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October 15, 2013

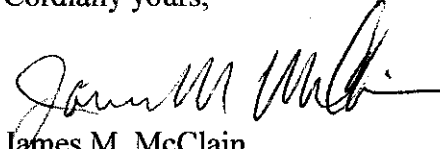
The Public Utilities Commission of Ohio
ATTN: Docketing Division
180 E. Broad Street
Columbus, OH 43215

RE: American Wire and Cable Company
vs.
The Cleveland Electric and Illuminating Company
Case No. 13-1613-EL-CSS

Dear Clerk:

Enclosed please find the original and one copy of a Motion to Strike Respondent's Motion for Order Compelling Discovery or in the Alternative Brief in Opposition to Respondent's Motion to be filed with the Public Utilities Commission. Please file this Motion, time-stamp the copy and return it to me in the self-addressed, stamped envelope provided.

Cordially yours,


James M. McClain

JMM/vlm
Enclosures

cc: Denise M. Hasbrook, Esq.
Carrie M. Dunn, Esq.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

AMERICAN WIRE AND CABLE)	Case No. 13-1613-EI-CSS
COMPANY)	
)	
Complainant,)	<u>MOTION TO STRIKE RESPONDENT'S</u>
)	<u>MOTION FOR ORDER COMPELLING</u>
vs.)	<u>DISCOVERY OR IN THE</u>
)	<u>ALTERNATIVE BRIEF IN</u>
THE CLEVELAND ELECTRIC)	<u>OPPOSITION TO RESPONDENT'S</u>
ILLUMINATING COMPANY,)	<u>MOTION</u>
)	
Respondent.)	

Respondent The Cleveland Electric and Illuminating Company has completely failed to comply with their obligations under Ohio Rule of Civil Procedure 37(E) prior to filing their Motion for Order Compelling Discovery ("Respondents Motion"). The Rule states:

Before filing a motion authorized by this rule, the party shall make a reasonable effort to resolve the matter through discussion with the attorney, unrepresented party, or person from whom discovery is sought. The motion shall be accompanied by a statement reciting the efforts made to resolve the matter in accordance with this section. (Emphasis added.)

Accordingly, pursuant to Civil Rule 37(E), Respondent was required, before filing a motion to compel, to make a reasonable effort to resolve any discovery issues with Complainant. In addition, pursuant to Civil Rule 37(E), Respondent's Motion must be accompanied by a

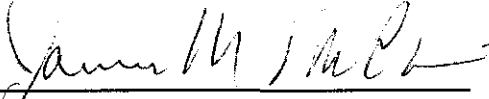
statement reciting the efforts made by counsel to resolve this matter. Respondent's Motion does not comply with either procedural requirement. Respondent has not made any effort to resolve this discovery dispute through discussion with Complainant. Respondent's Motion contains no statement regarding efforts purportedly made to resolve the matter and indeed, none have been made. On this basis alone, the Motion should be stricken as premature.

At a minimum, Respondent's Motion should be denied. A number of Courts of Appeals have held that a trial court does not err in denying a motion to compel when the moving party has failed to comply with the requirements of Civil Rule 37(E). See, e.g. *Deutsch Bank Nat. Trust Co. v. Doucet* (Feb. 14, 2008), Tenth Dist. No. 07AP-453 (citing *513 East Rich Street Co. v. McGreevy*, Franklin App. No. 02AP-1207, 2003-Ohio-2487, at §11 and *Briggs v. Glenbeigh Health Servs.* (Nov. 30, 2000), Cuyahoga App. No. 77395 (affirming denial of motion to compel where movant failed to informally resolve dispute)); *Maguire v. National City Bank* (August 28, 2009), Second Dist. No. 23140, 2009 WL 2675491 at §18.

Complainant admits that there has been delay in submitting answers to Respondent's discovery requests; however, Complainant has worked in due diligence in responding to various filings in responding to Respondent's requests. Complainant is currently in the process of answering and compiling documents for Respondent's discovery questions which will be provided as soon as possible.

For the foregoing reasons, Complainant requests that the Court deny Respondent's Motion.

Respectfully submitted,

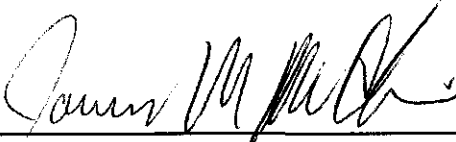

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Strike was sent by ordinary U.S. Mail, postage prepaid and via email, this 15 day of October, 2013, to the following:

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