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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 APR 20 PM 5:26

FOREST HILLS SUPERMARKET, INC.,)
d/b/a KONNIS FAMILY FOODS,)
)
Complainant,)
)
v.)
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY,)
)
Respondent.)

PUCO

Case No. 09-800-EL-CSS

RESPONDENT'S MOTION TO COMPEL DISCOVERY RESPONSES

Respondent The Cleveland Electric Illuminating Company ("CEI") hereby respectfully moves for an order compelling Complainant Forest Hills Supermarket, Inc., d/b/a Konnis Family Foods ("Forest Hills") to respond to CEI's First Set of Interrogatories and Requests for Production. That discovery was served on Forest Hills on February 3, 2010 and, per counsels' agreement, responses were due on March 5, 2010. Over six weeks later, Forest Hills has failed to provide *any* responses. As demonstrated in the attached affidavit, counsel for CEI has attempted to resolve this issue short of filing this motion, but no responses have been forthcoming. Forest Hills should be required to provide complete responses to CEI's discovery requests immediately.

I. ARGUMENT

Rules 4901-1-19 and 4901-1-20, Ohio Administrative Code, permit a party to a Commission proceeding to serve interrogatories and requests for production. Under those rules, responses to those discovery requests are due within 20 days of service. *See* Rule 4901-1-19(A); Rule 4901-1-20(C).

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On February 3, 2010, CEI served its First Set of Interrogatories and Requests for Production of Documents on Forest Hills. (See Ex. GWG-1, attached to Garber Aff (Ex. A to the Motion).) Per agreement of counsel, Forest Hills' responses were due on March 5, 2010. (See Garber Aff., ¶ 2.) That date came and went without any responses (or even acknowledgement of the deadline) from Forest Hills.

On March 31, 2010, in an effort to resolve this discovery dispute, counsel for CEI sent counsel for Forest Hills a letter requesting responses by April 9, 2010. (See Ex. GWG-2.) Forest Hills still has provided no discovery responses. (See Garber Aff., ¶ 3.)

Forest Hills' responses were due over six weeks ago, and to date it has failed to respond to a single one of CEI's interrogatories or requests for production. Nor has it shown any intention of doing so. Therefore, Forest Hills should be ordered to immediately provide complete responses to all of CEI's interrogatories and requests for production.

II. CONCLUSION

For the foregoing reasons, CEI respectfully requests that the Commission order Forest Hills to provide complete responses its discovery requests.

DATED: April 20, 2010

Respectfully submitted,



Grant W. Garber (0079541)
(Counsel of Record)

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ATTORNEYS FOR RESPONDENT
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel Discovery Responses was sent by first class U.S. mail, postage prepaid, and e-mail to the following person this 20th day of April, 2010:

Fred S. Papalardo, Esq.
Reminger Co., L.P.A.
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115-1093



Grant W. Garber
An Attorney for Respondent

Exhibit A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**FOREST HILLS SUPERMARKET, INC.,)
d/b/a KONNIS FAMILY FOODS,)
Complainant,)
v.)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY,)
Respondent.)**

Case No. 09-800-EL-CSS

AFFIDAVIT OF COUNSEL

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Grant Garber, being first duly sworn, states as follows:

1. I am counsel for The Cleveland Electric Illuminating Company ("CEI").
2. On February 3, 2010, I served CEI's First Set of Interrogatories and Requests for Production on counsel for Respondent Forest Hills Supermarket, Inc. d/b/a Konnis Family Foods ("Forest Hills"). A true and accurate copy of those requests is attached as Exhibit GWG-1 By agreement with Forest Hills' counsel, Forest Hills' responses were due on March 5, 2010. I did not receive any discovery responses from Forest Hills before, on, or after that date.
3. On March 31, 2010, in an effort to resolve this matter, I sent counsel for Forest Hills a letter requesting complete responses to CEI's discovery by April 9, 2010. A true and accurate copy of that letter is attached as Exhibit GWG-2. To date, I have not received any discovery responses from Forest Hills.

Grant Garber

Grant Garber

Sworn to before me

this 20th day of April, 2010.

Rebecca M. Cultice

Notary Public



REBECCA M. CULTICE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 11/7/2014

Exhibit GWG-1

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**FOREST HILLS SUPERMARKET, INC.,)
d/b/a KONNIS FAMILY FOODS,)**

Complainant,)

v.)

**THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY,)**

Respondent.)

Case No. 09-800-EL-CSS

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 4901-1-16, 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, Respondent The Cleveland Electric Illuminating Company ("CEI") requests Complainant Forest Hills Supermarket, Inc. d/b/a Konnis Family Foods ("Complainant") to respond in writing and under oath to the following interrogatories; to produce or make available for inspection and copying documents responsive to the following requests for production; and to serve written responses to the interrogatories and requests for production within twenty days hereof. 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, owners, officers, representatives or agents to answer the following 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. For any unanswered interrogatory or request for production of documents (in whole or in part), state specifically the basis of Your objection or refusal to answer. For any assertion of privilege or work product, state the nature of the privilege and describe the general subject matter of the information withheld.

7. 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.

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

9. Any reference to the masculine, feminine or neuter herein shall be construed to include the others, and the singular shall be construed to include the plural, and vice versa, as necessary to give these discovery requests their broadest possible meaning.

10. 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.

11. Your responses to these discovery requests should be delivered to Grant Garber; Jones Day; P.O. Box 165017; Columbus, Ohio 43216-5017, if by first class mail, and to 325 John H. McConnell Blvd, Suite 600; Columbus, Ohio 43215, if by overnight courier.

DEFINITIONS

1. "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, in whatever form.

2. "Complaint" refers to the First Amended Complaint You filed with the Public Utilities Commission of Ohio on or about December 15, 2009, in Case No. 09-800-EL-CSS.

3. "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, electronic mail, memoranda, notes, writings, meeting minutes, spreadsheets, graphs, charts, and drafts of any of the foregoing, and computer files, audio recordings, and photographs, in whatever form.

4. "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 above-captioned proceeding;

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.

d. When used in reference to a communication, to state all persons involved in the communication, the time, date, and location of the communication, a general description of the subject matter of the communication, and the nature of the communication (e.g., telephone, e-mail, in person).

5. "September 2008 Outage" refers to the loss of power experienced by You on or about September 15, 2008 and continuing through September 16, 2008.

6. "You," "Your," and "Complainant" refer to Complainant Forest Hills Supermarket, Inc. d/b/a Konnis Family Foods and its owners, officers, employees, agents and representatives.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person whom You intend to call as an expert witness at the hearing in this matter.

RESPONSE:

INTERROGATORY NO. 2: 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. 3: Identify each and every document, exhibit or other thing You intend to introduce into evidence or otherwise display at the hearing in this matter.

RESPONSE:

INTERROGATORY NO. 4: State the total amount of damages You incurred as a result of the September 2008 Outage for which you seek recovery from CEI. Of such amount, further state the amount attributable to “loss of business,” the amount attributable to “unnecessary payment of wages,” and the “costs incurred in an attempt to purchase an emergency generator,” as identified in paragraph 10 of the Complaint.

RESPONSE:

INTERROGATORY NO. 5: Identify all Communications reflecting, relating or referring to the September 2008 Outage and any related damages or losses, excluding routine monthly bills, between You or one of your owners, officers, employees, agents and/or representatives and any representative of CEI. For each such Communication, identify:

- a. The date of the Communication;
- b. The representatives of Complainant and CEI who were involved in the Communication;
- c. If not in writing or by telephone, the location of the Communication; and

- d. All documents reflecting or relating to those Communications, including but not limited to handwritten notes.

RESPONSE:

INTERROGATORY NO. 6: For the month of September 2008, identify by date and time all instances in which You lost power and the corresponding date and time when power was restored following such outage.

RESPONSE:

INTERROGATORY NO. 7: State whether You had possession of any electrical-power generator in September 2008 and, if so, identify by date and time any instance in which the generator was put in use.

RESPONSE:

INTERROGATORY NO. 8: Identify each and every officer, owner, employee, agent or representative of Complainant with knowledge of facts regarding the September 2008 Outage and any resulting damages or losses.

RESPONSE:

INTERROGATORY NO. 9: Identify each and every officer, owner, employee, agent or representative of Complainant who was present at Complainant's location at any point from September 14 through September 17, 2008.

RESPONSE:

INTERROGATORY NO. 10: With respect to Your allegation that "[u]pon information and belief [CEI] did settle claims with other utility customers resulting from the September 14, 2008 power outage, but refused to settle Forest Hills' claim," identify all facts that support or otherwise relate to such allegation, and identify all persons with knowledge of the facts that support or otherwise relate to such allegation.

RESPONSE:

INTERROGATORY NO. 11: Identify any statute, regulation, tariff provision or other authority You believe requires CEI to provide advance notice of power outages to nonresidential customers.

RESPONSE:

INTERROGATORY NO. 12: Identify each and every individual who furnished information used to prepare answers to these Interrogatories.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents and things identified in response to the CEI's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: A curriculum vitae for each expert witness.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: All exhibits You intend to introduce at hearing.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: All documents and things supplied to, relied upon, reviewed by, or prepared by any expert witness identified in response to Interrogatory No. 1 in connection with his or her testimony in this matter.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: All documents reflecting, relating or referring to any Communication between Complainant and/or its owners, officers, employees, agents or representatives and CEI that reflect, relate or refer to the September 2008 Outage or any related damages or losses, excluding routine monthly bills.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: All documents and things that allegedly support any allegation made in the Complaint.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: All documents and things reflecting, relating, referring to or supporting Your claim for damages, as set forth in paragraphs 9 and 10 of the Complaint and in Your response to Interrogatory 4, including but not limited to invoices, receipts, letters, time sheets or other business records.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: All documents and things reflecting, relating or referring to any insurance claim submitted by You for damages allegedly incurred as a result of the September 2008 Outage.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: All documents and things reflecting, relating or referring to payment by any insurer for damages allegedly incurred as a result of the September 2008 Outage.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: All documents and things reflecting, relating or referring to any attempt by You to purchase or otherwise obtain an electrical-power generator in September 2008.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: All documents reflecting, relating or referring to any Communication between Complainant and/or its owners, officers, employees, agents or representatives and any other individual, company or entity regarding the September 2008 Outage and any resulting damages or losses.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: All documents reflecting, relating or referring to the September 2008 Outage and any resulting damages or losses.

RESPONSE:

DATED: February 3, 2010

Respectfully submitted,



Grant W. Garber (0079541)

(Counsel of Record)

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haydenm@firstenergycorp.com

ATTORNEYS FOR RESPONDENT
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of CEI's First Set of Interrogatories and Requests for Production of Documents was delivered to the following person by overnight courier and e-mail this 3rd day of February, 2010:



An Attorney For Respondent The Cleveland
Electric Illuminating Company

Fred S. Papalardo, Esq.
Reminger Co., L.P.A.
1400 Midland Building
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Cleveland, Ohio 44115-1093
FPapalardo@reminger.com

Exhibit GWG-2

JONES DAY

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COLUMBUS, OHIO 43215-2673
TELEPHONE: 614.469.3939 • FACSIMILE: 614.461.4198

MAILING ADDRESS:
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COLUMBUS, OHIO 43216-5017

Direct Number: (614) 281-3858
gwgarber@jonesday.com

JP007123
034569-740009

March 31, 2010

BY FIRST CLASS MAIL AND E-MAIL

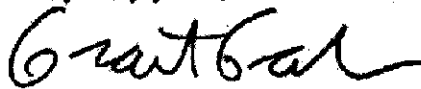
Fred S. Papalardo
Reminger Co., L.P.A.
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115-1093

Re: Forest Hills Supermarket, Inc. v. The Cleveland Electric Illuminating Company,
PUCO No. 09-800-EL-CSS

Dear Fred:

I write regarding Respondent The Cleveland Electric Illuminating Company's First Set of Interrogatories and Requests for Production of Documents. Complainant's responses to this discovery were due on March 5, 2010 (including the 10-day extension requested by Complainant). Nearly four weeks later, Complainant has yet to respond. Therefore, please provide full responses to Respondent's discovery requests no later than **April 9, 2010**, or we will move to compel them.

Very truly yours,



Grant W. Garber

COI-1437935v1

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