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SPECIAL INSTRUCTIONS:

Case No.: 04-28-EL-CSS, etc. (Consol.)
Case Title: S.G. Foods. Inc., et al. v. The Cleveland Elec. Illum. Co., et al.
Brief Description: The Insurance Company Complainants' Supplemental
Response to Respondents' (Expedited) Motion to Compel Discovery

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BEFORE**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaints of S.G.)	
Foods, Inc., et al.; Miles Management Corp.,)	
et al.; Allianz Global Risks U.S. Insurance)	
Company, et al.; Lexington Insurance)	
Company, et al.; and BMW Pizza, Inc. and)	
DPNY, Inc., et al.,)	
)	
Complainants,)	Case Nos. 04-28-EL-CSS
)	05-803-EL-CSS
v.)	05-1011-EL-CSS
)	05-1012-EL-CSS
The Cleveland Electric Illuminating)	05-1014-EL-CSS
Company, Ohio Edison Company,)	
Toledo Edison Company, and)	
American Transmission Systems, Inc.)	
)	
Respondents.)	

**THE INSURANCE COMPANY COMPLAINANTS' SUPPLEMENTAL RESPONSE TO
RESPONDENTS' (EXPEDITED) MOTION TO COMPEL DISCOVERY**

Respondents have filed a Supplemental Memorandum in Support of their Motion to Compel Discovery, directed at all the Complainants in this consolidated proceeding. This Supplemental Response is submitted on behalf of the Allianz Complainants (Case No 05-1011) and the Lexington Complainants (Case No 05-1012), who will be collectively referred to as "The Insurance Company Complainants."

The Insurance Company Complainants have no desire to inundate the Commission with numerous memoranda in connection with a simple (and premature) discovery motion brought by Respondents. Nevertheless, The Insurance Company Complainants are compelled to file a Supplemental Response to address certain inaccuracies contained in Respondents' most recent submission to the Commission.

First, Respondents suggest that, to date, the Insurance Company Complainants have still failed to provide substantive responses to their written discovery requests. This is simply untrue. As of January 25, 2007, The Insurance Company Complainants have provided Respondents with **all non-privileged claim file materials** for the various St. Paul/Travelers insurers, Allianz Global Risks U.S. Insurance Company, Royal Indemnity Company and Frankenmuth Mutual Insurance Company, as well as **all non-privileged claim file materials** for Lexington Insurance Company vis-à-vis the Republic Engineered Products claim (some additional materials regarding a few smaller claims will be produced by January 31, 2007).

In total, to date The Insurance Company Complainants have provided Respondents with **all non-privileged claim file materials** regarding approximately \$87.1 million of their Ohio-based claims at issue in this proceeding. Given the total Ohio claims being asserted by The Insurance Company Complainants total approximately \$87.4 million, it is clear that they have provided significant and substantive responses to written discovery requests. Even more will come by January 31, 2007, including The Insurance Company Complainants' written Responses to Respondents' Interrogatories.

Second, Respondents contend that Early v The Toledo Blade, 130 Ohio App.3d 302 720 N.E.2d 107 (Lucas Cty. 1998) supports the proposition that since The Insurance Company Complainants did not respond to Respondents' discovery requests within 20 days of service, they are now precluded from asserting **any** objections to these requests (including relevancy). Once again, Respondents are incorrect. Early holds that where a party has failed to respond to written discovery requests (even after entry of various discovery orders), that party may not object to the **form** of the requests (in Early, the complaint was that each interrogatory was not followed by a full one inch of space for an answer). Early does not hold that a party is precluded from


objecting to the **substance** of the discovery request (including claims of relevance, privilege, etc.). Indeed, The Insurance Company Complainants are not aware of any Ohio authority supporting the draconian position advocated by Respondents.

Finally, in their Supplemental Memorandum (and in their discovery requests themselves) Respondents apparently believe that **all** issues regarding The Insurance Company Complainants' claims against them -- including comparative and third-party fault, damages, etc. -- are to be resolved by the Commission, so they are all the proper subject of discovery in this proceeding. Respondents are yet again mistaken. In this proceeding, the Commission will **only** answer two questions: 1) did Respondents breach duties owed to its customers, and 2) whether such breaches of duties were a proximate cause of the Blackout of 2003? Pursuant to Ohio statutes [including, but not limited to, Ohio Rev. Code §4905.26] and corresponding case law [including, but not limited to, Suleiman v Ohio Edison Co., 146 Ohio App.3d 41, 764 N.E.2d 1098 (Mahoning Cty. 2001)], all other issues will have to be resolved in a subsequent lawsuit in the Ohio courts (assuming of course this Commission answers both questions in the affirmative). Therefore, discovery requests and responses should be limited to these two questions.

In any event, Respondents' Motion reflects an unduly contentious approach to resolving discovery disputes, at least with respect to The Insurance Company Complainants, and should be denied. The better approach at this juncture would be for Respondents to first review The Insurance Company Complainants' responses to their written discovery requests (all of which will be provided to Respondents by January 31, 2007 -- and would have been provided by then even if Respondents had not filed their Motion to Compel). If Respondents believe specific responses are inadequate or improper, they can confer with The Insurance Company Complainants in an attempt to resolve any differences. If disputes remain after the parties' good

faith efforts to resolve them, then Respondents can present those to the Commission for resolution in a more focused fashion. This will save both the parties and the Commission considerable time and effort, and will permit these proceedings to proceed in a more orderly fashion.

Respectfully submitted,



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Dated: January 25, 2007