

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

AMERICAN WIRE AND CABLE COMPANY,)	Case No.: 13-1613-E1-CSS
)	
)	
Complainant,)	<u>MEMORANDUM IN OPPOSITION</u>
)	<u>TO COMPLAINANT'S MOTION TO</u>
vs.)	<u>STRIKE RESPONDENT'S MOTION</u>
)	<u>FOR ORDER COMPELLING</u>
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,)	<u>DISCOVERY</u>
)	
Respondent.		

Now comes Respondent, The Cleveland Electric Illuminating Company (“CEI”), by and through counsel, opposing Complainant’s, American Wire and Cable Company (“American Wire”), Motion to Strike Respondent’s Motion for Order Compelling Discovery.

On October 3, 2013, CEI requested that American Wire be compelled to respond to the First Set of Interrogatories and Request for Production of Documents served on August 9, 2013. Without opposing this Motion, on October 17, 2013, American Wire filed a Motion to Strike CEI’s Motion to Compel. American Wire’s primary argument in support of their Motion to Strike is, “[CEI] 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.” In addition, American Wire maintains they have worked diligently to respond to CEI’s requests, that they are

currently in the process of answering and compiling documents, and that the documents will be provided as soon as possible.

American Wire cites only Ohio R.Civ. P. 37 in support of its Motion to Strike and ignores Ohio Admin. Code § 4901-1-23 which is applicable to this PUCO matter. As evidenced by CEI's Affidavit of Counsel (Exhibit B), and the attached correspondence dated September 17, 2013 (Exhibit 1), CEI has met the requirements of both Civ. R. Rule 37 and Rule 4901-1-23.

CEI has clearly met its requirement to make reasonable efforts to resolve this dispute by engaging in appropriate dialogue with American Wire. Within the correspondence dated September 17, 2013, counsel for CEI provided American Wire with a notice that discovery was overdue; an additional opportunity to discuss expected dates of document production; and an explanation of why the documents are necessary. On September 19, 2013, counsel for CEI telephoned principal agent of American Wire, Walter McClain, in a further attempt to ascertain the status of responses to discovery. At this time, Mr. McClain indicated to counsel for CEI that responses would be "forthcoming," but that they had been sent to legal counsel for review.

CEI has not only made a reasonable effort to resolve the matter pursuant to Civ. R. 37 (even if it is applicable), and exhausted all other reasonable means of resolving any differences with the other party pursuant to Ohio Admin. Code § 4901-1-23. Indeed, any additional efforts made by CEI would have proved to be futile since in its Motion to Strike, American Wire admits that it is still in the process of answering and compiling documents.

It is noted that American Wire's Motion to Strike, attorney for American Wire, James McClain, has never entered an appearance in this matter. All correspondence leading up to this point has been with principal agent of American Wire, Walter McClain, the sole representative identified as the representative of Complainant.

WHEREFORE, it is respectfully requested that Complainant's Motion to Strike be denied, and that CEI's Motion to Compel be granted so that Complainant is ordered to respond to the First Set of Interrogatories and Request for Production of Documents, or face dismissal or 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 Settlement Conference and Request for Expedited Ruling was sent by ordinary U.S. Mail and via email, this 21st day of October, 2013, to the following:

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Respectfully submitted,

/s/ Denise M. Hasbrook
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in

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

Summary: Memorandum in Opposition to Complainant's Motion to Strike Respondent's Motion for Order Compelling Discovery electronically filed by Mrs. Denise M. Hasbrook on behalf of The Cleveland Electric Illuminating Company