

FILE

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 US Global Risk 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 attorney examiner finds:

- (1) On August 14, 2003, portions of the northeastern part of the United States and the southeastern part of Canada experienced a widespread loss of electrical power (blackout).
- (2) The complainants in these consolidated proceedings filed their complaints on January 12, 2004, July 11, 2005, and August 15, 2005. In each case, the complainants allege, *inter alia*, that the Cleveland Electric Illuminating Company, Ohio Edison Company, Toledo Edison Company, and/or American Transmission Systems, Inc. (collectively, the respondents), failed to furnish necessary and adequate service and facilities to the complainants and that the service and/or facilities provided by one or more of those respondents were at least partially responsible for causing the blackout, thereby causing financial harm to the complainants.
- (3) At a prehearing conference on October 25, 2006, the parties and the examiner discussed the schedule for the completion of discovery, the filing of testimony, and the hearing. It was determined at that conference, and was subsequently ordered

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by entry dated October 26, 2006, that all responses to requests for written discovery of factual matters must be completed by no later than Tuesday, May 1, 2007.

- (4) On January 16, 2007, the respondents filed a motion to compel discovery. According to that motion, the respondents served written discovery requests on the respondents on September 29, 2006, and received, as of the date of the motion, only limited information from one complainant and nothing from any other complainant. The respondents request that the complainants be ordered to produce complete responses immediately. The motion also requests an expedited ruling, although respondents note that they have not contacted the complainants to request consent to expedited treatment.
- (5) Pursuant to paragraph (C) of Rule 4901-1-12, Ohio Administrative Code (O.A.C.), if the moving party fails to certify that no party has any objection to a request for expedited treatment, any party may file a memorandum contra within seven days after the service of the motion. Rule 4901-1-07, O.A.C., provides an additional three days' time, where service is made by mail. The certificate of service attached to the respondents' motion states that service was made by facsimile (without exhibits) and by mail (with exhibits). As service of the complete motion was made by mail, the examiner finds that the complainants could timely file memoranda contra the motion through January 26, 2007.
- (6) On January 18, 2007, the complainants in Case Nos. 05-1011-EL-CSS and 05-1012-EL-CSS (insurance complainants) filed a "response" to the motion to compel. They explain, in that response, the reason for their delay and the actions they have taken since receipt of the discovery request. The insurance complainants also confirm that they will provide "most (if not all) of their non-privileged claim file materials" no later than January 31, 2007. They assert that the motion to compel is premature prior to that time.
- (7) On January 25, 2007, the respondents filed a "supplemental memorandum in support" of their motion to compel, although, as noted by the respondents, the applicable rule specifically provides that no reply memoranda are to be filed where expedited treatment has been requested, unless otherwise

ordered. Rule 4901-1-12, O.A.C. In that supplemental filing, the respondents provide updated details concerning discovery responses received. Respondents also request that the examiner notify complainants that their late response will act as a waiver of objections based on relevance, burden, or other matters, citing a decision by a Lucas County court. *Early v. The Toledo Blade*, 130 Ohio App. 3d 302, 720 N.E.2d 107 (1998).

- (8) Later that same day, the insurance complainants responded with their own supplemental filing, also without benefit of an authorizing rule or permission from the examiner. In that "supplemental response," the insurance complainants also update information concerning their delivery of information to the respondents. They also address the applicability of the *Early* case to the present situation, arguing that *Early* only relates to a waiver as the form of discovery requests, not their substance.
- (9) No complainant other than the insurance complainants has responded to the motion to compel.
- (10) Under the circumstances of this particular motion, the examiner will agree to consider matters discussed in the supplemental filings by both the respondents and the insurance complainants. Any subsequent such "supplemental" filings should, however, only be made at the direction of the examiner.
- (11) The Commission's rules clearly provide for a twenty-day response time to interrogatories and requests for the production of documents. Rule 4901-1-19(A) and Rule 4901-1-20(C), O.A.C. Longer response times may be ordered by the examiner. However, no motion for an extended response time was made in these proceedings. No party has disputed that interrogatories and requests for the production of documents were served by the respondents on September 29, 2006.
- (12) The examiner recognizes that the insurance complainants have made efforts to respond to the discovery requests in question and, by this date, may have completed their responses. Some or all of the other complainants may have made partial or complete responses by that date. However, the examiner finds no reason not to order immediate responses to the outstanding

discovery requests, to the extent not already made. The complainants have had more than five months to gather information and to discuss their timing difficulties with respondents, if necessary. If any complainant will be, or anticipate that it may be, unable to respond to any outstanding discovery requests within ten days from the date of this entry, such complainant should immediately contact the respondents to arrange a mutually agreeable schedule. Failing such agreement, motion should immediately be made to this Commission, by the complainant in question, for the establishment of appropriate response dates. Such a motion must include a specific explanation of the reasons for the delay, a description of efforts made to reach a scheduling agreement with the respondents, and a proposed schedule for delivery of responses.

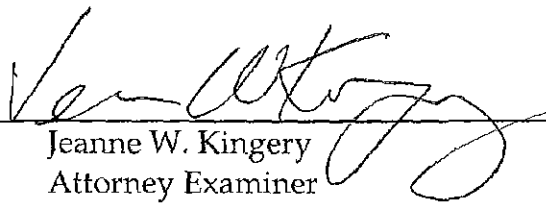
- (13) With regard to the respondents' argument that the delayed responses to discovery requests should act as a waiver of all objections, the examiner refuses to find such a waiver. The Commission, as an administrative body, is not constrained to follow precedent established in courts of law. The examiner would also point out that, as argued by the insurance complainants, the *Early* case related to objections as to form rather than substance of discovery requests.

It is, therefore,

ORDERED, That each complainant in these consolidated cases respond, if such complainant has not already done so, within ten days, to discovery requests propounded by respondents on September 29, 2007, or, if unable to do so, comply with the requirements in finding (12). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: 
Jeanne W. Kingery
Attorney Examiner

/geb 

Entered in the Journal

FEB 05 2007



Renee J. Jenkins
Secretary