UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

CHICAGO BRIDGE & IRON COMPANY N.V.,
a foreign corporation,

CHICAGO BRIDGE & IRON COMPANY,

PITT-DES MOINES, INC.,
a corporation.

DOCKET NO. 9300

ORDER DENYING MOTION TO COMPEL

I.

On September 26, 2002, Complaint Counsel filed a Motion to Compel. On October 1, 2002, Respondents filed their opposition. For the reason set forth below, the motion is DENIED.

II.

On June 7, 2002, Complaint Counsel served its Second Request for Production of Documents. Complaint Counsel's motion seeks to compel Respondents to produce electronic documents that are responsive to Complaint Counsel's Second Request for Production of Documents. In the alternative, Complaint Counsel seeks an order precluding Respondents from presenting testimony at trial from any witness now employed by Respondents, or employed by Respondents since September 2000, whose e-mail documents responsive to the Second Request for Production of Documents have not been provided to Complaint Counsel. Complaint Counsel asserts that the Second Request for Production of Documents was timely served, seeks relevant documents, and does not impose an undue burden on Respondents.

Respondents do not contest the relevancy of the requested documents. Instead, Respondents assert that the Second Request for Production of Documents imposes an undue

documents and electronic documents that Respondents reviewed in response to Complaint

III.

The First Revised Scheduling Order, entered on May 6, 2002, set June 7, 2002 as the last day for serving requests for production of documents. Complaint Counsel's Second Request for Production of Documents was served on June 7, 2002. Respondents filed their responses and [redacted] several letters on the disputed issues between June 14, 2002 and August 26, 2002. Declaration of Jeffrey A. Leon at ¶¶ 3, 5; Statement of Eric M. Sprague at ¶¶ 3, 4, 5. Complaint Counsel states [redacted] Scheduling Order, entered on June 18, 2002.

Commission Rule § 3.38(a)(2) states that "[i]f a party fails to respond to or comply as requested with a request for production . . . , the discovering party may move for an order to compel production . . ." 16 C.F.R. § 3.38(a)(2). Commission Rule 3.21 requires Administrative Law Judges to enter a scheduling order that "establishes a scheduling of proceedings, including a plan of discovery [and] dates for the submission and hearing of motions. . . ." 16 C.F.R. § 3.21(c)(1). Pursuant to 16 C.F.R. § 3.21(c)(1), Additional Provision Number Two of the first Scheduling Order entered on February 20, 2002 states that "[a]ny motion to compel responses [redacted]

Complaint Counsel expressly states that the parties agreed that they were at an impasse on this issue on August 23, 2002. Complaint Counsel's motion to compel, filed on September 26, [redacted] Accordingly, it is DENIED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: October 15, 2002