

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

RETAIL ENERGY SUPPLY)	
ASSOCIATION,)	
P.O. Box 6089)	
Harrisburg, PA 17112,)	
)	
Complainant,)	
v.)	
)	
OHIO EDISON COMPANY,)	
76 South Main Street)	
Akron, Ohio 44308,)	Case No. 18-0736-EL-CSS
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
76 South Main Street)	
Akron, Ohio 44308,)	
)	
THE TOLEDO EDISON COMPANY,)	
76 South Main Street)	
Akron, Ohio 44308,)	
)	
)	
Respondents.)	

COMPLAINT

For their Complaint against Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, the Retail Energy Supply Association alleges as follows:

PARTIES AND JURISDICTION

1. The Retail Energy Supply Association (RESA) is a non-profit 501c(6) organization comprised of competitive retail energy suppliers to residential, commercial and industrial customers throughout the United States, including Ohio and the distribution service territories of the Respondents. Among other goods and services, RESA members provide “competitive retail electric service” and “retail electric service” as defined in R.C. 4928.01(A)(4)

and (27), respectively, as well as “nonelectric product[s] [and] service[s]” described in R.C. 4928.17.

2. Respondent Ohio Edison Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

3. Respondent Cleveland Electric Illuminating Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

4. Respondent The Toledo Edison Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

5. Each Respondent is a wholly-owned subsidiary of FirstEnergy Corp. (NYSE: FE), an electric utility holding company. FirstEnergy Corp. is also the parent and sole shareholder of FirstEnergy Solutions Corp. (FES) and FirstEnergy Service Corp. (FE Service). This Complaint refers to Respondents collectively as the “FirstEnergy EDUs.”

6. The Commission has personal and subject matter jurisdiction over this Complaint and all claims herein pursuant to R.C. 4905.04, R.C. 4905.26, R.C. 4928.16, R.C. 4928.17 and R.C. 4928.18.

SUMMARY OF THE CASE

7. The FirstEnergy EDUs have the exclusive right and obligation to furnish electric distribution service within their respective certified territories. Electric distribution service is a “noncompetitive retail electric service” under R.C. 4928.01(A)(21), and may only be furnished in accordance with schedules filed in accordance with R.C. 4909.18 and 4928.15.

8. The FirstEnergy EDUs may not “engage in this state, either directly or through an affiliate, in the business of supplying a noncompetitive retail electric service and supplying a competitive retail electric service . . . or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission[.]” R.C. 4928.17(A).

9. Even under a corporate separation plan, the FirstEnergy EDUs may not furnish any competitive retail electric service or other “nonelectric product or service.” R.C. 4928.17(A)(1). Such services must be provided by “a fully separated affiliate of the utility.” *Id.*

10. R.C. 4928.17(C) authorizes the Commission, for good cause shown, to authorize an interim corporate separation plan that does not comply with division (A)(1) of R.C. 4928.17. The FirstEnergy EDUs do not currently operate under an interim corporate separation plan. “Pursuant to O.A.C. 4901:1-35-03(C)(4), the Companies state that their corporate separation plan is publicly available as filed in Case No. 09-462-EL-UNC and approved in Case No. 10-388-EL-SSO. The Companies have obtained no waivers related to their approved corporate separation plan.” *Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Application at 19 (Aug. 4, 2014).

11. Additionally, the FirstEnergy EDUs may not “extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service” by lending or making available “utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and

training, without compensation based upon fully loaded embedded costs charged to the affiliate[.]” R.C. 4928.17(A)(3).

12. The FirstEnergy EDUs must ensure that such affiliates “will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.” *Id.*

13. As alleged herein, the FirstEnergy EDUs, directly or through one or more affiliates, are developing, marketing, billing, and receiving payment for various nonelectric products and services in a manner which gives an undue preference and advantage to the FirstEnergy EDUs and their affiliates.

14. Many of these nonelectric products and services now offered for sale to the FirstEnergy EDUs’ customers are promoted and sold on an online store and e-commerce website referred to as “Smartmart by FirstEnergy” (www.smart-mart.com) (Smartmart). The Smartmart products and services include or will include, among other things, leased electric vehicle chargers, smart thermostats, dimmable LED lights, home protection services, and home repair and maintenance services. The FirstEnergy EDUs include charges for the Smartmart nonelectric products and services on their customers’ electric bills.

15. The FirstEnergy EDUs, directly and/or through their affiliate(s), also have contracted with HomeServe USA (HomeServe) to market and sell various home protection and repair plans for exterior and interior lines and heating and cooling appliances exclusively to the distribution customers of the FirstEnergy EDUs. Customers who purchase HomeServe plans are billed directly for the cost of their plans on their FirstEnergy EDUs’ electric bills.

16. The FirstEnergy EDUs utilize, or permit their affiliate(s) and/or third-party partner(s) to utilize, utility assets and resources for the marketing, advertising, promotion, financing and/or billing of Smartmart and HomeServe nonelectric products and services.

17. The FirstEnergy EDUs do not permit non-affiliated competitors to utilize the same utility assets and resources for the marketing, advertising, promotion, financing and/or billing of similar nonelectric services and products to the FirstEnergy EDUs' customers.

18. Although the FirstEnergy EDUs' advertising and promotion claims that Smartmart and HomeServe nonelectric services and products are provided by independent third-parties, the FirstEnergy EDUs participate in, facilitate and assist in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products, to the confusion and deception of the FirstEnergy EDUs' customers, and to the benefit of the FirstEnergy EDUs, their affiliate(s) and/or their third-party partner(s).

19. The FirstEnergy EDUs do not have the legal authority, Commission approval or the necessary protocols and protections in place to participate in, facilitate and assist in the marketing, billing and sale of nonelectric products and services in a competitively neutral manner.

20. The marketing, advertising, promotion, financing and/or billing for Smartmart and HomeServe nonelectric services and products: (i) do not comply with the State's corporate separation requirements, the FirstEnergy EDUs' Corporate Separation Plan and the FirstEnergy EDUs' Code of Conduct; and (ii) violate Ohio statutory provisions that prohibit the FirstEnergy EDUs from engaging in unfair discriminatory, preferential, anticompetitive and deceptive conduct.

21. The Commission must ensure that “anticompetitive subsidies” do not flow from the regulated electric distribution utility to any affiliate engaged in the business of providing competitive retail electric service or a product or service other than retail electric service. R.C. 4928.02(H). The Commission also must ensure that retail electric service consumers are protected against “unreasonable sales practices, market deficiencies, and market power.” R.C. 4928.02(I). It is incumbent upon the Commission to carry out and enforce these policies and other policies stated in R.C. 4928.02 to both correct and prevent any unfair or otherwise illegal practices by EDUs in competitive markets, including the market for nonelectric services and products in the FirstEnergy EDUs’ service territories.

22. The FirstEnergy EDUs’ participation in, facilitation of and assistance in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products results in “anticompetitive subsidies,” “market deficiencies” and other unfair and illegal discriminatory, preferential, anticompetitive and deceptive practices, to the detriment of unaffiliated competitors.

23. RESA members in Ohio provide the same or substantially similar nonelectric services and products that the FirstEnergy EDUs offer through the Smartmart marketplace or in partnership with HomeServe.

24. RESA members have suffered and will continue to suffer loss of sales and other damages from the FirstEnergy EDUs’ improper, discriminatory, preferential, anticompetitive and deceptive conduct.

FACTS COMMON TO ALL CLAIMS

25. Complainants incorporate by reference all previous allegations as if fully set forth herein.

26. In addition to competitive retail electric service, RESA members have developed and offer various non-electric products and services, including energy efficiency, demand response, direct load control, smart thermostats, distributed solar and wind generation, microgrids, battery storage technology, loyalty rewards programs, and home warranty protection services for utility lines and systems.

27. The FirstEnergy EDUs have partnered with HomeServe to offer various protection and repair plans to distribution customers of the FirstEnergy EDUs. Customers who purchase HomeServe plans are billed for the costs directly on their FirstEnergy EDUs' electric bills. The plans include protection plans for exterior water, sewer and septic service lines, gas lines, exterior and interior electric lines, interior telephone lines, heating and cooling system repairs, heat pump system protection and water heater repair.

28. The FirstEnergy EDUs also have launched an e-commerce website referred to as "Smartmart by FirstEnergy" (www.smart-mart.com) (Smartmart), which offers for sale a range of nonelectric products and services exclusively to the distribution customers of the FirstEnergy EDUs.

29. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised the nonelectric services and products as services and products "you might not expect from your utility." (<https://www.firstenergycorp.com/content/customer/products/smartmart.html>)

30. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised Smartmart as "a better way to shop for all of the great products and services that you'd normally see, and more. Come check it out and see how FirstEnergy can help make your home even more comfortable, convenient and secure." (<https://www.youfirstenergy.com>)

31. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised that the customers of the FirstEnergy EDUs will make “simple, straightforward payments” on their electric bills for the purchased Smartmart nonelectric services and goods.

(https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-will-launch-new-online-marketplace.html)

32. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised that “[f]or years, customers have turned to FirstEnergy about ways to better manage their energy use. ... Smartmart builds on that tradition, expanding on our collection of products and services that brings greater comfort, convenience, security and productivity to our customers’ lives.”

(https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-will-launch-new-online-marketplace.html)

33. In launching the Smartmart marketplace, the FirstEnergy EDUs have claimed that “there’s a lot more to FirstEnergy than energy.” (<https://www.smartmart.com/smartmart/en/aboutUs>)

34. In launching the Smartmart marketplace, the FirstEnergy EDUs intend to leverage the reputation of the electric distribution companies as “trusted sources of information for customers” to promote and sell new nonelectric services and products to create and/or support a new stream of revenue. (<https://www.smart-mart.com/smartmart/en/aboutUs>)

35. In launching the Smartmart marketplace, the FirstEnergy EDUs intend to have any questions related to existing or new Smartmart purchases, including questions regarding the terms and conditions of the purchased services and products, handled by customer service representations of the FirstEnergy EDUs and/or their affiliate(s). (<https://www.smartmart.com/smartmart/en/contactUs>)

36. The Smartmart nonelectric products and services include leased electric vehicle chargers (with installation and repair services), smart thermostats and HVAC monitoring services, various dimmable, smart LED lights, surge protection plans, security and landscape lighting, disaster protection plans, electrical services, tree-care services, appliance repair plans, plumbing repair plans, HVAC maintenance plans, and other home protection and repair plans.

37. The FirstEnergy EDUs intend for their customers to associate the Smartmart nonelectric products and services with the name, reputation and delivery service of the FirstEnergy EDUs.

38. The FirstEnergy EDUs prohibit RESA members from entering into arrangements that would permit RESA members to bill, and for their customers to pay for, nonelectric products and services through the FirstEnergy EDUs bills for electric distribution service.

39. The FirstEnergy EDUs and/or their affiliate(s) intend to utilize the Smartmart marketplace and HomeServe partnership to improperly compete with and discriminate against unaffiliated competitors in the market for nonelectric services and products.

40. The FirstEnergy EDUs currently have tariff sheets that authorize and identify in detail the specific limited “Special Customer Services” that the FirstEnergy EDUs may provide. These service offerings are narrowly related to design, construction, operation and maintenance of customer electric facilities and equipment. *See* Ohio Edison Company, P.U.C.O. No. 11, Original Sheet 4, Page 13 of 21, Section X.C., effective January 23, 2009; The Cleveland Electric Illuminating Company, P.U.C.O No. 13, Original Sheet 4, Page 13 of 21, Section X.C., effective May 1, 2009; and The Toledo Edison Company, P.U.C.O No. 8, Original Sheet 4, Page 13 of 21, Section X.C., effective January 23, 2009.

41. The FirstEnergy EDUs have not sought Commission approval for any tariff changes to “Special Customer Services” to authorize their participation, facilitating, assistance and “arranging” in the marketing, billing for and sale of nonelectric services and products through the Smartmart marketplace and the partnership with HomeServe.

42. The FirstEnergy EDUs’ current corporate separation plan, filed in Case No. 09-462-EL-UNC, was approved in an August 25, 2010 Opinion and Order in Case No. 10-388-EL-SSO.

43. The FirstEnergy EDUs do not have a “fully separate affiliate” responsible for and engaged in the business of marketing, advertising, promotion, financing and billing of Smartmart and HomeServe nonelectric services and products, as required by R.C. 4928.17(A)(1).

44. The FirstEnergy EDUs and their affiliate(s) do not have a separate cost center and separate accounting and procedures in place for the marketing, advertising, promotion, financing and billing of Smartmart and HomeServe nonelectric services and products, as required by R.C. 4928.17(A)(1).

45. The “Consumer Products” section of the FirstEnergy EDUs’ Corporate Separation Plan, and Attachment 1 entitled “Current Affiliates/Products and Services,” do not identify the nonelectric services and products for which the FirstEnergy EDUs and their affiliates participate in, facilitate and assist in the marketing, billing and sale through the Smartmart marketplace and partnerships with HomeServe.

46. The FirstEnergy EDUs have not sought to amend their corporate separation plan or otherwise seek approval from the Commission concerning their participation in, facilitation of and assistance in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products.

47. By letter dated January 4, 2018, RESA requested the FirstEnergy EDUs to investigate the concerns alleged herein. *See* Exhibit A. The FirstEnergy EDUs summarily dismissed these concerns in return correspondence dated February 8, 2018. *See* Exhibit B.

48. Respondents' actions alleged herein were committed "knowingly" within the meaning of R.C. 4928.01(A)(14).

49. RESA members have suffered actual damages from the violations alleged herein.

Count I:
**Violation of statutory prohibition against the provision of
nonelectric products and services by an electric distribution utility.**

50. Complainants incorporate by reference all previous allegations as if fully set forth herein.

51. The FirstEnergy EDUs may not furnish any competitive retail electric service or other "nonelectric product or service." R.C. 4928.17(A)(1). Such services must be provided by "a fully separated affiliate of the utility." *Id.*

52. To the extent the FirstEnergy EDUs are directly offering or providing nonelectric products or services, the provision of such products or services violates R.C. 4928.17(A)(1).

Count II:
**Violation of statutory prohibition against an affiliate's provision of nonelectric products
and services not disclosed in or authorized by an approved corporate separation plan.**

53. Complainants incorporate by reference the previous allegations as if fully set forth herein.

54. To the extent the FirstEnergy EDUs are offering nonelectric products and services through an affiliate, the offering and provision of such services must be conducted in accordance with an approved corporate separation plan.

55. Although the FirstEnergy EDUs have an approved corporate separation plan, the plan does not provide for any affiliate of the FirstEnergy EDUs to offer or provide the products and services available through Smartmart.

56. The offering or provision of nonelectric products and services not authorized by or disclosed in an approved corporate separation plan violates R.C. 4928.17—regardless of whether such nonelectric products and services are provided by the FirstEnergy EDUs directly or through an affiliate.

**Count III:
Failure to implement and operate under an approved corporate separation plan.**

57. Complainants incorporate by reference the previous allegations as if fully set forth herein.

58. The FirstEnergy EDUs do not fulfill their corporate separation obligations merely by obtaining approval of a corporate separation plan. The FirstEnergy EDUs must “implement[] and operate[] under” the plan approved by the Commission. R.C. 4928.17(A).

59. The FirstEnergy EDUs have not implemented and are not operating under their corporate separation plan in the manner required to prevent unfair competitive advantages and preferences, abuses of market power, subsidies from noncompetitive services to nonelectric services, discrimination, barriers to competition, and other outcomes contrary to R.C. 4928.17 and the state policy reflected in R.C. 4928.02.

**Count IV:
Violation of statutory prohibitions against discrimination,
cross-subsidies and anticompetitive conduct**

60. Complainants incorporate by reference the previous allegations as if fully set forth herein.

61. R.C. 4905.32 prohibits the FirstEnergy EDUs from extending “any rule, regulation, privilege, or facility” to any person, firm or corporation “except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.”

62. R.C. 4905.33(A) prohibits the FirstEnergy EDUs from, “directly or indirectly,” through “any special rate, rebate, drawback, or other device or method,” from charging “greater or lesser compensation” for any service rendered than what it charges for “doing a like a contemporaneous service under substantially the same circumstances and conditions.”

63. R.C. 4905.33(B) prohibits the FirstEnergy EDUs from furnishing any service “for less than actual cost for the purpose of destroying competition.”

64. R.C. 4905.35(A) prohibits the FirstEnergy EDUs from giving “any undue or unreasonable preference or advantage to any person, firm, corporation, or locality,” or subjecting “any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.”

65. R.C. 4928.17(A)(3) requires affiliates to compensate the FirstEnergy EDUs for the use of utility resources based upon fully loaded embedded costs.

66. R.C. 4928.17(A)(3) requires that the FirstEnergy EDUs not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying a nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training.

67. R.C. 4928.17(A)(3) requires that no affiliate, division, or part of the FirstEnergy EDUs engaged in nonelectric services receive any undue preference or advantage from any

affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service.

68. The FirstEnergy EDUs, directly or through one or more affiliates, have violated these statutes through the actions and omissions alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests the following relief:

- A. An interim, emergency order directing the FirstEnergy EDUs and/or affiliated entities, during the pendency of this Complaint, to immediately cease and desist from advertising, offering, or providing the Smartmart and HomeServe nonelectric products and services identified herein;
- B. Issuance of an entry finding that reasonable grounds for complaint have been alleged, and establishing a procedural schedule;
- C. Issuance of a final order finding that the FirstEnergy EDUs are in violation of R.C. 4928.17, R.C. 4905.32, R.C. 4905.33 and R.C. 4905.35, and therefore subject to a civil complaint for treble damages under R.C. 4905.61;
- D. Issuance of necessary orders to modify or revoke the FirstEnergy EDUs' existing corporate separation plan;
- E. Issuance of necessary orders to impose a forfeiture and order restitution, in accordance with R.C. 4928.18(D); and
- F. All other necessary and proper relief.

Dated: April 25, 2018

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Counsel of Record

Christopher T. Kennedy (0075228)

Rebekah J. Glover (0088798)

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Attorneys for Complainant

(All counsel consent to service by e-mail)

INSTRUCTIONS FOR SERVICE

TO THE DOCKETING DIVISION:

Please serve the Complaint to:

Ohio Edison Co., Cleveland Electric Illuminating Co., and Toledo Edison Co.
c/o CT Corporation System
1300 East 9th Street
Cleveland, OH 44114

A courtesy copy is being emailed to the following:

cdunn@firstenergycorp.com

rendris@firstenergycorp.com

jeckert@firstenergycorp.com

MARK A. WHITT

Direct: 614.224.3911

whitt@whitt-sturtevant.com

January 4, 2018

Ebony Yeboah-Amankwah
Vice President, Corporate Secretary & Chief Ethics Officer
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

Re: Corporate Separation Complaint
FirstEnergy Ohio distribution utilities/Smartmart

Dear Ebony:

This law firm represents the Ohio chapter of the Retail Energy Supply Association (RESA). Please accept this letter as a request to investigate probable violations of the FirstEnergy Ohio electric distribution utilities' (EDUs) Corporate Separation Plan (those EDUs being Ohio Edison, Toledo Edison, and CEI). Please acknowledge receipt of this letter within five days, and provide the results of your investigation to me, in writing, within thirty days. The results of your investigation will inform RESA's decision of whether to attempt to resolve its concerns informally and privately among the parties, or formally and publicly before the Public Utilities Commission of Ohio.

Background

RESA members provide both "competitive retail electric services" and "nonelectric products and services" (as defined or referenced in R.C. Chapter 4928) throughout Ohio, including each FirstEnergy EDU's service territory.

RESA's concerns pertain to the recently-launched Smartmart e-commerce website. FirstEnergy issued a press release on October 5, 2017 announcing the October 9 launch of "Smartmart by FirstEnergy" (www.smart-mart.com). The press release describes general categories of product offerings, such as "smart home systems and new, energy-saving lighting technology," "professional electric services," and "home warranty and repair plans."

The Smartmart website describes these product offerings in greater detail. Specific product and service offerings include electric vehicle charger leasing, lighting and home audio integration, disaster protection insurance, landscape lighting, professional tree services, and appliance and plumbing repair services, among others. Products and services are also offered for businesses, including electric forklift sales, infrared curing and drying, and resistance and induction heating. LED municipal lighting is also promoted through the website. Various RESA

members currently offer the same or similar products and services, or plan to offer them in the near future.

Neither the press release nor the Smartmart website specifically disclose whether the products and services are provided by the “FirstEnergy” EDUs, one or more “FirstEnergy” non-utility affiliates, or some combination thereof. The “About Us” section of the website implies that the EDUs provide the products and services. The “disclaimer” at the bottom of each page of the website confirms that at least some of the products and services are “sold by FirstEnergy utility companies.” Additionally, both the press release and website indicate, “[w]ith some products and services, customers of a FirstEnergy utility company can make simple, straightforward payments on their electric bill.”

Applicable EDU tariff provisions

The EDUs’ tariffs (Electric Service Regulations, Section X, Paragraph C) authorize them to furnish certain “special customer services as identified in this section,” such as diagnosing power quality problems, maintaining and repairing customer-owned electric equipment, service line siting and relocation, and similar services generally related to the customer-EDU interconnection.

Most of the product and service offerings described in the Smartmart website are not described in the EDUs’ tariff. Indeed, the gist of the press release and subsequent marketing effort is that “FirstEnergy” is now offering products and services it has not traditionally offered.

Corporate Separation Plan

Under R.C. 4928.17(A), the FirstEnergy EDUs may not, either directly or through an affiliate, supply both a noncompetitive retail electric service and a competitive retail electric service, or other nonelectric product or service, unless authorized by an approved corporate separation plan. The EDUs’ Corporate Separation Plan was filed in Case No. 09-0462-EL-UNC, initially approved in Case No. 10-388-EL-SSO, and re-approved in Case No. 12-1230-EL-SSO. The Corporate Separation Plan confirms that the EDUs may only provide nonelectric products and services identified in their respective tariffs. (*See* Section VI, Consumer Products.)

Basis for Investigation

Ohio law requires each FirstEnergy EDU to obtain Commission approval for “*all* rates, joint rates, rentals, tolls, classifications, and charges for service of *every kind* furnished by it, and all rules and regulations affecting them.” R.C. 4905.30 (emphasis added). Most of the products and services promoted through Smartmart are not authorized by the EDUs’ tariffs. The nonelectric goods and services described in the EDUs’ tariffs do not encompass the sale of light

bulbs and lighting kits, home automation, line protection insurance, HVAC and plumbing repair, and other goods and services wholly unrelated to electrical services.

Having an approved Corporate Separation Plan does not permit the EDUs to directly or indirectly offer or sell any nonelectric products and services they wish. The EDUs must “implement[] and operate under” their Commission-approved plan. R.C. 4928.17(A). The approved Corporate Separation Plan limits the sale of nonelectric products and services to those identified in the EDUs’ tariff. By offering and selling nonelectric goods and services that are *not* identified in their tariff, the EDUs are not only violating the tariff, but the Corporate Separation Plan as well.

The EDUs cannot modify their tariff to include additional goods or services offered through Smartmart without first amending their Corporate Separation Plan. As stated in the current Plan, the EDUs “offer a limited number of products and services other than retail electric service pursuant to existing tariff provisions *and plan to continue offering the same types of products and services in the same manner.*” (Section VI, emphasis added.) The Smartmart goods and services are much different than those offered before the roll-out of this website, as FirstEnergy’s press release makes clear.

RESA’s concerns are not limited to products and services “sold by FirstEnergy utility companies.” Corporate separation restrictions apply to the sale of nonelectric products and services “either directly or through an affiliate.” R.C. 4928.17(A). Allowing payment for products and services on an EDU electric bill amounts to the indirect sale or offering of the product or service by the EDU, and is subject to corporate separation requirements as if the product or service were provided by the EDU directly.

Specific violations and scope of investigation

The FirstEnergy EDUs are directly marketing and selling nonelectric goods and services that they are not authorized to market or sell under existing tariffs. This is a violation of R.C. 4905.30 in its own right. If the EDUs are marketing and selling these unauthorized goods and services in conjunction with goods and services provided directly by non-utility affiliates, the EDUs are also violating R.C. 4928.17. Providing unauthorized goods and services “through an affiliate” rather than directly also violates R.C. 4928.17. These statutory violations are also violations of Section V (Joint Advertising/Marketing), Section VI (Consumer Products), Section X (Compliance Policy Statement), Section XI (Compliance Monitoring and Corrective Action), and Section XIII (Compliance with Commission Rules) of the Corporate Separation Plan.

The Smartmart initiative calls into question whether any aspect of FirstEnergy's Corporate Separation Plan is being implemented, monitored, or enforced. We ask that your investigation look into the adequacy of, and compliance with, the provisions of the Corporate Separation Plan addressing structural safeguards (Section II), separate accounting and financial arrangements (Sections III and IV), Code of Conduct (Section VII), compliance with Cost Allocation Manual (Section VIII), and Education and Training (Section IX) within the specific context of the design, development, and implementation of the Smartmart sales channel.

If any facts or information contained in this letter are in any way incomplete or inaccurate, please let me know. RESA looks forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark A. Whitt".

Subject: Letter Pertaining to Ohio Corporate Separation Plan
Date: Thursday, February 8, 2018 at 7:19:40 PM Eastern Standard Time
From: Yeboah, Ebony L
To: Mark Whitt

Mark,

As requested by your letter of January 4, 2018, a preliminary investigation was conducted by my designee, in accordance with the Public Utilities Commission of Ohio's corporate separation rules and the EDUs' corporate separation plan, to address whether the EDUs' offering of Smartmart products is consistent with EDU tariffs and the corporate separation plan.

The conclusions of the preliminary investigation were that: 1) the EDUs are permitted to offer certain products and services other than retail electric service under their corporate separation plan and existing tariff provisions, including the programs and services currently being offered by the EDUs in the Smartmart program; 2) that the probable violations alleged in RESA's January 4, 2018 letter appear to be unfounded; and 3) that the EDUs' offering of these programs and services are not in violation of RC 4928.17 or RC 4905.30.

Based on the above, I have concluded that no further action is necessary.

Ebony L. Yeboah-Amankwah
Vice President, Corporate Secretary & Chief Ethics Officer
FirstEnergy Service Company
[76 South Main Street](#)
[Akron, Ohio 44308](#)
(w) [330-384-5969](#)
(c) [330-819-7313](#)

From: Yeboah, Ebony L
Sent: Tuesday, January 16, 2018 1:10 PM
To: 'whitt@whitt-sturtevant.com' <whitt@whitt-sturtevant.com>
Subject: Letter Pertaining to Ohio Corporate Separation Plan

Mark,

On January 9, 2018 I received your attached letter requesting an investigation of as your letter states probable violations of our Ohio electric distribution utilities Corporate Separation Plan. I hereby acknowledge receipt of your letter. I have requested an investigation and will provide you in writing the results of such investigation on or before February 8, 2018.

Ebony L. Yeboah-Amankwah
Vice President, Corporate Secretary & Chief Ethics Officer
FirstEnergy Service Company
[76 South Main Street](#)
[Akron, Ohio 44308](#)
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in

Case No(s). 18-0736-EL-CSS

Summary: Text In the Matter of the Complaint against Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company for statutory and corporate separation violations electronically filed by Ms. Rebekah J. Glover on behalf of Retail Energy Supply Association