



For the reasons set forth below, Respondent's Motion is DENIED.

## II.

Respondent filed its Motion to Compel pursuant to Commission Rule 3.38(a), which allows a party to apply by motion to the Administrative Law Judge for an order compelling disclosure or discovery. 16 C.F.R. § 3.38(a). Respondent's Motion to Compel is also subject to the Commission rule governing motions, Rule 3.22.

Rule 3.22(g) states in pertinent part:

[E]ach motion to compel or determine sufficiency pursuant to § 3.38(a) . . . shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. . . . The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the Administrative Law Judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

16 C.F.R. § 3.22(g).

Respondent's Motion to Compel fails to comply with the express terms of Commission Rule 3.22(g). Respondent's Motion to Compel was not accompanied by the required signed statement. Instead, several days after submitting the Motion to Compel, Respondent submitted a "Supplemental Statement" attaching a chart summarizing the date, time, and place of communications with Complaint Counsel and the names of the parties involved in each such communication.

Rule 3.22(g) is not vague and does not contemplate nor allow a supplement or amendment to an already-filed motion. In addition, Additional Provision 4 of the Scheduling Order entered in this case requires that:

Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. Motions that fail to include such statement may be denied on that ground.

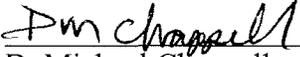
Thus, the parties were on notice that failure to include the required statement with a motion to compel could result in denial of such motion on that basis alone. Respondent failed to comply with the unequivocal requirements of Rule 3.22(g). Accordingly,

Respondent's motion is denied and a determination of other issues presented need not and will not be made.

**III.**

For the foregoing reasons, Respondent's Motion to Compel is DENIED.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

January 20, 2011