize the interconnection unless the City agreed to take 43 MW.

13. The interconnections for emergency use should not be equated with arrangements required by the City for access to power pooling, reserve sharing, coordinated development and planning, and access to the economies of scale available from participation in large scale generating units such as those enjoyed by CEI, Toledo Edison, and other members of CAPCO. The temporary 69 kv tie and permanent 138 kv tie recently ordered by the FPC do not provide such benefits. Such ties involve delivery only of emergency energy from CEI to MELP. CEI has sought to give the impression that it has stood ready for years to interconnect with MELP in order to give MELP the benefits of coordinated planning and operation, but its representations are misleading. The type of interconnection which CEI has offered is not the type the City has sought and needs -- one which provides the benefits of coordination, access to economies of scale, reserve sharing, etc. The

interconnections proposed by CEI would not have provided such benefits and ameliorated MELP's condition as an isolated electric system. The interconnection CEI proposed would have basically provided only for the sale of power and would have had the inevitable result of forever removing the City from contention as a viable competitor of CEI. In fact, CEI imposed a condition on the availability of even such an interconnection which made acceptance impossible: that MELP would raise its rates to the level of CEI's rates.

14. CEI, as Cleveland will prove at the hearing on antitrust review, has employed unfair methods of competition and unfair and deceptive acts against MELP in an effort to destroy MELP as a viable competitor. Such methods and acts have included harassment and coercion of MELP's customers until they agreed to discontinue taking service from MELP and switch to CEI, disconnecting MELP's service facilities to customers without authorization and substituting CEI's services, making of cash payments by CEI to induce existing and potential customers of MELP to take service from CEI, and generating of lawsuits to jeopardize MELP's ability to maintain a competitive stance.

To illustrate CEI has utilized portions of its annual \$7,300,000 Public Relations Budget to make payments directly or indirectly to induce customers of Petitioner to become customers of CEI. Such payments are available only to customers who have the option of purchasing electricity from either Cleveland or CEI.

Also, CEI employs electrical inspectors who have passed the state examination for inspectors and are licensed by the State of Ohio.

These inspectors frequently inspect buildings serviced by Petitioner. Any violations discovered are reported to local city inspectors. After notice of the observed wiring violations have been given to the property owners, the CEI inspectors return to the premises and offer to pay for the correction of the noticed violations if the customer will switch service from Petitioner to CEI.

Additionally, CEI gave \$1,700.00 for advertising to the manager of an apartment building located at 18050 Lake Shore Boulevard after the manager authorized the change in the building's electric service from Petitioner to CEI.

Also, on February 5, 1972, a crew of CEI employees presented themselves to the tenants of a building at 3631 West 45th Street and advised them that they had come to change the electric service from Petitioner to CEI. After the changeover was completed, the tenants learned that the owners had never authorized such a change in electric service.

A short time after Cleveland had installed service at Maria Parkway Nursing Home, 3600 Franklin Blvd., Mr. Chester Mayland, a CEI representative, arrived and threatened to have Petitioner's line cut and to pull out all of the city's material leaving the home without service, if it did not switch back to CEI. Mayland returned later and harassed customer's mother, who is not in good health, until she told him to reconnect CEI service.

15. CEI has placed an additional economic burden on Cleveland by insisting that it pay the Ohio State excise tax on the sale of electricity sold to Cleveland by CEI for emergency purposes. The tax which in 1972 amounted to approximately \$80,000 affiant is advised by counsel is inapplicable to electricity sold by CEI to the City.

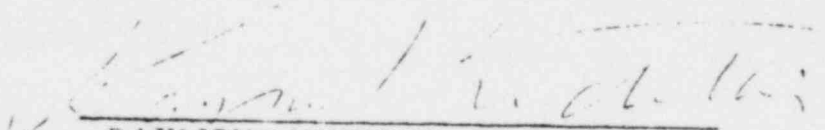
16. CEI has engaged in and is continuing to engage in activities which are intended to eliminate Cleveland as a competitor.

17. The granting of an unconditioned license to operate the Davis-Besse Nuclear Plant will further the concentration of economic power in CEI to the great detriment of MELP. CEI either as owner or as participant in CAPCO seeks to gain control of all nuclear generation in Northern Ohio.

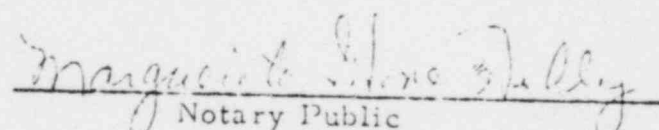
18. Through its monopoly and control of high voltage transmission facilities which encircle and isolate MELP, CEI will effectively prevent MELP from participating with other parties in the construction of nuclear or conventional plants even assuming all possible sites are not usurped by CEI and CAPCO.

19. The granting of an unconditional operating license and the failure to add conditions to the construction license will result in the creation or maintenance of a situation inconsistent with the antitrust laws. To avoid the creation or maintenance of a situation inconsistent with the antitrust laws, any license issued to CEI and Toledo Edison should be conditioned to require them to grant participation in the Davis-Besse Nuclear Plant to Cleveland either through ownership participa-

tion in the plant or through the sale of unit power, together with the transmission services necessary to deliver power to MELP and together with participation with CAPCO members in coordinated operation, reserve sharing, and development and planning of bulk power supply and transmission.


RAYMOND KUDUKIS
Director of Public Utilities

SWORN TO BEFORE ME this 30th day of May, 1973.


Notary Public

My Commission Expires 1-7-74