

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)	
Company, Ohio Edison Company,)	
Toledo Edison Company, and)	
American Transmission Systems, Inc.)	
)	
)	
Respondents.)	

**INSURANCE COMPANY COMPLAINANTS' RESPONSE TO RESPONDENTS'
MOTION TO STRIKE COMPLAINANTS' FILING OF DEPOSITIONS AND MOTION
FOR PROTECTIVE ORDER**

NOW COME Complainants Allianz Global Risks U.S. Insurance Company, et al and Lexington Insurance Company, et al, and for their Response to Respondents' Motion to Strike Complainants' Filing of Depositions and Motion for Protective Order state as follows:

At the outset, it appears to be necessary to remind Respondents that this claim involves more than \$80,000,000 in damages arising from the largest Blackout in United States history. There were nearly 40 depositions taken during the course of fact discovery and hundreds of exhibits marked. The testimony obtained is complex and technical. To believe that the hearing on this matter (and the preparation for the same) would be less than lengthy is unreasonable.

Nevertheless, Respondents have taken exception to the materials filed by Respondents, objecting to the volume of testimony required by Complainants to present their case, and through unprofessional hyperbole, suggested that Complainants have not taken this case seriously and have done the minimal amount of work to get by, placing a great burden on Respondents and the Commission. This is simply not true. Though Respondents may not like it, Complainants filed and served testimony compliant with the Commission's order and each and every page of that testimony is necessary for Complainants to present their case.

Important to note is that the testimony given by various deponents is subject to a Protective Agreement entered between the parties. The Protective Agreement, drafted by Respondents, includes an important provision relevant to the issues of this most recent motion.

In particular, Paragraph 4 of the Protective Agreement states as follows:

All depositions, including any document marked as an exhibit or otherwise appended to the deposition, shall be treated as confidential to the Supplying Party under the terms of this Agreement if designated as "confidential" at any time during a deposition or within five days after receipt of a deposition transcript. *By the end of the five-day period, the party making such a designation will indicate the pages or sections of the transcript that are to be treated as confidential in order for the "confidential" designation of any part of the transcript to continue to apply thereafter.* During the five-day period, all transcripts and the information contained in the transcripts will be deemed to be confidential to the Supplying Party in their entirety under the terms of this Agreement. The party taking the deposition shall retain the original transcript until such time as the filing of the transcript is required by the Attorney Examiner or the Commission or desired by a party. At such time, the confidential portions of the transcript shall be bound and filed under seal with the Commission.

Based on the clear language of this Agreement, Respondents had five days following the receipt of the transcript to designate those portions that they believed were confidential. Rather than identify line by line those items believed to be confidential, Respondents simply stamped the entire transcript "confidential". Now, when that testimony has been filed in anticipation of the

hearing, Respondents are overwhelmed by the work they failed to do in a timely manner pursuant to the Agreement.

At the end of the day, the response is quite simple. Complainants filing of these transcripts in whole was not for the purpose of skirting any work or creating additional tasks for the Commission or Respondents. Complainants simply wish to present all testimony of all of those individuals whose transcripts were filed on October 30, 2007.

Further, this filing is compliant with the instructions of the Commission. The September 28, 2007 Order of the Commission does not require that Complainants provide page line designations. Neither does the November 2, 2007 Order. When Complainants inquired to the Commission whether these designations were required, they were told they were not. In fact, numerous telephone calls to the Commission took place inquiring on this very issue. Complainants specifically asked whether they needed to file page line designations of the testimony to be filed on October 30, 2007 and were told that this type of designation was not required. In fact, any page line designation filed by Complainants would not have excluded any testimony and would have made the task of reviewing the deposition in conjunction with the designation even more burdensome on the Commission and the Respondents.

Respondents' allegations that Complainants are playing games when it comes to this case are particularly troublesome in light of Respondents recent tactics. Originally, Respondents produced approximately 50,000 documents responsive to Complainants discovery requests. On October 1, 2007, Respondents produced in excess of 3,000 documents as supplemental discovery responses to Complainants' discovery requests. Further, on October 26, 2007, Respondents produced an additional 216,000 documents to Complainants. Not only were these documents produced well after the discovery cutoff, but the later production was produced only 14 days

before Complainants' expert testimony was due to be filed with the Commission. Clearly, Respondents were "hiding the ball", a game they continuously accuse Complainants of playing with no basis.

Finally, the relief requested by Respondents makes no logical sense. Respondents request that Complainants retrieve the depositions filed and file the deposition testimony of those witnesses they intend to call or that Respondents will call. Complainants have no information as to who Respondents will call. Further, of the deponents' testimony that was filed, Complainants intend to call all the witnesses not called by Respondents. Complainants will not have this information until after Respondents' December 17, 2007 filing deadline.

WHEREFORE, Complainants request that the Commission deny Respondents' Motion to Strike Complainants' Filing of Depositions and Motion for Protective Order.

Respectfully submitted,



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(Case Nos. 05-1011 and 05-1012)

Dated: November 19, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Insurance Company Complainants' Response to Respondents' Motion to Strike Complainants' Filing of Depositions and Motion for Protective Order was mailed by ordinary U.S. mail to the following persons this 19th day of November, 2007 and to Jones Day by facsimile and U.S. Mail:

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