

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

DAVID RANDALL,)	
)	
Complainant,)	
)	Case No. 18-1851-EL-CSS
v.)	
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY’S MOTION FOR
CONTINUANCE AND REQUEST FOR EXPEDITED TREATMENT**

Pursuant to Ohio Administrative Code Sections 4901-1-12 and 4901-1-13, Respondent, The Cleveland Electric Illuminating Company (“CEI” or the “Company”), respectfully moves the Commission for an Order continuing the Hearing that is currently scheduled for June 18, 2019, to allow adequate time to complete discovery prior to the Hearing. CEI further requests expedited treatment of this Motion. Complainant has consented to this Motion. A Memorandum in Support of this Motion is attached.

Respectfully submitted

/s/ Emily V. Danford
Emily V. Danford (0090747)
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MEMORANDUM IN SUPPORT

I. Factual & Procedural Background

The Complainant filed a Complaint against CEI on December 18, 2018, alleging, among other things that he experienced a power surge at his residence that caused damage to personal and real property. On January 7, 2019, CEI filed its Answer. The parties attended a settlement conference on February 5, 2019 but were unable to resolve this dispute. On May 6, 2019, the Commission issued an Entry scheduling a Hearing in this matter for June 18, 2019, and ordering that any direct expert testimony be filed with the Commission and served on the other parties to the proceeding no later than June 11, 2019.

On May 8, 2019, CEI served its First Set of Combined Discovery Requests (the “Discovery Requests”) on Complainant by Regular U.S. Mail at the address listed on the Complaint. Per Commission Rules, Complainant’s responses to these Discovery Requests were due no later than May 28, 2019. CEI did not receive responses to the Discovery Requests by that date, and on June 3, 2019, Emily V. Danford, the undersigned counsel for CEI, called the Complainant to ask about the status of his responses to the Discovery Requests. During that telephone call, Complainant indicated that he had not received CEI’s mailing of the Discovery Requests, and further indicated that he regularly has issues with the U.S. Postal Service delivering his mail to the wrong address. Complainant also informed counsel for CEI that he does not use electronic mail and does not have personal access to a facsimile machine. Counsel for CEI told Complainant that she would resend the Discovery Requests to Complainant by Certified U.S. Mail.

On June 3, 2019, CEI resent the Requests to Complainant via Certified U.S. Mail. Pursuant to the Commission’s Rules, Complainant’s responses to the Requests are not due until June 23,

2019, which is 5 days *after* the scheduled Hearing in this matter and 12 days *after* pre-filed expert testimony is due in this matter.

II. Law & Argument

CEI will be prejudiced if the Hearing proceeds on June 18th as scheduled. CEI's Discovery Requests seek information regarding the facts alleged in the Complaint. They also include interrogatories seeking the identity of any witness the Complainant expects to call at the Hearing in this proceeding, and written reports and other evidence Complainant intends to rely on in support of his case at the Hearing.

CEI served the Discovery Requests on Complainant in advance of the Hearing so that CEI could incorporate Complainant's responses into CEI's defense of this Complaint. Complainant is late in responding to these Discovery Requests and has asserted that his tardiness is a result of the U.S. Postal Service's failure to deliver the Discovery Requests to his residence. While CEI is sympathetic to this issue, it would be unfair to CEI for the Hearing to proceed in this matter while these Discovery Requests are outstanding. Ohio Administrative Code Section 4901-1-13(A) provides, in pertinent part, that "continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown[.]" The Commission has found that outstanding discovery requests are "good cause shown" under this provision of the Ohio Administrative Code, warranting the continuance of a hearing.¹ As explained above, without a continuance of the Hearing, CEI will be subjected to undue prejudice in this proceeding because of the outstanding Discovery Requests.

¹ See, e.g., *In the Matter of the Complaint of Jenny Kenderes*, Case No. 18-922-EL-CSS, Entry at ¶¶ 7-8 (Apr. 30, 2019); *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, PUCO Case No. 15-298-GE-CSS, Entry at ¶¶ 7-8 (Sept. 17, 2015) (granting a continuance "to afford the parties additional time to complete the discovery process"); *In the Matter of the Complaint of Ohio Consumers' Counsel v. Revolution Communications Co., LLC, et al.*, PUCO Case No. 1-811-TP-CSS, Entry at ¶¶ 6-7 (Oct. 30, 2001) (granting a continuance to allow the parties to complete "additional discovery").

Section 4901:1-1-12(C) of the Ohio Administrative Code permits a party to include a specific request for an expedited ruling in a motion provided that the grounds for such a request are set forth in the memorandum in support. Without an expedited ruling in this matter, CEI will be put in the position of having to pre-file expert testimony without having received full and complete responses from Complainant to the Discovery Requests that CEI served on Complainant. Complainant provided his oral consent to CEI's pursuit of a Continuance of the Hearing during his telephone call with counsel for CEI on June 3, 2019.

III. Conclusion

For the foregoing reasons, The Cleveland Electric Illuminating Company respectfully moves for a continuance of the Hearing in this matter pending the conclusion of discovery, and for expedited treatment of this Motion.

Respectfully submitted

/s/ Emily V. Danford
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Cleveland Electric Illuminating Company's Motion for Continuance and Request for Expedited Treatment was served by Certified U.S. Mail, Return Receipt Requested to the following person on this 3rd day of June 2019.

David N. Randall
1600 E. 27th Street RR
Cleveland, Ohio 44114

/s/ Emily V. Danford
*An Attorney for The Cleveland Electric
Illuminating Company*

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Case No(s). 18-1851-EL-CSS

Summary: Motion for Continuance and Expedited Treatment electronically filed by Ms. Emily V Danford on behalf of The Cleveland Electric Illuminating Company