

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
American Wire and Cable Company,)	
)	
Complainant,)	
)	
v.)	Case No. 13-1613-EL-CSS
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On July 11, 2013, American Wire and Cable Company (AWACC) filed a complaint against The Cleveland Electric Illuminating Company (CEI) concerning electric service at its Olmsted Township facility. In its complaint, AWACC alleges that it experienced high voltage circuit protection interruptions for a period of time ending in mid-January 2013. Thereafter, on July 31, 2013, CEI filed its answer denying the material allegations of the complaint.
- (2) By entry issued August 9, 2013, the attorney examiner scheduled a settlement conference for September 12, 2013. Thereafter, by entry issued August 27, 2013, the attorney examiner continued the settlement conference until September 26, 2013, at CEI's request due to a scheduling conflict.
- (3) On September 20, 2013, CEI filed a motion to continue the settlement conference and explained that AWACC had not provided responses to discovery that were due August 30, 2013. CEI argued that, without the information requested in discovery, CEI would be unable to evaluate the claims and engage in meaningful settlement and procedural discussions on September 26, 2013. Consequently, the attorney examiner continued the settlement conference until October 29, 2013.

- (4) Thereafter, on October 3, 2013, CEI filed a motion to compel AWACC to respond to discovery requests served on August 9, 2013. In its motion, AWACC explained that responses were not provided when due and that AWACC indicated responses would be sent but did not indicate when. CEI represented that, as of the time its motion was filed, no responses had been received despite CEI's efforts to resolve the issue with AWACC. Consequently, CEI requested that the Commission order AWACC to respond to the August 9, 2013 discovery requests.
- (5) On October 15, 2013, AWACC filed a motion to strike CEI's motion to compel or, in the alternate, a brief in opposition to CEI's motion to compel. In its motion, AWACC asserted that CEI failed to comply with Civ.R. 37(E) in filing its motion to compel. Additionally, AWACC admitted that it had not submitted responses to the August 9, 2013 discovery requests, but represented that it was working in due diligence to respond to the requests. AWACC also represented that it would file provide the responses "as soon as possible."
- (6) On October 21, 2013, CEI filed a memorandum in opposition to AWACC's motion to strike arguing that Civ.R. 37 is inapplicable to matters before the Commission, and that CEI met the requirements of the applicable rule, Ohio Adm.Code 4901-1-23. More specifically, CEI noted that it provided an affidavit of counsel at Exhibit B, and also attached correspondence dated September 17, 2013 as Exhibit 1, in which CEI provided AWACC with notice that discovery was overdue and an opportunity to discuss the matter. Further, CEI argued that these attempts to resolve the dispute are futile since AWACC admitted it had not responded to the requests.

Contemporaneously, CEI filed a motion to continue the October 29, 2013 settlement conference pursuant to Ohio Adm.Code 4901-1-12, and a request for expedited treatment, asserting that it had not yet received discovery responses that would allow meaningful case evaluation and settlement discussions.

- (7) In light of the various motions and responses currently pending before the Commission, the attorney examiner finds that the settlement conference previously scheduled for October 29, 2013, shall be continued until a later date to be determined, and that the settlement conference currently scheduled be converted to a prehearing discovery conference to take place via telephone. At the previously scheduled time of 1:00 p.m. on October 29, 2013, the parties shall call 866-209-2820 and enter conference code 5879750243. All parties participating in the prehearing discovery conference must be represented by counsel, pursuant to Ohio Adm.Code 4901-1-08.

It is, therefore,

ORDERED, That the settlement conference scheduled for October 29, 2013, is continued. It is, further,

ORDERED, That a prehearing discovery conference is scheduled for October 29, 2013, at 1:00 p.m., to be held via telephone as set forth in Finding (7). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

By: Mandy Willey Chiles
Attorney Examiner

GAP/sc

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in

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

Summary: Attorney Examiner Entry converting settlement conference into a prehearing discovery conference to take place via telephone on 10/29/2013 at 1:00 p.m. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio