

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|-------------------------|---|--|
| AMERICAN WIRE AND CABLE |) | Case No.: 13-1613-EL-CSS |
| COMPANY, |) | |
| |) | <u>MOTION TO COMPEL</u> |
| Complainant, |) | |
| |) | Denise M. Hasbrook (0004798) |
| vs. |) | Emily Ciecka Wilcheck (0077895) |
| |) | Roetzel & Andress, LPA |
| THE CLEVELAND ELECTRIC |) | One SeaGate, Suite 1700 |
| ILLUMINATING COMPANY, |) | Toledo, OH 43604 |
| |) | Telephone: 419.242.7985 |
| Respondent. |) | Facsimile: 419-242-0316 |
| |) | Email: dhasbrook@ralaw.com |
| |) | ewilcheck@ralaw.com |
| |) | |
| |) | and |
| |) | |
| |) | Carrie M. Dunn (0076952) |
| |) | Counsel of Record |
| |) | FirstEnergy Service Company |
| |) | 76 South Main Street |
| |) | Akron, Ohio 44308 |
| |) | Telephone: (330) 761-2352 |
| |) | Facsimile: (330) 384-3875 |
| |) | Email: cdunn@firstenergycorp.com |
| |) | |
| |) | <i>Attorneys for Respondent,</i> |
| |) | <i>The Cleveland Electric Illuminating</i> |
| |) | <i>Company</i> |

Pursuant to Rule 4901-1-23 and Ohio Rule of Civil Procedure 37, Respondent, The Cleveland Electric Illuminating Company, respectfully moves for an Order compelling discovery in the within action. A Memorandum is attached hereto.

Respectfully submitted,

/s/Denise M. Hasbrook

Denise M. Hasbrook (0004798)

Emily Ciecka Wilcheck (0077895)

Carrie M. Dunn (0076952)

*Counsel for The Cleveland Electric
Illuminating Company*

MEMORANDUM IN SUPPORT

Respondent, The Cleveland Electric Illuminating Company, requests that Complainant, American Wire and Cable Company be compelled to respond to the First Set of Interrogatories and Request for Production of Documents served on August 9, 2013. The Interrogatories and Request for Production of Documents attached hereto as Exhibit A seek basic information on the claims and alleged damages asserted in the Complaint. When the responses were not timely received on August 30, 2013 when due, Respondent sent a correspondence dated September 17, 2013 to Complainant. (See Hasbrook Aff., Exhibit B; Exhibit 1 attached thereto) A telephone call was also placed to principal agent of Complainant, Walter McClain on September 19, 2013 to remind him that the responses were not yet received and to discuss when the responses would be forthcoming. Mr. McClain indicated at that time that the responses would be sent but that he had to speak with the corporation's legal counsel as to the timing of when the responses would be finalized and mailed.

Based upon the discussion with Complainant's representative on September 19, 2013, Respondent requested a continuance of the September 26, 2013 settlement conference for the reason that Complainant had not yet provided responses to discovery that would allow meaningful case evaluation and settlement discussions to occur. The Motion was granted and the settlement pretrial was set for October 29, 2013 at 1:00 p.m. As of this date, no responses to the discovery have yet been received.

Without the information requested in the discovery, Respondent cannot properly evaluate its claims or the alleged damages in order to prepare its defense. Ohio Admin. Code § 4901-1-23 provides that any party upon reasonable notice to all other parties and persons affected thereby may move for an order compelling discovery. As Complainant has completely failed to respond to the First Set of Interrogatories and Request for Production of Documents, despite reasonable

efforts to resolve these differences, an Order compelling responses to the discovery is hereby requested. Pursuant to Ohio Admin. Code § 4901-1-23(C)(3) an Affidavit of Counsel is attached as Exhibit B.

Wherefore, it is respectfully requested that Complainant be ordered to respond to the First Set of Interrogatories and Request for Production of Documents or face dismissal or other appropriate sanctions as permitted under Ohio Admin. Code § 4901-1-23(F).

Respectfully submitted,

/s/Denise M. Hasbrook

Denise M. Hasbrook (0004798)

Emily Ciecka Wilcheck (0077895)

Carrie M. Dunn (0076952)

*Counsel for The Cleveland Electric
Illuminating Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel was sent by ordinary U.S.

Mail and via email, this 3rd day of October, 2013, to the following:

Walter McClain
American Wire and Cable Company
7951 Bronson Road
Olmsted Falls, OH 44138
walter@awacc.com

Respectfully submitted,

/s/ Denise M. Hasbrook
Denise M. Hasbrook (0004798)
Emily Ciecka Wilcheck (0077895)
Carrie M. Dunn (00769)

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Case No(s). 13-1613-EL-CSS

Summary: Motion Motion to Compel electronically filed by Mrs. Denise M. Hasbrook on behalf of The Cleveland Electric Illuminating Company