

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Jimmy)	
Hayes,)	Case No. 15-1662-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY’S SUPPLEMENTAL
BRIEF REGARDING MOTION TO COMPEL DISCOVERY**

I. FACTUAL BACKGROUND

This case arises from Complainant’s allegation that after he closed his business account with CEI in 2009, he did not receive a refund of a \$5,900 security deposit, which he allegedly had paid to The Illuminating Company nearly 20 years ago in October 1996. (See Compl.) CEI filed its Answer on October 13, 2015 and denied the allegations. (See Answer.)

In accordance with CEI’s document retention policies and Commission rules on document retention, CEI does not have bills, billing statements, or documents regarding Complainant’s account dating back to the inception of Complainant’s account in 1996. However, Complainant has suggested that he has documents spanning the 13 year duration of his business account with CEI and its predecessor, and CEI sought to review all such documents. Complainant had numerous documents with him at the settlement conference in this case, but only allowed counsel for CEI to briefly review one bill summary that covered the time frame from 1998 to 2000. In two separate phone calls – one with each of the attorneys representing

CEI – Complainant referenced that he has a “suitcase” full of documents related to this case. (See Ex. A ¶10 and Ex. B ¶7 to CEI’s 4/4/2016 Mot. Compel.) CEI issued discovery requests to Complainant seeking these records, among other things. (See Ex. C to Mot. Compel.) Upon receiving only six pages of documents from Complainant on March 14, 2016, and after unsuccessfully attempting to resolve its discovery issues with Complainant, CEI filed its Motion to Compel Discovery in this case on April 4, 2016.

Then, under a cover letter dated April 7, 2016, Complainant sent 37 pages of documents to CEI’s counsel, who received them on April 13, 2016. These documents do not span the entire history of the account at issue in this case. Rather, they are random checks from 1996, 2003, and 2009; partial bills from 2009; a Cleveland Electric Illuminating Company Customer Itemized Statement for the period January 1, 1998 to August 31, 2000;¹ a Deposit Receipt dated October 10, 1996 (which was also attached to the Complaint in this case); four pages of handwritten notes; a U.S. Postal Service certified mail receipt for a mailing to Carrie Dunn (counsel for CEI) dated March 10, 2016² and a copy of the corresponding “green card” indicating receipt of the mailing; and A U.S. Postal Service certified mail receipt for a mailing to Elizabeth Blackmon at 188 East Broad Street, Columbus, Ohio dated September 21, 2015.

On April 15, 2016, Complainant filed a letter to the Commission dated April 7, 2016 and 39 pages of documents on the docket in this case. The documents submitted with Complainant’s letter to the Commission are the same as the documents CEI received on April 13, 2016 as listed above, except that the documents filed with the Commission include two copies of

¹ This document appears to be the Bill Summary, which Complainant allowed CEI’s counsel and Attorney Examiner Lynn to review at the settlement conference.

² By tracking the certified mail receipt number (7015 1660 0000 2881 8483) at www.usps.gov, CEI was able to determine that the mailing was sent from Beachwood, Ohio on March 10, 2016 and received at FirstEnergy in Akron, Ohio on March 14, 2016.

the same page of Complainant's March 31, 2009 bill for his residential account (*i.e.*, not the account at issue in this case). These two pages are not relevant or responsive to CEI's discovery requests. Like the documents received by CEI on April 13, 2016, the documents Complainant filed on the docket do not span the entire history of the account at issue in this case.

In his April 7, 2016 letter to the Commission, Complainant states "CEI requested bills, payment records, etc. and those were provided more than once to the company. We are again sending information to them." (See Complainant's Letter filed 4/15/2016, p. 2.) CEI has not received from Complainant all bills, billing statements, and/or bill summaries that pertain to his account from 1996 to 2009.

Complainant also stated "I am sending you copies of USPS certified receipts that show materials were sent earlier to Carrie Dunn and others at CEI." (*Id.*) However, one of the certified mail receipts shows that Complainant mailed something to Elizabeth Blackmon at 188 East Broad Street, Columbus, Ohio – not to CEI. The other two certified mail documents provided by Complainant both correspond to the same mailing (both bear the certified mail number: 7015 1660 0000 2881 8483), which was sent on March 10, 2016 to Carrie Dunn at FirstEnergy and received by her on March 14, 2016. This mailing contained only six pages of responsive documents from Complainant, as previously explained in CEI's Motion to Compel. (See Mot. Compel, pp. 3-4.)

Complainant further stated that he included "a list of phone numbers that document calls from my lawyer and me over the past several years with CEI to try to get the matter resolved but we always got the runaround." (See Complainant's Letter filed 4/15/2016, p. 1.) In fact, many of the phone and fax numbers on Complainant's list are numbers for the PUCO, not CEI or FirstEnergy.

Complainant's letter does not indicate whether he has produced all of the documents that CEI requested.

II. DISCUSSION

Although Complainant has produced certain documents in response to CEI's discovery request, CEI has no way of knowing whether these are all of the requested documents that are in Complainant's possession, custody, or control. Complainant had numerous documents with him at the settlement conference, he has previously suggested that he has documents spanning the entire period of his account, and he has stated to counsel for CEI that he has a "suitcase" full of relevant documents. However, the documents produced to date do not encompass the entire period of Complainant's account with CEI (*i.e.*, 1996 to 2009), and they are less than would be expected to fill a suitcase. In addition, Complainant still has not responded to most of CEI's discovery requests. (See Mot. Compel, p. 5 and Ex. C thereto.)

Moreover, the check copies, handwritten notes, and certified mail receipts, while responsive to some of CEI's requests, do not allow CEI to assess whether and when a security deposit was being held, security deposit interest may have accrued, or the deposit was refunded or applied to Complainant's account. This information would be expected to appear on CEI invoices, bill summaries, or itemized statements. Yet, Complainant has only produced partial bills from 2009 and one itemized statement covering January 1, 1998 to August 31, 2000.

Pursuant to Section 4901-1-23(B), Ohio Administrative Code, "an evasive or incomplete answer shall be treated as a failure to answer." Thus, a partial discovery response is an insufficient response. Here, CEI is unable to determine whether the documents produced by Complainant constitute a complete response to CEI's requests for production of documents. However, CEI seeks to avoid expending additional time and resources further pursuing written

discovery in this case. If Complainant has, in good faith, produced all responsive documents, then this case should proceed to hearing.

Thus, in the interest of expediting this matter, CEI respectfully requests that: (1) the Commission set this matter for hearing the week of June 6 – 10, 2016 to begin at 1:30 p.m.; (2) that Complainant be compelled to appear at the Commission offices at 10:00 a.m. on the day of the hearing with legible copies for CEI of each and every document he intends to use, refer to, or introduce during the hearing; (3) that CEI be permitted to review all such documents from 10:00 a.m. until 1:00 p.m.; (4) that in the event that the documents are too voluminous to be reasonably reviewed in the allotted time, or if they raise an issue that cannot reasonably be addressed during the hearing (*e.g.*, through supplemental direct examination of CEI's witnesses and/or cross-examination of Complainant), that CEI be permitted to request a further continuance of the hearing.

III. CONCLUSION

Wherefore, for the reasons set forth herein and in CEI's Motion to Compel Discovery, CEI respectfully requests that the Commission issue an Entry ordering:

- (1) That the hearing in this case be scheduled for the week of June 6 – 10, 2016 to begin at 1:30 p.m.;
- (2) That Complainant be compelled to appear at the Commission offices at 10:00 a.m. on the day of the hearing with legible copies for CEI of each and every document he intends to use, refer to, or introduce during the hearing;
- (3) That CEI be permitted to review all such documents from 10:00 a.m. until 1:00 p.m.; and

- (4) That, in the event that the documents are too voluminous to be reasonably reviewed in the allotted time, or if they raise an issue that cannot reasonably be addressed during the hearing (*e.g.*, through supplemental direct examination of CEI's witnesses and/or cross-examination of Complainant), that CEI be permitted to request a further continuance of the hearing.

Respectfully submitted,

/s/Christine E. Watchorn

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*On behalf of The Cleveland Electric Illuminating
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Cleveland Electric Illuminating Company's Supplemental Brief Regarding Motion to Compel Discovery* was served via U.S.

Mail this 20th day of April, 2016 upon:

Mr. Jimmy Hayes
2723 Green Road
Shaker Heights, Ohio 44122
Complainant, pro se

/s/Christine E. Watchorn

On behalf of The Cleveland Electric Illuminating
Company

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Summary: Brief The Cleveland Electric Illuminating Company's Supplemental Brief Regarding Motion to Compel Discovery electronically filed by Ms. Christine E. Watchorn on behalf of The Cleveland Electric Illuminating Company