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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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  
05-1011-EL-CSS  
05-1012-EL-CSS  
05-1014-EL-CSS

v.

The Cleveland Electric Illuminating  
Company, Ohio Edison Company,  
Toledo Edison Company, and  
American Transmission Systems, Inc.,

Respondents.

RESPONDENTS' SECOND MOTION TO COMPEL  
DISCOVERY FROM COMPLAINANT S.G. FOODS, INC.

Respondents, pursuant to Rule 4901-1-23, Ohio Administrative Code ("O.A.C."), respectfully request an Entry ordering Complainant S.G. Foods, Inc., to provide complete, non-evasive answers to discovery propounded to this Complainant on September 29, 2006. This is the second motion to compel filed against this Complainant. The first motion, filed January 16, 2007, was necessary because the S.G. Foods Complainants (among others) failed to responded to Respondents' discovery requests. Complainant S.G. Foods eventually served discovery responses on February 9, 2007, but many of the responses are deficient. The other two Complainants that comprise the S.G. Foods group (Case No. 04-28-EL-CSS) never responded to

discovery at all. A motion to dismiss is pending with respect to those two Complainants. Respondents have requested Complainant S.G. Foods to supplement its discovery responses, but to no avail. Accordingly, Respondents are forced into the position of having to burden the Attorney Examiner with yet another discovery motion.

Specifically, Respondents move that S.G. Foods be ordered to respond to the following discovery: Respondents' Interrogatory Nos. 2, 3 and 5 and Request for Production No. 2 concerning damages, Interrogatory Nos. 8 through 13 concerning the basis of Complainant's claims, Request for Production No. 5 concerning documentation of Complainant's status as a customer and Request for Production No. 6 concerning documents allegedly supporting Complainant's claims.

An Affidavit of Counsel describing Respondents' efforts to avoid filing the instant motion is attached.

March 15, 2007

Respectfully submitted,



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Meggan A. Rawlin

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Attorneys for Respondents

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

### Respondents.

**MEMORANDUM IN SUPPORT OF SECOND MOTION TO COMPEL  
DISCOVERY FROM COMPLAINANT S.G. FOODS, INC.**

## COI-1366878v2

In response to the prior motion to compel, one of the three S.G. Foods Complainants, S.G. Foods, finally served discovery responses, (attached to this Memorandum as Exhibit A). As explained in a letter to Complainant's counsel, dated February 20, 2007 (attached to this Memorandum as Exhibit B), these responses are deficient in many different respects. Complainant's counsel has not responded to that letter. Accordingly, Respondents move that S.G. Foods be required to provide complete answers to Respondents' discovery.

## II. ARGUMENT

Under the Commission's Rules of Procedure, "an evasive or incomplete answer shall be treated as a failure to answer." Rule 4901-1-23(B), O.A.C. Many of Complainant's responses are incomplete and evasive, and are therefore deficient. The Attorney Examiner should order Complainant to immediately supplement their discovery responses as requested below.

### A. Interrogatory Nos. 2, 3 and 5 and Request For Production No. 2 (Information on Damages Arising from the Outage)

Interrogatory No. 2 asks Complainant to identify, among other things, "All damages allegedly sustained because of the interruption of service." (Interrogatory No. 2(e).) Complainant's responses to this interrogatory and others concerning damages are evasive. In response to Interrogatory No. 2(e), Complainant alleges that it sustained \$15,000 in damages. But in response to Interrogatory No. 2(f), which asked for "all documents relating to the interruption of service, or to any damages sustained as a result of the interruption," Complainant states, "not available." Yet, in response to Request for Production No. 2, which asks for "All documents and things reflecting any damages allegedly sustained by You arising from the August 14, 2003 Outage," Complainant states that these documents "will be supplied prior to hearing."

Documents either currently exist or they do not. If they exist, Complainant is required to produce them now, not at some indeterminate time prior to hearing. And if the documents are “not available,” Complainant is required to explain what happened to them. Complainant should therefore be ordered to provide non-evasive answers to Interrogatory Nos. (2)(e), 2(f) and Request for Production No. 2. Complainant must also supplement its answer to Interrogatory No. 3, where it provided the same responses as Interrogatory No. 2 but with respect to damages allegedly sustained from outages *other than* the August 14, 2003 outage.

Similarly, Interrogatory No. 5 asked for an itemization of property damages. Complainant states that this “will be provided later.” The discovery rules provide for specific deadlines for responses; “later” isn’t one of them. Complainants should be required to produce the requested documents immediately.

**B. Interrogatory Nos. 8-13 (Basis for claims)**

Complainant also refuses to answer a number of interrogatories that seek information concerning the bases of Complainants’ claims. Interrogatory Nos. 8 through 13 asked complainants to identify any tariffs, statutes, Ohio Administrative Code provision, PUCO orders or industry standards allegedly violated by Respondents and the facts that complainants allege support a finding of such violations. Complainants object to each of these interrogatories on the basis that they “call for legal conclusion.” Whether an interrogatory calls for a legal conclusion is not necessarily a sufficient grounds for objection. *See* O.A.C. Rule 4901-1-19(B). (“An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion . . .”). The basis for a claim is certainly fair game for discovery. The Complaint in Case No. 04-28-EL-CSS specifically alleges that Respondents “breached its [sic] statutory obligation to furnish necessary and adequate service” (§ 2), “failed to comply with industry standards” (§ 29), “intentionally failed to perform a manifest duty” (§ 64)

and otherwise failed to act as a "reasonably prudent utility company." (§ 67.) Under Ohio Civil Rule 11, counsel for Complainants was required to have a good-faith basis for the allegations at the time that the Complaint was filed. Respondents are entitled to know what statutory or regulatory provisions were allegedly violated and what facts complainants intend to rely on to try to prove the violations. Complainants should be compelled to provide non-evasive answers to Interrogatory Nos. 8-13.

C. Request for Production No. 5 (Documentation that Complainant Is A Customer)

Complainant has also failed to provide information demonstrating that it is a customer of any of the Respondents. Request for Production No. 5 asked for "A copy of Your electric bills for service to you provided during any time in August 2003." Complainant objects on the basis that this is "in the possession of Respondents." Respondents, in their February 20, 2007 letter to Complainants' counsel, agreed to accept some other form of evidence that establishes Complainant's status as a customer of a Respondent. (See Exhibit B, p. 2.) Complainants have failed to provide any such information. Pursuant to the March 7, 2007 Entry in this proceeding, which establishes that only customer of a Respondent have standing to bring a complaint (See March 7, 2007 Entry, § 52), Complainant should be required to immediately establish its customer status; if it cannot, it should be dismissed.

D. Request For Production No. 6 (Documents Supporting Claim)

Respondents' Request for Production No. 6 asked for "All documents and things that allegedly support any allegation made in the Complaint in Case No. 04-28-EL-CSS." Given the objection based on attorney client privilege, Complainant is required to produce a privilege log. *City of Huron v. Ohio Edison Co., et al.*, No. 03-1238-EL-CSS (Entry of Aug. 3, 2005, at 5.) Respondents are also entitled to any non-privileged documents that are responsive to this request. To date, Respondents have not received any documents -- for any request for production -- from

Complainant. Complainant should be ordered to immediately produce documents responsive to Respondents' Requests for Production.

### III. CONCLUSION

For the reasons discussed above, the Attorney Examiner should grant this motion to compel and put Complainant S.G. Foods on notice that the failure to abide by any Entry issued pursuant to this motion will result in dismissal of its claims.

March 15, 2007

Respectfully submitted,



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Meggan A. Rawlin  
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E-mail: mawhitt@jonesday.com

Attorneys for Respondents



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Second Motion to Compel Discovery From Complainant S.G. Foods, Inc., and Memorandum in Support, was served by facsimile and U.S. Mail to the following persons this 15th day of March, 2007.

Edward F. Siegel, Esq.  
5910 Landerbrook Drive, Suite 200  
Cleveland, OH 44124

W. Craig Bashein, Esq.  
Bashein & Bashein Co., L.P.A.  
55 Public Square, Suite 1200  
Cleveland, OH 44113

Francis E. Sweeney, Jr. Esq.  
323 Lakeside Avenue, Suite 450  
Cleveland, OH 44113

Joel Levin, Esq.  
Aparesh Paul, Esq.  
Levin & Associates Co., L.P.A.  
The Tower at Erieview, Suite 1100  
1301 East Ninth Street  
Cleveland, OH 44114

Paul W. Flowers, Esq.  
Paul W. Flowers Co., L.P.A.  
50 Public Square, Suite 3500  
Cleveland, OH 44113

Leslie E. Wargo, Esq.  
McCarthy, Lebit, Crystal & Liffman Co.,  
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101 West Prospect Avenue  
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55 Public Square, Suite 800  
Cleveland, OH 44113



Mark A. Whitt  
An Attorney for Respondents

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**Case Nos. 04-28-EL-CSS  
05-803-EL-CSS  
05-1011-EL-CSS  
05-1012-EL-CSS  
05-1014-EL-CSS**

## AFFIDAVIT OF COUNSEL

COI-1366878v2

3. Respondents sent a letter to Complainant's counsel on February 20, 2007 requesting supplementation of Complainant's evasive or nonresponsive answers. A true and correct copy of the letter is attached as Exhibit B to Respondents' Memorandum in Support.

4. As of the date of this Affidavit, Complainant's counsel has not responded to Respondents' February 20, 2007 letter.



Mark A. Whitt

Sworn to before me

this 15th day of March, 2007.



Notary Public



DEBORAH A. ELLIS  
Notary Public, State of Ohio  
My Commission Expires 8/28/09

## **EXHIBIT A**

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
	)	05-1014-EL-CSS
The Cleveland Electric Illuminating	)	
Company, Ohio Edison Company,	)	
Toledo Edison Company, and	)	
American Transmission Systems, Inc.	)	
	)	
Respondents,	)	

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S.G. FOODS, INC. ANSWER TO RESPONDENTS' FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
COMPLAINANTS S.G. FOODS, INC. ET.AL

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ANSWERS TO INTERROGATORIES:

1. Yes;
2.
  - a. Do not recall exact time of day;
  - b. Service was not restored for at least three (3) days. It then went out again and was finally restored two (2) days after that.  
Therefore, full restoration did not occur until approximately one week after the outage;
  - c. 5555 Brecksville Road  
Independence, OH 44131;
  - d. Same;
  - e. \$15,000.00;
  - f. Not available;
  - g. No;
3.
  - a. Exact dates unknown;
  - b. Several times between January 01, 2000 and the present, power would go off for four (4) or five (5) hours;

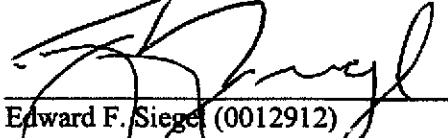
- c. Storms;
- d. Service address is 5555 Brecksville Road  
Independence, OH 44131
- e. \$3,000.00 from each interruption;
- f. Not available;
- g. No;
- 4. None
- 5. a. Food in freezers and refrigerators;  
b. Will be provided later;  
c. Records attached as Exhibit A;
- 6. No;
- 7. N/A;
- 8. Objection. Calls for legal conclusion;
- 9. Objection. Calls for legal conclusion;
- 10. Objection. Calls for legal conclusion;
- 11. Objection. Calls for legal conclusion;
- 12. Objection. Calls for legal conclusion;
- 13. Objection. Calls for legal conclusion;
- 14. Pak Yan Lui. He has knowledge of all of the facts;
- 15. None;
- 16. None yet identified;
- 17. Not yet identified;
- 18. None;
- 19. N/A;

**ANSWERS TO REQUEST FOR PRODUCTION:**

- 1. Will be supplied prior to hearing;
- 2. Will be supplied prior to hearing;
- 3. N/A;

4. N/A;
5. Objection. These are in the possession of the Respondent;
6. Objection. Attorney – Client work privilege;
7. Not yet identified;
8. Not yet identified;

Respectfully submitted,

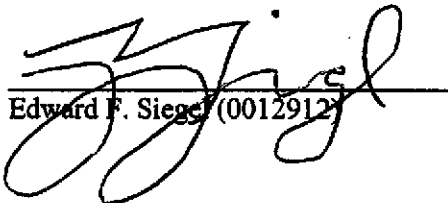


Edward F. Siegel (0012912)  
27600 Chagrin Blvd., Ste. 340  
Cleveland, OH 44122  
(216) 831-3424/Fax: 831-6584  
efsiegel@efs-law.com

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ANSWERS** were sent to the following on February 9, 2007:

David A. Kutik  
Mark A. Whitt  
Francis Sweeney, Jr.  
Paul W. Flowers  
Alyssa J. Endelman  
Henry Eckhart  
Craig Bashein  
Joel L. Levin  
Patrick J. O'Malley  
Leila Vespoli



Edward F. Siegel (0012912)

STATE OF OHIO

COUNTY OF CUYAHOGA

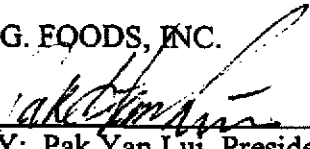
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ss:

**VERIFICATION**

Pak Yan Lui, BEING FIRST DULY SWORN, states that he is authorized to answer these Interrogatories on behalf of S.G. Foods, Inc.; that he has read the answers; and the answers are true, as he verily believes.

S.G. FOODS, INC.

  
BY: Pak Yan Lui, President

Sworn to and subscribed in my presence this 7<sup>th</sup> day of

February, 2007.

  
NOTARY PUBLIC



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.	)	

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**RESPONDENTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO  
COMPLAINANTS S.G. FOODS, INC., ET AL.**

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Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-20 of the Ohio Administrative Code, Respondents Ohio Edison Company, Toledo Edison Company, The Cleveland Electric Illuminating Company and American Transmission Systems, Inc., request Complainants S.G. Foods, Inc., Pak Yan Lui, and John Summers to respond in writing and under oath to the following interrogatories; to produce or make available for inspection and copying document responsive to the following requests for production; and to serve written responses to the interrogatories and requests for production within twenty (20) days. These interrogatories and requests for production of documents are governed by the following Instructions and Definitions:

## INSTRUCTIONS

1. You are required to choose one or more of Your employees, officers or agents to answer the foregoing interrogatories and to respond to the following requests for production, who shall furnish all such information which is known or available to You.
2. Where an interrogatory calls for an answer in more than one part, the parts should be presented in the answer in a manner which is clearly understandable.
3. You are under a continuing duty to supplement Your responses pursuant to Rule 4901-1-16(D) of the Commission's Rules of Practice as to expert witnesses and the subject matter of their testimony, responses discovered to be incorrect or materially deficient, and where the initial response indicated that the information sought was unknown or nonexistent but such information subsequently becomes known or existent.
4. If You claim any form of privilege as a ground for not completely answering any interrogatory, state the nature of the privilege and the general subject of the information withheld.
5. For any document that You decline to produce because of a claim of privilege or any other reason, provide the date, author, and type of document, the name of each person to whom the document was sent or shown, a summary of the contents of the document, and a detailed description of the grounds for the claim of privilege or objection to producing the document. If a claim of privilege is made only to certain portions of a document, please provide that portion of the document for which no claim of privilege is made.
6. If any document responsive to a request for production of documents is no longer in Your possession or control, please state why the document is no longer in Your possession or control, explain the circumstances surrounding the disposition of the document, identify the individual responsible for the disposition of the document, and state whether the document or copies thereof still exist.

7. Please identify all responses to requests for production of documents by the number of the request.

8. Terms used herein shall be construed to include their plural, and vice versa, so as to make the interrogatory or request for production inclusive rather than exclusive.

9. Where an interrogatory requests that a date be given, but You cannot recall the specific date, please respond by giving an approximate date or time frame, indicating that the date or time frame is approximate.

#### DEFINITIONS

1. "August 14, 2003 Outage" means the electrical outage complained of in the Complaint.

2. "Communication" is used herein in its broadest possible sense and means any occurrence in which information is related between persons by means or an oral or written statement, including, without limitation, any, meeting, conversation, correspondence, memoranda, discussion, negotiation, telephone conversation, voicemail message, electronic mail message, proposal, or presentation.

3. "Complainant" means S.G. Foods, Inc., Pan Yan Lui, and John Summers.

4. "Document" is used herein in its broadest possible sense and means any information memorialized in any way, however stored, including, but not limited to, bills, correspondence, memoranda, notes, writings, meeting minutes, graphs, charts, and drafts of any of the foregoing, and computer files, audio recordings, and photographs.

5. "FirstEnergy Respondents" means Ohio Edison Company, Toledo Edison Company, The Cleveland Electric Illuminating Company and American Transmission Systems, Inc.

6. "Identify" means:

a. When used in reference to a natural person, to state the full name, the present or last-known address, and the present or last-known employer or business affiliation of the person;

b. When used in reference to an entity, department, or division, to state the full name of the entity, department, or division, the present or last-known address of the entity, department, or division, and to identify the natural person or persons who represent such entity, department, and division, in connection with the subject matter of this complaint;

c. When used in reference to a document, to state the date, author, addressor, addressee, type of document, title, if any, or some other means of identifying the document, a general description of its subject matter, and its present or last known location and custodian.

7. "You" and "Your" refer to the Complainant, individually.

## **INTERROGATORIES**

**INTERROGATORY NO. 1:** Did You sustain a loss of electrical service during the August 14, 2003 Outage?

**RESPONSE:**

**INTERROGATORY NO. 2:** If the answer to Interrogatory No. 1 is "yes," identify:

- a. The time of day You lost service;
- b. The time of day service was restored;
- c. Your service address where service was interrupted;
- d. Your billing address, if different from the service address;
- e. All damages allegedly sustained because of the interruption of service;
- f. *All documents relating to the interruption of service, or to any damages sustained as a result of the interruption; and*
- g. Whether You made a claim to any insurance company or anyone else to compensate You for Your alleged damages and, if so:
  - i. The person or entity to whom or when the claim was made;
  - ii. Whether the claim was paid and, if so, the amount paid; and
  - iii. All documents relating to the claim.

**RESPONSE:**

**INTERROGATORY NO. 3:** Identify all other electric service interruptions not otherwise identified in response to Interrogatory Nos. 1 and 2 experienced by You from January 1, 2000 to the present, including, for each interruption, the following:

- a. The date of interruption;
- b. The length of interruption;
- c. The cause of the interruption;
- d. The service address where the interruption occurred;
- e. All damages sustained as a result of the interruption;
- f. Each document which relates to or constitutes a Communication concerning the interruption; and
- g. Whether You made a claim to any insurance company or anyone else to compensate You for Your alleged damages and, if so:
  - i. The person or entity to whom or when the claim was made;
  - ii. Whether the claim was paid and, if so, the amount paid; and
  - iii. All documents relating to the claim.

**RESPONSE:**

**INTERROGATORY NO. 4:** Identify:

- a. Any surge protection, voltage regulation or other electrical protective equipment installed between 2000 and the present;
- b. Any stand-by generation, back-up power supply or other alternate source of electrical supply installed between 2000 and the present;
- c. The date any such equipment described in subparts (a) and (b) above was installed and first functioning; and
- d. The dates after the date identified in subparagraph (a) when the equipment described in subparagraphs (a) and (b) above was out of service, under repair or otherwise unusable.

**RESPONSE:**

**INTERROGATORY NO. 5:** With respect to any property damage, if any, allegedly sustained by You as a result of the August 14, 2003 Outage, identify:

- a. The specific property that sustained damage;
- b. An itemization of the amount of damage and how that amount was calculated; and
- c. Documentation of Your ownership of the property.

**RESPONSE:**

**INTERROGATORY NO. 6:** With respect to any personal injury, if any, allegedly sustained by

You or for which You are responsible as a result of the August 14, 2003 Outage, identify:

- a. Who sustained the injury;
- b. The nature and extent of the injury;
- c. Each document relating to treatment for the injury;
- d. Each document relating to payment for treatment for the injury;
- e. An itemization of the amount of damages claimed as a result of such injury and how that amount was calculated; and
- f. Each document which relates to or constitutes a Communication concerning a claim for the injury.

**RESPONSE:**

**INTERROGATORY NO. 7:** With respect to any other damages not otherwise identified in response to Interrogatory Nos. 5 and 6 that You allegedly sustained as a result of the August 14, 2003 Outage, identify:

- a. The nature of the damage;
- b. An itemization of the amount of damage and how such amount was calculated; and
- c. Each document which relates to or constitutes a Communication concerning a claim for the damage.

**RESPONSE:**



**INTERROGATORY NO. 8:** Identify each tariff provision that You allege any FirstEnergy Respondent violated and, for each such violation, identify each fact that You contend supports a finding that such violation occurred.

**RESPONSE:**

**INTERROGATORY NO. 9:** Identify each Ohio statute that You allege any FirstEnergy Respondent violated and, for each such violation, identify each fact You contend supports a finding that such violation occurred.

**RESPONSE:**

**INTERROGATORY NO. 10:** Identify each rule or regulation of the Ohio Administrative Code that You allege any FirstEnergy Respondent violated and, for each such violation, identify each fact that You contend supports a finding that such violation occurred.

**RESPONSE:**

**INTERROGATORY NO. 11:** Identify each order of the Public Utilities Commission of Ohio (including the case number and date of the order) that You allege any FirstEnergy Respondent violated and, for each such violation, identify each fact that You contend supports a finding that such violation occurred.

**RESPONSE:**

**INTERROGATORY NO. 12:** Identify any other local, state and federal statutes, regulations, and administrative agency orders that You allege any FirstEnergy Respondent violated and, for each such violation, identify each fact that You contend supports a finding that such violation occurred.

**RESPONSE:**

**INTERROGATORY NO. 13:** Identify any industry standards that You allege any FirstEnergy Respondent did not comply with and provide a summary of the facts that allegedly constitute such noncompliance.

**RESPONSE:**

**INTERROGATORY NO. 14:** Identify each individual with knowledge of any fact underlying any claim contained in the Amended Complaint, and identify each fact that such person is believed to know.

**RESPONSE:**

**INTERROGATORY NO. 15:** Identify all insurance payments or other reimbursements received by You for losses allegedly sustained from the August 14, 2003 Outage.

**RESPONSE:**

**INTERROGATORY NO. 16:** For each person whom You intend to call as an expert witness at the hearing in this matter:

- a. State the substance of each opinion on which the witness will testify;
- b. State all facts which provide the basis for each opinion on which the witness will testify;
- c. Provide a summary of the witness's background and qualifications;
- d. Identify each document supplied to, reviewed by, relied on, or prepared by the witness in connection with his or her testimony in this matter; and
- e. Identify by caption, agency or court, case name, and case number all other proceedings in which the witness has testified on the same or a similar topic in the past ten years.

**RESPONSE:**

**INTERROGATORY NO. 17:** Identify each document that You intend to offer as evidence at the hearing in this matter.

**RESPONSE:**

**INTERROGATORY NO. 18:** Identify all insurance claims made by You during the past ten (10) years arising from a loss of utility service.

**RESPONSE:**

**INTERROGATORY NO. 19:** For each claim identified in response to Interrogatory No. 18,

Identify:

- a. The insurance company to whom the claim was made;
- b. The amount of the claim;
- c. The type of service from which the claim arose;
- d. The location and date of the service interruption; and
- e. Each document which relates to or constitutes a Communication concerning the claim, including without limitation all documents submitted to any insurance company.

**RESPONSE:**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** All documents and things identified in response to FirstEnergy Respondents' First Set of Interrogatories to Complainants S.G. Foods, Inc., Pak Yan Lui, and John Summers

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 2:** All documents and things reflecting any damages allegedly sustained by You arising from the August 14, 2003 Outage.

**RESPONSE::**

**REQUEST FOR PRODUCTION NO. 3:** All insurance policies pursuant to which You made claims for losses allegedly sustained from the August 14, 2003 Outage.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:** All documents relating to claims submitted to any insurance company for any claim arising from a loss of utility service from 2000 to the present.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:** A copy of Your electric bills for service to You provided during any time in August 2003.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:** All documents and things that allegedly support any allegation made in the Complaint in Case No. 04-28-EL-CSS.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:** A curriculum vitae for each expert witness identified in response to Interrogatory No. 16.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 8:** All exhibits You intend to introduce at hearing.

**RESPONSE:**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondents' First Set Of Interrogatories  
And Requests For Production Of Documents To Complainants S.G. Foods, Inc., et al. was  
mailed by ordinary U.S. mail to the following persons this 29<sup>th</sup> day of September, 2006.

Edward F. Siegel, Esq.  
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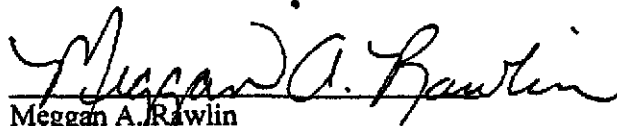
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An Attorney for Respondents



**EXHIBIT B**

S G Foods

# JONES DAY

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JP104785:rlr  
034569-685046

February 20, 2007

VIA FACSIMILE AND U.S. MAIL

Edward F. Siegel, Esq.  
27600 Chagrin Boulevard, Suite 340  
Cleveland, OH 44122

Re: Responses of Complainant S.G. Foods, Inc. to Respondent's First Set of  
Interrogatories and Requests for Production

Dear Mr. Siegel:

We have reviewed your client's discovery responses served on February 9, 2007. I am writing to bring to your attention certain responses that we believe are evasive or deficient. Our specific concerns are set forth below. We would like to resolve these issues with you without the need for additional motion practice.

In response to Interrogatory No. 2(e), complainant alleges that it sustained \$15,000 in damages. But in response to Interrogatory No. 2(f), which asked for all documents relating to the interruption in service or to damages, complainant states, "not available." Later, in response to Request for Production No. 2, which asks for copies of all documents relating to damages, complainant states that these documents "will be supplied prior to hearing." Documents either currently exist or they do not. If they exist, complainant is required to produce them. If they used to exist but now for some reason are "not available," please explain what happened to them. Complainant should also supplement its answer to Interrogatory No. 3, where it provided the same responses with respect to damages allegedly sustained from outages other than the August 14, 2003 outage.

Similarly, Interrogatory No. 5 asked for an itemization of property damages. Complainant states that this "will be provided later." These documents should be provided immediately. Until they are, complainants' responses remain incomplete and in violation of the Attorney Examiner's February 5, 2007 Entry directing all complainants to furnish responses within 10 days.

Interrogatory Nos. 8 through 13 asked complainants to identify any tariffs, statutes, Ohio Administrative Code provision, PUCO orders or industry standards allegedly violated by Respondents and the facts that complainants allege support a finding of such violations. Complainants object to each of these interrogatories on the basis that they "call for legal conclusion." The Complaint specifically alleges that Respondents "breached its [sic] statutory obligation to furnish necessary and adequate service" (§ 2), "failed to comply with industry

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Edward F. Siegel, Esq.  
February 20, 2007  
Page 2

standards" (§ 29), "intentionally failed to perform a manifest duty" (§ 64) and otherwise failed to act as a "reasonably prudent utility company." (§ 67.) Under Ohio Civil Rule 11, complainants were required to have a good-faith basis for their allegations at the time they filed the Complaint. Respondents are entitled to know what statutory or regulatory provisions were allegedly violated and what facts complainants intend to rely on to try to prove the violations. Complainants should supplement their answers to Interrogatory Nos. 8-13 to provide the requested information.

Request for Production No. 5 asked for a copy of complainant's electric bill covering the period August 14, 2003. Complainant objects on the basis that this is "in the possession of Respondents." Respondents asked for this information to determine whether any complainant in Case No. 04-28 was a customer. Our records show that none of them were. The customer of record at 5555 Brecksville Avenue in Independence, which is the service address listed in response to Interrogatory No. 2(c), was Pak Lok Restaurant. Accordingly, given the March 7, 2006 Entry in this case, only Pak Lok Restaurant has standing to bring a complaint. In lieu of providing an electric bill, please produce information that establishes customer status for S.G. Foods, Inc. If this information is not immediately forthcoming we will move to dismiss S.G. Foods from this case.

Request for Production No. 6 asked for all documents that allegedly support any allegations made in the Complaint. Given the objection based on attorney client privilege, complainant is required to produce a privilege log. We are also entitled to any non-privileged documents that are responsive to this request.

Please contact me or David Kutik if you have any questions about the issues raised in this letter and how we might resolve them. If we cannot reach closure on outstanding discovery issues by the end of this month, we will have little alternative but to burden the Attorney Examiner with additional motion practice. We prefer not to have to do that.

Sincerely,



Mark A. Whitt

cc: David A. Kutik, Esq.  
Meggan A. Rawlin, Esq.