

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S. G.)
Foods, Inc.; Miles Management Corp., et al.;)
Allianz US Global Risk Insurance Company,)
et al.; and Lexington Insurance Company, et)
al.,)

Complainants,)

v.)

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


Respondents.)

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

ENTRY

The attorney examiner finds:

- (1) The complainants in these consolidated proceedings filed their complaints on January 12, 2004, June 21, 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 a widespread blackout on August 14, 2003, thereby causing financial harm to the complainants. The complainants in Case Nos. 05-1011-EL-CSS and 05-1012-EL-CSS will be referred to as the insurance complainants.
- (2) On October 25, 2006, the examiner held a telephonic prehearing conference, at which the parties discussed the schedule for discovery and the hearing in these consolidated cases. The examiner issued an entry on October 26, 2006, setting forth the schedule determined at that conference.

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- (3) By examiner entry of April 30, 2007, the schedule was delayed, with new deadlines established. The substance of the schedule set forth in the October 26, 2006, entry was not otherwise altered.
- (4) Based on the examiners' statement in an August 10, 2007, entry that they are "receptive to a motion for schedule and procedure modifications that may assist the parties in preparing adequately for the hearing," on September 7, 2007, the respondents filed a motion to revise the procedural schedule in these consolidated cases. According to the respondents, the only dispute centers on the opportunity for the respondents to take depositions of the complainants' experts prior to providing respondents' experts' opinions. The insurance complainants suggest, however, two additional issues.
- (5) The respondents propose the following revised schedule:

September 7, 2007	Complainants shall respond to respondents' pending written expert discovery (including the production of all responsive documents).
October 5, 2007	Complainants shall have produced all expert witnesses for deposition.
October 19, 2007	Respondents shall provide expert testimony summaries and respond to complainants' pending written expert discovery.
October 30, 2007	Complainants shall file all non-expert written testimony and all designations of those portions of any depositions that they intend to introduce at hearing.
November 9, 2007	Complainants shall file all expert written testimony.
December 14, 2007	Any third-party depositions necessary to be taken to preserve testimony shall be completed.

December 17, 2007 Respondents shall file all written testimony (*i.e.*, all expert and non-expert written testimony).

January 8, 2008 The hearing shall commence at the offices of the Commission.

- (6) On September 14, 2007, the insurance complainants filed their response to the respondents' proposed schedule. With regard to the deposition of the insurance complainants' expert witnesses, the insurance complainants suggest that the filing of the respondents' experts' summaries should not be delayed until after depositions have been completed. They contend that the existing summaries and interrogatory answers provide sufficient information to enable the respondents' experts to provide summaries of their opinions. The insurance complainants note that one of their expert witnesses, Mr. Kevin Eckert, will be unavailable until October 15 or 16, 2007. The complainants also contend, with regard to third party depositions, that these depositions are already late, as depositions of fact witnesses needed to be completed by the July 13, 2007, deadline for discovery.
- (7) The insurance complainants also note, in their response, that they received a September 10, 2007, letter from the respondents' counsel, submitting that the insurance complainants' experts' interrogatory answers were insufficient. The insurance complainants disagree, believing that the provided references to facts on which the opinions are based are sufficient.
- (8) Later on September 14, 2007, the respondents filed a reply memorandum. They first discuss the insurance complainants' responses to expert interrogatories, noting that the responses were late and incomplete. In part as a result of these inadequacies, the respondents believe that expert depositions must be completed prior to the deadline for their filing of expert testimony summaries. They do confirm that they are "amenable" to deposing witness Eckert after the proposed October 5, 2007, deadline, as long as expert disclosures may be made after his deposition. With regard to third-party depositions, the respondents note that such depositions, intended to preserve the testimony of a party's own witnesses,

are not a part of the discovery process and, so, were not covered by the July 13, 2007, deadline.

- (9) The examiner finds, first, that the third-party depositions proposed by respondents for the purpose of preserving testimony would not fall within the discovery deadline of July 13, 2007. When it was first issued, on October 26, 2006, the schedule was described as covering "the completions of discovery, the filing of testimony, and the hearing." This specific deadline (which was then an earlier date) applied to "[a]ll responses to requests for written discovery of factual matters, as well as all depositions related to factual matters" Similarly, the April 30, 2007, entry extending the schedule described July 13, 2007, as the date on which the parties were required to have completed "[a]ll responses to requests for written discovery of factual matters, as well as all depositions related to factual matters" It is clear to the examiner that this deadline applied to the discovery process and did not envision depositions to preserve testimony. Therefore, third-party depositions to preserve testimony will be allowed, beyond July 13, 2007.
- (10) With regard to the proposed schedule, the examiner agrees with the respondents' suggestions. The single contentious issue is, as respondents noted, the question of whether the respondents should have the opportunity to complete their depositions of the insurance complainants' experts prior to filing their own experts' summaries. The examiner agrees that such an opportunity is reasonable and appropriate and would resolve the questions of adequacy in the interrogatory responses provided. Therefore, the schedule proposed by the respondents will be adopted, with the following modification.
- (11) The examiner notes the difficulty of making witness Eckert available by the October 5, 2007, deadline. Therefore, the insurance complainants will be permitted to provide Mr. Eckert for deposition, beginning no later than October 16, 2007. Because of the short time between the start of Mr. Eckert's deposition and the proposed deadline for the provision of expert testimony summaries by the respondents (as well as their responses to pending written expert discovery requests), the examiner finds that the October 19 deadline should be extended until October 22, 2007.

(12) As suggested by the respondents, by agreeing to a date for the filing of "deposition designations," the examiner is making no ruling as to the relevance or admissibility of such evidence.

(13) The examiner also notes that the necessity to file certain items with the Commission is not entirely clear in the respondents' proposal. Therefore, the following table will clarify the schedule for the time remaining until the start of the hearing:

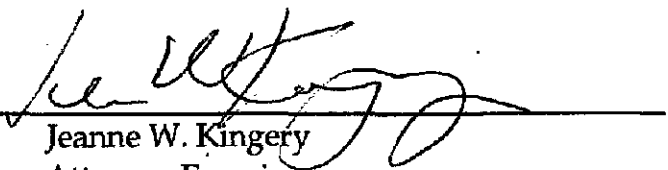
October 5, 2007	Complainants shall have produced all expert witnesses for deposition, with the exception of Mr. Kevin Eckert, who shall be produced no later than October 16, 2007.
October 22, 2007	Respondents shall file expert testimony summaries and shall respond to complainants' pending written expert discovery.
October 30, 2007	Complainants shall file all non-expert written testimony and all designations of those portions of any depositions that they intend to introduce at hearing.
November 9, 2007	Complainants shall file all expert written testimony.
December 14, 2007	Any third-party depositions necessary to be taken to preserve testimony shall be completed.
December 17, 2007	Respondents shall file all written testimony (<i>i.e.</i> , all expert and non-expert written testimony).
January 4, 2008	Pursuant to Rule 4901-1-21(N), Ohio Administrative Code, any depositions to be used as evidence must be filed with the Commission.
January 8, 2008	The hearing shall commence at the offices of the Commission.

It is, therefore,

ORDERED, That the parties comply with the schedule set forth in finding 13. 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

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geb

Entered in the Journal

SEP 19 2007

Renee J. Jenkins

Renee J. Jenkins
Secretary