

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

THE TOLEDO EDISON COMPANY and)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY)
(Davis-Besse Nuclear Power Station,)
Units 1, 2 & 3)

NRC Docket Nos. 50-346A
50-500A
50-501A

THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)
(Perry Nuclear Power Plant,)
Units 1 & 2)

NRC Docket Nos. 50-440A
50-441A

AFFIDAVIT OF THOMAS A. KAYUHA,
ATTORNEY FOR OHIO EDISON COMPANY, TO
PROVIDE A FACTUAL RESPONSE TO THE LETTER OF
THE DEPARTMENT OF JUSTICE OF OCTOBER 10, 1975



I, Thomas A. Kayuha, being first duly sworn on oath depose and state the following:

1. I am presently an Attorney employed by Ohio Edison Company ("Ohio Edison") at its principal place of business at 47 North Main Street, Akron, Ohio 44308. Among my responsibilities is the general coordination and advising Ohio Edison, its officers, managers and employees with respect to the production of documents requested to be produced in the subject proceedings.

2. As Attorney, I was actively involved in the process of producing those documents in Ohio Edison's possession, custody and control pursuant to the Department of Justice request dated August 2, 1974 (Joint Request of AEC Regulatory Staff and the United States Department of Justice For Interrogatories and the Production of Documents by Applicants) as modified

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and the request dated May 23, 1975 (Request of the Department of Justice for Interrogatories and the Production of Documents by Applicants) as modified by agreement of counsel contained in Mr. Steven M. Charno's letter to Mr. Wm. B. Reynolds dated July 3, 1975, and was at all times familiar with such requests.

3. On October 16, 1975, I received a copy of the Department of Justice's letter to Wm. Bradford Reynolds dated October 10, 1975 requesting Ohio Edison to immediately produce five documents; this being the first time such a request was made to me, and furthermore such letter indicated also for the first time Ohio Edison had failed to either produce the required documents or inform the Department of Justice that these documents were no longer in Ohio Edison's possession or in existence. The statements made hereafter with respect to the request of additional production are made after I have personally reviewed the subject letter.

4. Upon request of Mr. Wm. Bradford Reynolds on October 15, 1975 and after receiving the subject letter, I, and in some instances with the assistance of other Ohio Edison employees, undertook to search those files of Ohio Edison's President, including those of its former President, Vice President (Engineering), Vice President (Construction/System Operations/Fuel), Vice President (Division Operations), General Supervisor of System Operations, General Coordinator of Division Distribution Practices and the Engineering File Room using as guidance the identifying information provided in an attempt to locate the subject documents. Furthermore, a phone call was made to Ohio Edison's retired President in an attempt to locate the subject documents. It is after such search that I have prepared this Affidavit.

5. Document No. 1, "Letter from R. J. Dreisbach, General Coordinator of Division Distribution Practices to F. G. Streit, C&SOE, dated February 2, 1966", which the Department of Justice has alleged to be responsive to D-14

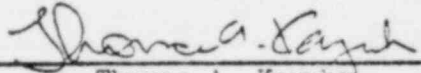
and E-1 (Perry Request dated August 23, 1974) and E-3 (Davis-Besse No. 2 and 3 Request dated May 23, 1975) was not produced in response to such request as it was not called for under any reasonable interpretation thereof.

6. Document No. 2, "Letter from A. N. Prentice, OP, to Mansfield, White, and others, dated February 28, 1967", which the Department of Justice alleges to be responsive to D-14 and E-1 (Perry Request dated August 23, 1974) and E-3 (Davis Besse No. 2 and 3 Request dated May 23, 1975) was not produced in response to such request as it was not called for under any reasonable interpretation thereof.

7. Document No. 3, "Letter from J. L. McNealey, C&SOE, to Messrs. Zimmer, Oxley, Flahie, McVay, dated December 31, 1968" and Document No. 4 "Letter from J. L. McNealey, C&SOE, to Messrs. Zimmer, de Bruyn Kops, Flahie, Dunham, Mansfield, dated December 27, 1968, with attachments", which the Department of Justice alleges is responsive to E-1 (Perry Request dated August 23, 1974) and E-3 (Davis Besse No. 2 and 3 Request dated May 23, 1975) could not be located in the files of Ohio Edison Company after the search described in Article 4 hereof was completed. The description of Document No. 3 does not list an employee of Ohio Edison as an addressee and like Document No. 4, there was no subject matter included. To the best of my knowledge and belief the subject documents are not now in the custody or control of Ohio Edison.

8. Document No. 5, "Letter from Howard A. Cummins, Buckeye Power, Inc., to Roger Waite of Norwalk, Ohio, dated March 14, 1971 with handwritten marginal notes in upper right corner", which the Department of Justice alleges to be responsive to E-1 (Perry Request dated August 23, 1974) and E-3 and E-5 (Davis Besse No. 2 and 3 dated May 23, 1975) was made available for rough screening by the Department of Justice pursuant to such request, was

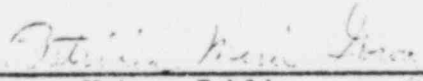
shipped to the Central Depository in Washington, D.C. pursuant to the Department of Justice request, and according to our records was actually copied by the Department of Justice.



Thomas A. Kayuh

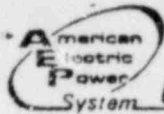
STATE OF OHIO)
) SS:
SUMMIT COUNTY)

Sworn to before me and subscribed in my presence this 20th
day of October, 1975.



Notary Public

PATRICIA MARIE GOROG
Notary, Public Summit County, Ohio
My commission expires Dec. 14, 1978



OHIO POWER COMPANY

A. N. PRENTICE
Vice President & General Manager



GENERAL OFFICE
CANTON, OHIO
February 28, 1967

- Mr. J. K. Davis, Toledo Edison Company
- Mr. D. Bruce Mansfield, Ohio Edison Company
- Mr. J. L. McNealey, Columbus & Southern Ohio Electric Company
- Mr. J. M. Stuart, Dayton Power and Light Company
- Mr. W. H. Zimmer, Cincinnati Gas & Electric Company
- Mr. D. E. Hollen, Monongahela Power Company
- Mr. G. V. Patterson, American Electric Power Service Corporation

Gentlemen:

With reference to our meeting of January 27 on the proposed territory integrity law, a committee composed of Messrs. D. B. Mansfield, John White, J. K. Davis, Les Henry, G. V. Patterson and H. B. Cohn, reviewed the Conditions for a Territory Integrity Law dated January 12, 1967, which I sent to you with my letter of January 17.

We have made certain changes in these Conditions and I am attaching a copy of the original draft, indicating the additions, insertions, and omissions (omissions are in parenthesis) made in the original draft, so that you might more easily compare it to the original. Also, attached is a revised copy of the Conditions for a Territory Integrity Law dated February 24, which includes the above mentioned corrections made by the committee.

I would appreciate your reviewing this latest draft of the Conditions and advise me by March 10 if not satisfactory. As soon after March 10 as possible, and following out the suggestions made at our January 27 meeting, the committee mentioned above will hold further meetings with representatives of the rural electric cooperative group to attempt to reach some understanding of a proposed territory integrity law, using the February 24 Conditions, attached, as a guide. These Conditions will not be submitted to the rural electric cooperatives in these discussions.

No notes were made of the January 27 meeting but for your records I am attaching a list of those who attended this meeting.

Sincerely,

A. N. Prentice

ANP/s

- cc: Mr. Les Henry
- Mr. John White
- Mr. Ed Rommel
- Mr. B. J. Yeager
- Mr. Harry Miller
- Mr. R. S. Weygandt

CONDITIONS FOR A TERRITORY INTEGRITY LAW

February 24, 1967

1. ANNEXATION

Provide for a single supplier in a municipality. In the event of annexation, an attempt would be made by the two suppliers to trade equivalent facilities and customers or otherwise to accomplish the desired result through mutual agreement. In the event that the suppliers cannot agree, P.U.C.O. would be authorized to require a trade of equivalent facilities (giving due consideration, to the extent practicable, to the desires of the customers affected) or, if such a trade is not possible, to require a sale of facilities to the supplier in the original municipal area on a fair and equitable basis.

2. MUNICIPAL WHOLESALE LOADS

The present municipal wholesale loads would remain with the existing suppliers.

3. SERVICE AREAS

(a) All areas in the state would be certificated, including those served by municipal systems, which would be certificated to the utility supplying in whole or part at wholesale, or if no wholesale supply, to the surrounding utility, or if partially surrounded by two or more utilities, as determined by the P.U.C.O. Service areas would be determined by filing with P.U.C.O. service area maps. Such service area maps appear to be feasible.

(b) Each utility would have included in its mapped service area the area adjacent to its 34.5-kv and up lines in its general service area, consisting of a corridor of perhaps 5 miles on either side of such facilities, for the serving of industrial loads directly from such facilities, including normal extensions.

4. REGULATION

If the cooperatives have service responsibility in assigned service areas they should accept full regulation as in numerous other states. There should be no exemptions from any provisions of such regulation except under circumstances where the facts applicable to cooperatives overwhelmingly demonstrate that it is in the public interest to provide an exemption (or partial exemption) from a particular provision or provisions.

TERRITORY INTEGRITY MEETING
COLUMBUS & SOUTHERN OHIO ELECTRIC COMPANY OFFICES
COLUMBUS, OHIO

JANUARY 27, 1967

ATTENDEES

Harry Miller, Columbus & Southern Ohio Electric Company
J. L. McNealey, Columbus & Southern Ohio Electric Company

John K. Davis, Toledo Edison Company
Les Henry, Toledo Edison Company
W. H. Schwalbert, Toledo Edison Company

John White, Ohio Edison Company

Ed Rommel, Dayton Power and Light Company

Jim Beckjord, Cincinnati Gas & Electric Company

R. S. Weygandt, Monongahela Power Company

G. V. Patterson, American Electric Power Service Corp.
H. B. Cohn, American Electric Power Service Corp.

A. N. Prentice, Ohio Power Company
E. E. Fournace, Ohio Power Company

