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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)
Foods, Inc.; Miles Management Corp., et al.;)
Allianz US Global Risk Insurance Company,)
et al.; and Lexington Insurance Company, et)
al.,)

Complainants,)

Case Nos. 04-28-EL-CSS

05-803-EL-CSS

05-1011-EL-CSS

05-1012-EL-CSS

v.)

The Cleveland Electric Illuminating)
Company, Ohio Edison Company,)
Toledo Edison Company, and)
American Transmission Systems, Inc.,)

Respondents.)

**RESPONDENTS' MOTION TO COMPEL DISCOVERY FROM THE LEXINGTON
COMPLAINANTS (SIXTH MOTION) AND FROM THE ALLIANZ COMPLAINANTS
(THIRD MOTION)**

Respondents, pursuant to Rule 4901-1-23, Ohio Administrative Code, respectfully move for an Entry ordering the Complainants in Case No. 05-1012 ("Lexington") and the Complainants in Case No. 05-1011 ("Allianz," or collectively with Lexington, "Complainants") to provide complete responses to Respondents' Interrogatory No. 16 and Request for Production Nos. 1 and 9, which seek critical information regarding Complainants' expert witnesses.

As demonstrated in the attached Memorandum in Support, this information is relevant and discoverable. Both the Scheduling Order in this case and Commission rules expressly provide for the discovery requests at issue. Further, Complainants' refusal to provide this information in light of the mere existence of the Scheduling Order is unjustifiable. Given the

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impending expert discovery deadlines in this case and the amount of time Complainants have had to prepare, Complainants should be ordered to answer this discovery by August 15, 2007.

Efforts to resolve this discovery dispute are summarized in the Affidavit of Counsel, attached as Exhibit A to the accompanying Memorandum in Support.

Respectfully submitted,



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Lisa B. Gates

Meggan A. Rawlin

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Attorneys for Respondents

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)	
Foods, Inc.; Miles Management Corp., et al.;)	
Allianz US Global Risk Insurance Company,)	
et al.; and Lexington Insurance Company, et)	
al.,)	
)	
Complainants,	)	Case Nos. 04-28-EL-CSS
	)	05-803-EL-CSS
	)	05-1011-EL-CSS
	)	05-1012-EL-CSS
v.)	
)	
The Cleveland Electric Illuminating)	
Company, Ohio Edison Company,)	
Toledo Edison Company, and)	
American Transmission Systems, Inc.,)	
)	
Respondents.)	

**MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL
DISCOVERY FROM THE LEXINGTON COMPLAINANTS (SIXTH MOTION) AND
FROM THE ALLIANZ COMPLAINANTS (THIRD MOTION)**

Experts will play a key role in this case. As the pleadings in these matters demonstrate, the Commission will be required to review the adequacy of electric service provided to numerous customers. The Complaints filed in these cases focus on the outages that occurred on August 14, 2003 and the alleged reasons why those outages occurred. To deal with these issues, both sides here will be required to sponsor expert testimony.

Realizing the importance of experts in these matters, the parties agreed to and the Attorney Examiner ordered that a specific phase of the discovery in these matters be devoted to expert discovery. (See Entry dated Apr. 30, 2007 at ¶ 12.) The parties also agreed to and were

ordered to provide summaries of the testimony of any experts that they intended to call. (*Id.* at ¶ 12(b)-(d).)

On September 29, 2006, Respondents propounded their First Set of Interrogatories and Requests for Production on Complainants. Some of this discovery was devoted to understanding who Complainants intended to call as expert witnesses, the qualifications of those witnesses, the opinion of such witnesses, and the bases for those opinions. Interrogatory No. 9 states:

For each person whom Complainants intend to call as an expert witness at the hearing in this matter:

- (a) State the substance of each opinion on which the witness will testify;
- (b) State all facts which provide the basis for each opinion on which the witness will testify;
- (c) Provide a summary of the witness's background and qualifications;
- (d) Identify each document supplied to, reviewed by, relied on or prepared by the witness in connection with his or her testimony in this matter; and
- (e) Identify by caption, agency or court, case name, and case number all other proceedings in which the witness has testified on the same or a similar topic in the past ten years.

In addition, Request for Production No. 1 asks for "[a]ll documents and things identified in response to FirstEnergy Respondent's First Set of Interrogatories." Request for Production No. 9 asks for "[a] curriculum vitae for each expert witness."

Over three months later, in January and February, 2007, when Complainants first responded to this discovery, they indicated that they had "not yet determined who they will call as an expert" and would "identify their experts in accordance with the Commission's Order." (Compl. Responses and Supplemental Responses, attached as Exhibits MAW-1 and MAW-2.) Now, as expert discovery phase of these matters nears, Complainants have again refused to respond to these requests. The sole reason given for this refusal is a claim that the Commission's

Scheduling Order “effectively pre-emps [sic] the expert interrogatories.” (Letter from C. Tuffley to D. Kutik, dated July 31, 2007, attached as Exhibit MAW-7.)

Complainants’ position concerning expert discovery, although wrong, is consistent with their view that discovery in this case should be a one-way street, with Respondents required to produce everything that Complainants request, but Complainants required to produce only what they want, and in a timeframe of Complainants’ choosing. Complainants have consistently forced Respondents to seek Commission intervention in order to obtain meaningful discovery responses. Every discovery motion that Respondents have filed thus far has detailed Respondents’ efforts to resolve the dispute in order to avoid filing the motion. Respondents take no pleasure in burdening the Commission with yet another discovery motion, but Complainants leave us with no alternative.

The information requested by Respondents is relevant and discoverable, and nothing about the Scheduling Order changes that fact. According to the Order, Complainants have until August 15, 2007 to “identify, by name and position, all experts they intend to call as witnesses on their behalf, and [to] set forth a description of the testimony.” (See Entry dated Apr. 30, 2007 at ¶ 12(b).) There is no dispute that these “descriptions” will consist of summaries of the parties’ experts’ testimony. (See Letter from C. Tuffley to D. Kutik, dated July 10, 2007, attached as Exhibit MAW-3.)

However, Respondents are entitled to more than mere “summaries” of expert testimony. The Scheduling Order contemplates both written discovery and depositions during the expert discovery phase. (See Entry dated Apr. 30, 2007 at ¶ 12(e).) More importantly, Rule 4901-1-16(C) specifically authorizes a party to “discover from the expert or other party facts or data known or opinions held by the expert which are relevant to the stated subject matter.” This is

precisely what Respondents seek from Complainants by the discovery requests described above, and Complainants cannot simply ignore them.

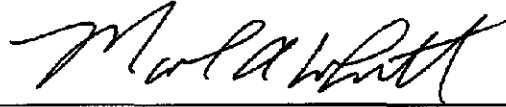
Moreover, Complainants' position—that they should not have to respond to substantive expert discovery because of the existence of a scheduling order—is astounding. Nothing about that Order limits the scope of permissible discovery or requires that Respondents wait any longer before taking it. Indeed, it is difficult to understand how the Order, which merely establishes discovery deadlines and sets the *minimum* amount of expert disclosure (i.e., what the parties should disclose without being asked in discovery to do so), could “preempt” Respondents’ substantive discovery requests and relieve Complainants of their obligation to respond to them.

The Order establishes a tight timeline for completing expert discovery. Complainants have two weeks *from today* to identify their experts and provide summaries of their expert testimony. Respondents have six weeks *from today* to do the same, and their experts cannot adequately prepare until Complainants disclose the information described above. After two years of litigation (and two weeks before Complainants’ first expert discovery deadline), it is not unreasonable to expect that Complainants provide complete responses immediately, and the Attorney Examiner should order them to do so.

CONCLUSION

For the foregoing reasons, Respondents’ Motion to Compel should be granted.

Respectfully submitted,



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Meggan A. Rawlin

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel Discovery and Memorandum in Support of Motion to Compel Discovery was served by facsimile (without exhibits) and U.S. Mail (with exhibits) to the following persons this 2nd day of August, 2007.

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Mark A. Whitt
An Attorney for Respondents

EXHIBIT A

THE PUBLIC UTILITIES COMMISSION OF OHIO

Case Nos. 04-28-EL-CSS
05-803-EL-CSS
05-1011-EL-CSS
05-1012-EL-CSS

2. On September 29, 2006, Respondents served their First Set of Interrogatories and Requests for Production of Documents on the Lexington and Allianz Complainants. The Lexington Complainants provided their most recent Supplemental Responses to this discovery on February 28, 2007. The attached Exhibit MAW-1 is a true and correct copy of the relevant portion of those responses. The Allianz Complainants provided their Responses to this discovery

on January 31, 2007. The attached Exhibit MAW-2 is a true and correct copy of the relevant portion of those responses.

3. Charles Tuffley, one of the counsel for Complainants, sent a letter dated July 10, 2007 to David Kutik, one of the counsel for Respondents, noting that Complainants “would prefer to proceed with the [filing of] expert summaries” rather than staggered filing of expert testimony. The attached Exhibit MAW-3 is a true and correct copy of that letter.

4. On July 17, 2007, Mr. Kutik sent a letter to Mr. Tuffley formally proposing that Complainants and Respondents file their expert testimony in a “staggered manner” rather than rely on the filing of summaries. The attached Exhibit MAW-4 is a true and correct copy of that letter.

5. On July 24, 2007, Mr. Tuffley sent a letter to Mr. Kutik in which Complainants rejected Mr. Kutik’s proposal. The attached Exhibit MAW-5 is a true and correct copy of that letter.

6. On July 24, 2007, Mr. Kutik sent a letter to Mr. Tuffley reminding Complainants of their continuing obligation to respond to Respondents’ Interrogatory No. 16 and Request for Production Nos. 1 and 9. The attached Exhibit MAW-6 is a true and correct copy of this letter.

7. On July 31, 2007, Mr. Tuffley sent a letter to Mr. Kutik stating that “the Scheduling Order effectively pre-emps [sic] the expert interrogatories” and indicating that Complainants would not respond to Respondents’ expert discovery requests. The attached Exhibit MAW-7 is a true and correct copy of this letter.

A handwritten signature in black ink, appearing to read "Mark A. Whitt", is written over a horizontal line.

Mark A. Whitt

Sworn to before me

this 2nd day of August, 2007.

Tannia L. Cavendish

Notary Public



TANNIA L. CAVENDISH
Notary Public, State of Ohio
My Commission Expires 12-22-2007

EXHIBIT MAW-1

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)
 Foods, Inc., et al.; Miles Management Corp.,)
 et al.; Allianz US Global Risk Insurance)
 Company, et al.; Lexington Insurance)
 Company, et al.; BMW Pizza, Inc. and)
 DPNY, Inc., et al.; Triple A Sport Wears, Inc.;)
 and Dennis Kucinich;)

Complainants,)

v.)

The Cleveland Electric Illuminating)
 Company, Ohio Edison Company,)
 Toledo Edison Company, and)
 American Transmission Systems, Inc.)

Respondents.)

Case Nos. 04-28-EL-CSS
 05-803-EL-CSS
 05-1011-EL-CSS
 05-1012-EL-CSS
 05-1014-EL-CSS
 05-1020-EL-CSS
 03-1833-EL-CSS

**(NON-REPUBLIC) INSURANCE COMPANY COMPLAINANTS' SUPPLEMENTAL
 RESPONSE TO RESPONDENTS' FIRST SET OF INTERROGATORIES AND
 REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-20 of the Ohio Administrative Code Complainants Lexington Insurance Company, Frankenmuth Mutual Insurance Company, Charter Oak Fire Insurance, The Automobile Insurance Company of Hartford, The Standard Fire Insurance Company, Travelers Indemnity Company of America, Travelers Indemnity Company of Connecticut, Travelers Indemnity Company, Travelers Property Casualty Company of America, Phoenix Insurance Company, St. Paul Mercury Insurance Company, St. Paul Surplus Lines Insurance Company, United States Fidelity & Guaranty, Allied Mutual Insurance Company and Nationwide Mutual Insurance, as subrogees of their insureds, ("Non-Republic Insurance Company Complainants") by and through their attorneys, Grotefeld & Denenberg,

INTERROGATORY NO. 16: For each person whom Complainants intend to call as an expert witness at the hearing in this matter:

- a. State the substance of each opinion on which the witness will testify;
- b. State all facts which provide the basis for each opinion on which the witness will testify;
- c. Provide a summary of the witness's background and qualifications;
- d. Identify each document supplied to, reviewed by, relied on, or prepared by the witness in connection with his or her testimony in this matter; and
- e. Identify by caption, agency or court, case name, and case number all other proceedings in which the witness has testified on the same or a similar topic in the past ten years.

RESPONSE:

Complainants object to this interrogatory, as they have not yet determined who they will call as an expert. Complainants will identify their experts in accordance with the Commission's Order.

INTERROGATORY NO. 17: Identify each document Complainant intends to offer as evidence at the hearing in this matter.

RESPONSE:

Complainants object to this interrogatory, as discovery is ongoing and incomplete. The documents that will be used at the hearing have not been determined, as written discovery is not completed and no depositions have occurred. Complainants will provide a list of exhibits in accordance with the Commission's Order. Subject to and without waiving this objection, Complainants believe that the following documents will be submitted;

1. The insurance policy for each insured listed in Exhibits A-O of Complainants' Amended Complaint.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents and things identified in response to FirstEnergy Respondents' First Set of Interrogatories.

RESPONSE:

Please see claim files previously produced.

REQUEST FOR PRODUCTION NO. 2: All documents and things reflecting any damages allegedly sustained by each Insured arising from the August 14, 2003 Outage.

RESPONSE:

Please see claim files previously produced.

REQUEST FOR PRODUCTION NO. 3: All insurance policies pursuant to which Complainant paid claims to any Insured for losses allegedly sustained from the August 14, 2003 Outage.

SUPPLEMENTAL RESPONSE:

Please see attached disks which contain the following:

1. Policies of Charter Oak Fire Insurance; The Automobile Insurance Company of Hartford; The Standard Fire Insurance Company; Travelers Indemnity Company of America; Travelers Indemnity Company of Connecticut; Travelers Indemnity Company; Travelers Property Casualty Company of America; Phoenix Insurance Company; St. Paul Mercury Insurance Company; St. Paul Surplus Lines Insurance Company; and/or United States Fidelity & Guaranty, including:
 - Complete copy of the policy for Carlyle Concierge LLC
 - Endorsements that differ from those on the Carlyle policy:
 - ☐ Mama Mia's Pizza
 - ☐ Zoss The Swiss Baker
 - ☐ All Ohio Five Jay's
 - ☐ Aladdin's Baking Co.

RESPONSE:

Complainants object to this Request to Produce as it is vague, ambiguous and overly broad. Subject to and without waiving this objection, please see claim files previously produced.

REQUEST FOR PRODUCTION NO. 9: A curriculum vitae for each expert witness.


RESPONSE:

Please see Response to Interrogatory 16.

REQUEST FOR PRODUCTION NO. 10: All exhibits Complainant intends to introduce at hearing.

Please see claim files previously produced. In addition, please see the Interim and Final Reports of US-Canada Task Force. Complainants reserve the right to supplement this Request following the completion of additional fact discovery.

Respectfully submitted,


Christina L. Weeks, Esq.
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Bloomfield Hills, MI 48304

and

Mark S. Grotefeld, Esq.
Daniel G. Galivan, Esq.
Grotefeld & Denenberg, LLC
105 West Adams Street, Suite 2300
Chicago, IL 60603

Attorneys for (Non-Republic) Insurance Company
Complainants

Dated: February 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing (Non-Republic) Insurance Company Complainants' Responses to Respondents' First Set of Interrogatories and Requests for Production of Documents was mailed by ordinary U.S. mail, to the following persons this 28th day of February, 2007.

David A. Kutik
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Christina L. Weeks

EXHIBIT MAW-2

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)	
Foods, Inc., et al.; Miles Management Corp.,)	
et al.; Allianz US Global Risk Insurance)	
Company, et al.; Lexington Insurance)	
Company, et al.; BMW Pizza, Inc. and)	
DPNY, Inc., et al.; Triple A Sport Wears, Inc.;)	
and Dennis Kucinich;)	
)	
Complainants,	)	Case Nos. 04-28-EL-CSS
	)	05-803-EL-CSS
v.	)	05-1011-EL-CSS
	)	05-1012-EL-CSS
The Cleveland Electric Illuminating	)	05-1014-EL-CSS
Company, Ohio Edison Company,	)	05-1020-EL-CSS
Toledo Edison Company, and	)	03-1833-EL-CSS
American Transmission Systems, Inc.)	
)	
Respondents.)	

**(REPUBLIC) INSURANCE COMPANY COMPLAINANTS' RESPONSE TO
RESPONDENTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-20 of the Ohio Administrative Code Complainants Allianz Global Risks U.S. Insurance Company, Lexington Insurance Company and Royal Indemnity Company, as subrogees of Republic Engineered Products, Inc. ("Republic Insurance Company Complainants") by and through their attorneys, Grotefeld & Denenberg, L.L.C., respond to Respondents' First Set of Interrogatories and Requests for Production of Documents as follows:

- c. **Facts in support of Complainants' allegations of inadequate facilities are identified in Complainants' Complaint and in the Joint Task Force Report.**
- d. **Joint Task Force Report and other documents in the possession and control of Respondents.**

INTERROGATORY NO. 14: Identify each individual with knowledge of the facts underlying any claim contained in the Amended Complaint, and identify each fact that such person is believed to know.

RESPONSE:

Complainants object to this interrogatory, as discovery is ongoing and incomplete. The identity of all those with knowledge of the facts underlying this claim is not known, as written discovery is not completed and no depositions have occurred. Complainants will provide a list of witnesses in accordance with the Commission's Order. Subject to and without waiving this objection, Complainants believe each individual insured listed in Exhibits A-O of Complainants' Amended Complaint has knowledge of the dates and times the service was interrupted and the damages sustained as a result thereof.

INTERROGATORY NO. 15: Identify all reinsurance payments or other reimbursements received by Complainant for losses allegedly sustained by paying claims arising from the August 14, 2003 Outage.

RESPONSE:

Complainants object to this interrogatory, as it seeks information that is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 16: For each person whom Complainants intend to call as an expert witness at the hearing in this matter:

- a. **State the substance of each opinion on which the witness will testify;**
- b. **State all facts which provide the basis for each opinion on which the witness will testify;**

- c. Provide a summary of the witness's background and qualifications;
- d. Identify each document supplied to, reviewed by, relied on, or prepared by the witness in connection with his or her testimony in this matter; and
- e. Identify by caption, agency or court, case name, and case number all other proceedings in which the witness has testified on the same or a similar topic in the past ten years.

RESPONSE:

Complainants object to this interrogatory, as they have not yet determined who they will call as an expert. Complainants will identify their experts in accordance with the Commission's Order.

INTERROGATORY NO. 17: Identify each document Complainant intends to offer as evidence at the hearing in this matter.

RESPONSE:

Complainants object to this interrogatory, as discovery is ongoing and incomplete. The documents that will be used at the hearing have not been determined, as written discovery is not completed and no depositions have occurred. Complainants will provide a list of exhibits in accordance with the Commission's Order. Subject to and without waiving this objection, Complainants believe that the following documents will be submitted;

- 1. The insurance policy for each insured listed in Exhibits A-O of Complainants' Amended Complaint.**
- 2. All non-privilege documents from each claim file listed in Exhibits A-O of Complainants' Amended Complaint.**
- 3. All photographs taken by any party.**
- 4. All documents produced by Defendants and other Complainants.**
- 5. All documents relied upon by the task force in drafting U.S.-Canada Power System Outage Task Force Report.**

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents and things identified in response to FirstEnergy Respondents' First Set of Interrogatories.

RESPONSE:

Please see claim files previously produced.

REQUEST FOR PRODUCTION NO. 2: All documents and things reflecting any damages allegedly sustained by each Insured arising from the August 14, 2003 Outage.

RESPONSE:

Please see claim files previously produced.

REQUEST FOR PRODUCTION NO. 3: All insurance policies pursuant to which Complainant paid claims to any Insured for losses allegedly sustained from the August 14, 2003 Outage.

RESPONSE:

Complainants are collecting copies of these policies. Copies will be provided upon receipt.

REQUEST FOR PRODUCTION NO. 4: All underwriting files for each policy pursuant to which any Complainant paid claims arising from the August 14, 2003 Outage.

RESPONSE:

Complainants object to this Request for Production as it seeks information that is beyond the scope of the PUCO proceedings. Further, the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 5: All documents relating to any claims by Complainant as a subrogee for a utility service outage.

REQUEST FOR PRODUCTION NO. 9: A curriculum vitae for each expert witness.

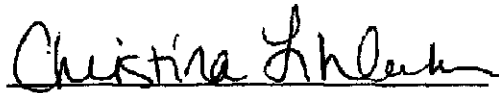
RESPONSE:

Please see Response to Interrogatory 16.

REQUEST FOR PRODUCTION NO. 10: All exhibits Complainant intends to introduce at hearing.

Please see claim files previously produced. In addition, please see the Interim and Final Reports of US-Canada Task Force. Complainants reserve the right to supplement this Request following the completion of additional fact discovery.

Respectfully submitted,



Christina L. Weeks, Esq.
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Daniel G. Galivan, Esq.
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Chicago, IL 60603

Attorneys for (Republic) Insurance Company
Complainants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing (Republic) Insurance Company Complainants' Responses to Respondents' First Set of Interrogatories and Requests for Production of Documents was mailed by ordinary U.S. mail to the following persons this 31st day of January, 2007.

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Christina L. Weeks

EXHIBIT MAW-3

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July 10, 2007

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RE: S. G. Foods, Inc., et al. v The Cleveland Electric Illuminating Company, et al.
PUCO Case No. 04-28-EL-CSS, etc. (Consol.)

Dear Dave:

Following up on our telephone discussion last week, I spoke to Dan Galivan and he only recalls briefly discussing the issue of the staggered filing of written testimony. We would prefer to proceed with the expert summaries as indicated in the Scheduling Order.

With respect to the staggered submission of written testimony, how would you propose that we handle the dates including the scheduled hearing for January 8, 2008?

With respect to the state court action issue, we are agreeable to putting off the deposition scheduled for this Thursday pending the agreement outlined by you. Could you please reduce the description of the relationship between the operating and service companies and the agreement that the operating companies would be responsible for any acts or omissions of the service companies to writing for our review. That would be very helpful.

Very truly yours,

DENENBERG TUFFLEY, PLLC
Charles R. Tuffley

CRT/vmk

DENENBERG TUFFLEY, PLLC

David A. Kutik, Esq.

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July 10, 2007

PUCO_Letter Dave Kutik 7-10-07.DOC

EXHIBIT MAW-4

JONES DAY

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July 17, 2007

VIA E-MAIL AND U.S. MAIL

Charles R. Tuffley
Denenberg Tuffley, PLLC
21 E. Long Lake Rd., Suite 200
Bloomfield Hills, MI 48304

Re: S.G. Foods, Inc. et al. v. The Cleveland Electric Illuminating Company, et al.

Dear Chuck:

This responds to your letters to me and to Mark Whitt, dated July 10, 2007.

In your letter to Mark, you refused to produce witnesses in response to a notice for a deposition for a corporate witness to testify about the Complainants' claim files. In your letter to me, you refused my request to exchange "federal style" expert disclosures. Both of these issues deal with Respondents' right to know the identity of Complainants' witnesses and the substance of their testimony in advance of the hearing in this case.

Regarding the deposition notice, as you know, documents from Complainants' claim file cannot simply appear by themselves in record evidence at the hearing in this case. We assume that, to the extent that you may seek to introduce any documents from those files, you will have a witness testify about them. The purpose of the deposition notice was to understand what facts Complainants might seek to introduce through testimony regarding the claim files. If you will represent to me that Complainants will not seek to introduce any documents from the claim files or any facts derived from the claim files, then we will withdraw our notice. Otherwise, we will insist that you produce a witness or witnesses responsive to the notice.

Regarding the expert disclosures, I note that your letter did not dispute what I told you in our telephone conversation: i.e., that the discussion of counsel at the October 2006 prehearing conference on expert disclosures envisioned disclosures similar to those provided in federal court litigation. As I also told you, the fact that this type of procedure is not normally done in litigation before the Commission led the Attorney Examiner to believe that the disclosures would be mere summaries.

In our conversation, I asked you to live up to the shared expectations of counsel regarding expert disclosures. You have now refused. In our conversation, you indicated that you might

Charles R. Tuffley
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not have time between now and when Complainants' expert summaries are due to prepare such disclosures. Frankly, I don't understand how that could be. This case is now almost two years old. You have taken over thirty depositions. You have thousands of documents from Respondents and (given the questioning in the depositions) from publicly available materials. If it is in fact true that you cannot provide expert reports by mid-August, my guess is that your ability to provide meaningful summaries of what your experts intend to say will be limited as well. If that's true, then Respondents will be forced to play "blind man's bluff" in attempting, inefficiently, to depose your experts and figure out what they'll say at the hearing and what they intend to rely on – all in thirty days (before Respondents' summaries are due).

If we are unable to determine what your experts will say, I have no confidence that we will be able to provide you with meaningful summaries of what Respondents' potential expert witnesses will say. And both sides will be left with little to go on.

Because our case is obviously responsive to yours, the less we know about your case, the less we will be able to disclose about ours. If you want to play "hide the ball," I guess that's your prerogative. But doing so ultimately hurts both sides.

Since the whole purpose of the expert phase of discovery was to make understanding expert testimony efficient (especially given the relatively tight timeframes involved), I propose that we delay expert discovery until the filing of testimony and that we accelerate the filing of testimony in a staggered manner. Under this proposal, you would file Complainants' testimony and simultaneously provide us with all materials that the witnesses relied upon. We would then take discovery of those experts. We would then file Respondents' testimony and give you similar materials. Following your discovery of Respondents' experts, you could then file any rebuttal testimony. We could then take discovery on that testimony. In this way, the testimony acts in lieu of the traditional expert report in civil litigation. (By the way, this is the more typical way that experts are handled before the Commission.)

Somewhere in this process, we should also set a date by which other witnesses (that is, those whose testimony will not be prefiled) will be disclosed. This should be done to allow sufficient time to take any discovery not already done regarding these witnesses.

Accordingly, I propose the following schedule:

Complainants file testimony and witness list	September 14, 2007
Respondents file testimony and witness list	November 1, 2007
Complainants file rebuttal testimony and rebuttal witness list	December 14, 2007

JONES DAY

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In this way, both sides will be able to understand who will be testifying and what they will testifying about, with enough time to undertake efficient discovery to be able to prepare for hearing.

Let me know if you will agree to the proposals in this letter.

Very truly yours,


David A. Kutik

EXHIBIT MAW-5

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July 24, 2007

Via Email dakutik@jonesday.com

David A. Kutik, Esq.
Jones Day
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Columbus, Ohio 43216-5017

RE: S. G. Foods, Inc., et al. v The Cleveland Electric Illuminating Company, et al.
PUCO Case No. 04-28-EL-CSS, etc. (Consol.)

Dear Dave:

This will serve to respond to your letter of July 17, 2007 regarding discovery, expert summaries and scheduling.

Claim Files

The only exhibits which will be offered at the hearing will be the Declaration Page of the policy, Proof of Loss, Subrogation Receipt or other similar documents demonstrating coverage and payment of the claim for damages alleged to arise out of the outage. To conduct numerous depositions in order to have the deponent identify a few documents is not necessary for purposes of discovery when you have the existing documentation. We will not voluntarily produce witnesses for such purposes.

Expert Summaries

I have shown your letter to each of the persons from our firm who participated in the pre-hearing conference. I have also reviewed their notes. None of them (three) agree with your contention that it was discussed or envisioned that the expert summaries would follow the

DENENBERG TUFFLEY, PLLC

David A. Kutik, Esq.

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Federal Court Rules format. Therefore, they have assured me that there were no such "shared expectations" as described in your letter.

We believe our expert summaries will be "meaningful" and we do not intend "to hide the ball." The summaries will, in accordance with the letter and spirit of the Scheduling Order, provide you with sufficient information to enable you to not only depose the experts but for your experts to offer responsive opinions.

Revised Schedule

Since we do not agree with your premise regarding the adequacy of our expert summaries, we do not believe that the staggered schedule you propose is necessary. Further, the proposed revised schedule would require us to file testimony 60 days sooner than the present Scheduling Order which resulted from our Motion to extend the dates. Therefore, we will not agree to a revised staggered schedule to file testimony and witness lists.

Very truly yours,

DENENBERG TUFFLEY, PLLC

Charles R. Tuffley

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EXHIBIT MAW-6

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July 24, 2007

VIA E-MAIL AND REGULAR U.S. MAIL

Charles R. Tuffley, Esq.
Denenberg Tuffley, PLLC
21 E. Long Lake Rd., Suite 200
Bloomfield Hills, MI 48304

Re: S.G. Foods, Inc., et al. v. The Cleveland Electric Illuminating Company, et al.

Dear Chuck:

You have not responded to my letter, dated July 17, 2007, regarding discovery, and especially experts.

Unless we are able to reach an agreement otherwise, I must remind you of Respondents' duty to supplement certain discovery, pursuant to Rule 49.01-1-16(D) of the Commission's Rules of Procedure. Specifically, under Rule 49.01-1-16(D)(1), a party is required to supplement discovery relating to experts who are expected to testify.

I direct you to Interrogatory No. 16 of Respondents' First Set of Interrogatories and Request for Production of Documents, which requested the following:

For each person whom Complainants' intend to call as an expert witness at the hearing in this matter:

- (a) state the substance of each opinion on which the witness will testify;
- (b) state all facts which provide the basis for each opinion on which the witness will testify;
- (c) provide a summary of the witness's background and qualifications;
- (d) identify each document supplied to, reviewed by, relied upon, or prepared by the witness in connection with his or her testimony in this matter; and

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JONES DAY

Charles R. Tuffley, Esq.

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- (e) identify by caption, agency or court, case name, and case number all other proceedings in which the witness has testified on the same or similar topic in the past ten years.

Request for Production No. 1 in that discovery further requested, "All documents and things identified in response to FirstEnergy Respondent's First Set of Interrogatories." Request for Production No. 9 requested, "A curriculum vitae for each expert witness."

We expect to receive responses to this discovery (and all responsive documents) on or before August 15, 2007. If you do not believe that you will be able to do so, please let me know immediately so that I can bring this to the attention of the Attorney Examiners.

I would like to bring the discussion regarding a new schedule for the filing of expert testimony (specifically a schedule which would have Complainants file first, followed by Respondents' testimony, followed by any rebuttal) before the Attorney Examiners. Please advise me when you will be available to attend a telephone conference with one or both Attorney Examiners.

Very truly yours,


David A. Kutik

EXHIBIT MAW-7

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July 31, 2007

Via Email dakutik@jonesday.com

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RE: S. G. Foods, Inc., et al. v The Cleveland Electric Illuminating Company, et al.
PUCO Case No. 04-28-EL-CSS, etc. (Consol.)

Dear Dave:

This will acknowledge receipt of your letter dated July 24, 2007 relative to the above-captioned matter.

Regarding expert testimony, as in all cases where the Court, or in this case the Commission, issues a Scheduling Order regarding expert disclosures, the Scheduling Order effectively pre-empts the expert interrogatories. Therefore, the Complainants will disclose expert opinions in accordance with the Scheduling Order.

Last, we are not amenable to your revised scheduling proposal which would serve to contract the time by which the Complainants would be required to file witness testimony. The present schedule, which we are satisfied with, required a Motion which Respondents vigorously opposed.

Very truly yours,

DENENBERG TUFFLEY, PLLC
Charles R. Tuffley

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