

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Carbo Forge, Inc., Wyandot, Inc., Plaskolite, Inc., American Trim, LLC, Whirlpool Corporation, McWane, Inc., Navistar, Inc., Sauder Woodworking Co., McDonald Steel Corporation, Henny Penny Corporation, Lima Refining Company, Campbell Soup Supply Company, LLC, Cooper Tire & Rubber Company, Mantaline Corporation, Republic Steel, Jay Industries, Inc., Sun Chemical Corporation, and 3M Company,)	
)	
Complainants,)	
)	
v.)	
)	
FirstEnergy Solutions Corp.,)	
)	
Respondent.)	
)	

Case No. 14-1610-EL-CSS

COMPLAINT AND REQUEST FOR RELIEF

Pursuant to Sections 4905.26 and 4928.16, Revised Code, and Rules 4901-9-01, 4901:1-21-02(B)(2), and 4901:1-24-12(A), Ohio Administrative Code (O.A.C.), Carbo Forge, Inc., Wyandot, Inc., Plaskolite, Inc., American Trim, LLC, Whirlpool Corporation, Clow Water Systems Company, Navistar, Inc., Sauder Woodworking Co., McDonald Steel Corporation, Henny Penny Corporation, Lima Refining Company, Campbell Soup Supply Company, LLC, Cooper Tire & Rubber Company, Mantaline Corporation, Republic Steel, Jay Industries, Inc., Sun Chemical Corporation, and 3M Company (collectively, Complainants) hereby file this complaint (Complaint) with the Public Utilities Commission of Ohio (Commission) asserting violations of, inter alia, Chapter 4928, Revised Code, and Chapters 4901:1-21 and 4901:1-24,

O.A.C., against FirstEnergy Solutions Corporation (FES or Respondent), and seek the relief set forth herein.

In support of their Complaint, the Complainants state as follows:

PARTIES

1. Carbo Forge, Inc. (Carbo Forge) is an Ohio corporation with facilities located at 150 State Route 523, Fremont, Ohio 43420.
2. Wyandot, Inc. (Wyandot) is an Ohio corporation with facilities located at 135 Wyandot Avenue, Marion, Ohio 43302.
3. Plaskolite, Inc. (Plaskolite) is an Ohio corporation with facilities located at 1770 Joyce Avenue and 1772 Joyce Avenue, Columbus, Ohio 43219, as well as 1175 5 BS Drive, Zanesville, Ohio 43701.
4. American Trim, LLC (American Trim) is an Ohio limited liability corporation with facilities located at 1501 Michigan Street, Sidney, Ohio 45365.
5. Whirlpool Corporation (Whirlpool) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 1300 Marion Agosta Road and 1650 Marion Agosta Road, Marion, Ohio 43302; 4901 North Main Street, Findlay, Ohio 45840; 1700 Kitchen-Aid Way, Greenville, Ohio 45331, and 1701 Kitchen-Aid Way, Greenville, Ohio 45331.
6. McWane, Inc. (Clow Water Systems Company) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 2266 S. 6th Street, Coshocton, Ohio 43812.

7. Navistar, Inc. (Navistar) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 5975 Urbana Road and 6125 Urbana Road, Springfield, Ohio 45502.

8. Sauder Woodworking Co. (Sauder) is an Ohio corporation with facilities located at 3101 County Road 22 Sub, Archbold, Ohio 43502.

9. McDonald Steel Corporation (McDonald Steel) is an Ohio corporation with facilities located at 100 Ohio Avenue, McDonald, Ohio 44437.

10. Henny Penny Corporation (Henny Penny) is an Ohio corporation with facilities located at 1000 U.S. Rt. 35 W, 1050 U.S. Rt. 35 W, and 1219 U.S. Rt. 35 W, Eaton, Ohio 45320, as well as 1165 Richmond Pike, Eaton Ohio 45320.

11. Lima Refining Company (Lima Refining) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 1150 Metcalf Street, Lima, Ohio 45804.

12. Campbell Soup Supply Company, LLC (Campbell Soup) is a limited liability corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 12-775 State Rt. 110, Napoleon, Ohio 43545.

13. Cooper Tire & Rubber Company (Cooper Tire) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 701 Lima Avenue, Findlay, Ohio 45840 and 800 Western Avenue, Findlay, Ohio 45840.

14. Mantaline Corporation (Mantaline) is an Ohio corporation with facilities located at 4754 East High Street, Mantua, Ohio 44255.

15. Republic Steel (Republic) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 3425 Georgetown Road NE, Canton, Ohio 44704; 2633 8th Street NE, Canton, Ohio 44704; 401 Rose SE Avenue, Massillon, Ohio 44646; 4135 Commerce Drive, Massillon, Ohio 44646; and 31000 Solon Road, Solon, Ohio 44139.

16. Jay Industries, Inc. (Jay Industries) is an Ohio corporation with facilities located at 501 Newman Street, Mansfield, Ohio 44902 and 1595 West Longview Avenue, Mansfield, Ohio 44906.

17. Sun Chemical Corporation (Sun Chemical) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 3922 Bach Buxton Rd., Amelia, Ohio 45102; 5366 Este Ave., Cincinnati, Ohio 45232; 11430 Rockfield Ct., Cincinnati, Ohio 45241; 1380 Ford Street, Maumee, Ohio 43537; 5020 Spring Grove Ave., Cincinnati, Ohio 45232; 11436 Rockfield Court, Cincinnati, Ohio 45241; 12049 Centron Place, Cincinnati, Ohio 45246; 4502 Chickering, Cincinnati, Ohio 45232; 600 Redna Terrace, Cincinnati, Ohio 45215; 10590 Chester Road, Cincinnati, Ohio 45215; 125 Industrial Dr., Franklin, Ohio 45005; 266 West Mitchell Avenue, Cincinnati, Ohio 45232; and 4526 Chickering, Cincinnati, Ohio 45232.

18. 3M Company (3M) is a corporation organized under the laws of the state of Delaware, duly authorized to conduct business in the state of Ohio, with facilities located at 1301 Lowell Street, Elyria, Ohio 44035 and 1030 Lake Road, Medina, Ohio 44256.

19. FES is an Ohio corporation located at 341 White Pond Drive, A-WAC-B2, Akron, Ohio 44320.

JURISDICTION

20. FES is engaged in the business of supplying electricity for light, heat, or power purposes to consumers in Ohio and, as such, is an electric light company under Section 4905.03, Revised Code.

21. As an electric light company under Sections 4905.03 and 4928.01(A)(7), Revised Code, FES is also a public utility as defined in Section 4905.02, Revised Code.

22. FES is a competitive retail electric service (CRES) provider in Ohio pursuant to Rule 4901:1-24-01(J), O.A.C.

23. FES is certified by the Commission as a CRES provider or supplier in Ohio pursuant to Certificate No. 00-011E(7), which was originally issued on November 3, 2000 in Case No. 00-1742-EL-CRS as Certificate No. 00-011(1), and which has been renewed biannually since its original issuance.

24. Under the terms of Certificate No. 00-011E(7), FES is authorized to provide “retail generation and power marketer services within the State of Ohio[.]”¹

25. As an authorized provider of retail generation and power marketing services within the state of Ohio, FES is an electric services company as defined in Section 4928.01(A)(9), Revised Code, and Rule 4901:1-24-01(M), O.A.C.

26. FES’ certification to provide generation and power marketer services is “governed by Section 4901:1-24-(01-13) of the Ohio Administrative Code, Section 4901:1-21-(01-15) of the Ohio Administrative Code, and Section 4928.08 of the Ohio Revised Code.”²

¹ See Certificate 00-011E(7), issued November 6, 2012, pursuant to *In the Matter of the Application of FirstEnergy Solutions Corp. for Certification/Renewal as a Certified Retail Electric Service Provider*, Case No. 00-1742-EL-CRS.

² Id.

27. Pursuant to Section 4928.08(D), Revised Code, the Commission may suspend, rescind, or conditionally rescind the certification of any electric services company if the Commission determines, after reasonable notice and opportunity for hearing, that the company has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in this state.

28. Section 4928.16(A)(1), Revised Code, specifies that, pursuant to Section 4905.26, Revised Code, the Commission has jurisdiction over a complaint regarding the provision of any service by an electric service company for which it is subject to certification under Section 4928.08, Revised Code.

29. Section 4928.16(A)(2), Revised Code, states that the Commission also has jurisdiction pursuant to Section 4905.26, Revised Code, over a complaint to determine whether an electric services company subject to certification under Section 4928.08, Revised Code, has violated or failed to comply with any provision of Sections 4928.01 through 4928.10, Revised Code, regarding a competitive retail electric service, or any rule or order adopted or issued under those Sections.

30. The regulations in Chapter 4901:1-21, O.A.C., governing Competitive Retail Electric Service (CRES) Providers, and Chapter 4901:1-24, O.A.C., governing the Certification of CRES Providers, are statutorily authorized by numerous provisions in Chapter 4928, Revised Code.

31. Rule 4901:1-21-02(E), O.A.C., specifically grants the Commission jurisdiction over the provisions, terms, and conditions of CRES providers' contracts and other documents describing service offerings for customers or potential customers in Ohio.

32. Allegations of violations of Chapter 4928, Revised Code, and, by extension, Chapters 4901:1-21 and 4901:1-24, O.A.C., are subject to “supervision and regulation” by the Commission pursuant to Section 4928.05(A), Revised Code.

33. Section 4905.06, Revised Code, further grants the Commission general supervision authority over FES as a public utility.

34. Paragraph 18 of the Complainants’ Customer Supply Agreement with FES states the following: [REDACTED]

[REDACTED]

[REDACTED] Filing a complaint with the Commission pursuant to Section 4905.26, Revised Code, and Rule 4901-9-01, O.A.C, is such an available remedy.

35. The Commission has jurisdiction over the allegations contained in the various counts of the Complaint pursuant to Sections 4905.06 and 4905.26, Revised Code, the provisions of Chapter 4928, Revised Code, Rule 4901-9-1, O.A.C., and the regulations contained in Chapters 4901:1-21 and 4901:1-24, O.A.C.

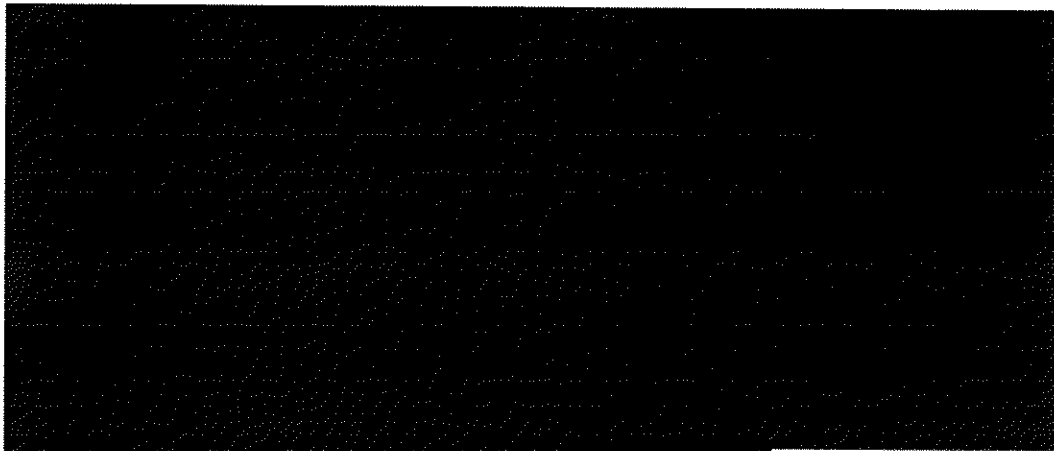
GENERAL ALLEGATIONS

36. The allegations contained in paragraphs 1 through 35 of this Complaint are re-alleged and incorporated as if fully set forth herein.

37. Each of the Complainants is a party to a contract for generation supply and service with FES, which was drafted by FES. Exhibit A, attached hereto, provides the date of each Complainant’s effective Fixed Price Pricing Attachment with FES, as well as the original effective date of its Customer Supply Agreement with FES. Each Complainant’s Fixed Price

Pricing Attachment(s) and Customer Supply Agreement(s) with FES is appended hereto as Exhibit B (confidential).

38. Paragraph 6 of the Complainants' Customer Supply Agreements with FES, covering Supplier Electricity Supply Obligations, provides, in pertinent part, the following:



(emphasis added).

39. Pursuant to the language of Paragraph 6 of the Customer Supply Agreements, FES is responsible for the costs of ancillary services, as they are costs associated with the delivery of the electricity to the pertinent Delivery Point.

40. Paragraph 8 of the Complainants' Customer Supply Agreements with FES, covering Customer Obligations, states the following:



(emphasis added).

41. As alleged in paragraphs 38 and 39 of this Complaint, under the language of Paragraph 6 of the Complainants' Customer Supply Agreements, FES is responsible for the costs and charges of ancillary services. Because the costs of ancillary services are covered in Paragraph 6, Complainants are not responsible for ancillary services costs or expenses under Paragraph 8 of the Complainants' Customer Supply Agreements.

42. “Ancillary service” is defined in Section 4928.01(A)(1), Revised Code, as “any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.”

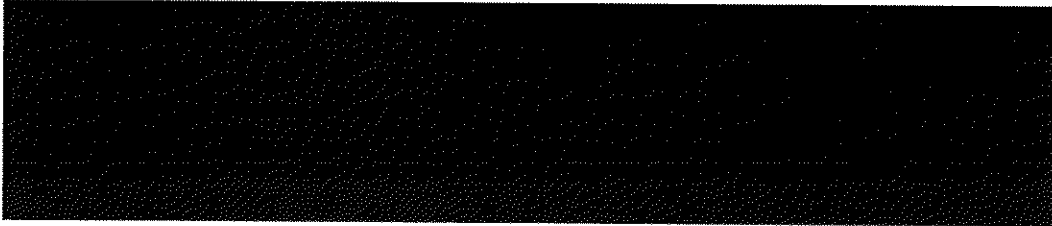
43. PJM Interconnection, L.L.C. (PJM) defines ancillary services as “[t]hose services that are necessary to support the transmission of Capacity and energy from resources to loads, while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.”³

44. PJM explains that ancillary services support the reliable operation of the transmission system as it moves electricity from generating sources to retail customers, and that it currently operates two markets for ancillary services: regulation and synchronized reserve markets. PJM provides details of its ancillary services and associated markets: Regulation service corrects for short-term changes in electricity use that might affect the stability of the power system. It helps match generation and load and adjusts generation output to maintain the desired frequency. Synchronized reserve service supplies electricity if the grid has an unexpected need for more power on short notice. The power output of generating units supplying synchronized reserve can be increased quickly to supply the needed energy to balance supply and demand. Load-serving entities can meet their obligations to provide regulation or

³See PJM's Glossary of Terms available at <http://www.pjm.com/Home/Glossary.aspx>.


synchronized reserve to the grid by using their own generation, by purchasing the required regulation or synchronized reserve under contract with another party or by buying them in the Regulation or Synchronized Reserve markets.⁴

45. Paragraph 31 of Complainants' Customer Supply Agreement with FES states, in pertinent part, the following:

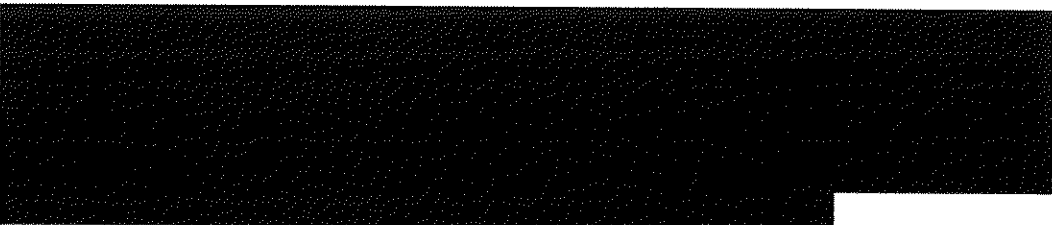
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(emphasis added).

46. Paragraph 32 of Complainants' Customer Supply Agreement with FES states, in pertinent part, the following:

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47. With regard to disputes of invoiced amounts, the Customer Supply Agreement provides the following in Paragraph 18:

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48. The companion to the Customer Supply Agreement, the Fixed Price Pricing Attachment (which, when taken together, are referred to herein as each Complainant's Contract),

⁴ See PJM Markets Fact Sheet, Ancillary Services Section (June 18, 2014) available at <http://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/pjms-markets-fact-sheet.ashx>.

must be read in conjunction with the Customer Supply Agreement in order to understand a customer's price of service under the Contract.

49. The penultimate paragraph of Complainants' Fixed Price Pricing Attachment states as follows:

[REDACTED]

50. Further, the language of the first paragraph of Complainants' Fixed Price Pricing Attachment expressly incorporates the Fixed Price Pricing Attachment into the Customer Supply Agreement.

51. At various points in March 2014, Complainants received a form notice from FES (attached hereto as Exhibit C) stating that "January 2014 was an extremely cold month" and stating further, in pertinent part, the following:

During these periods of time [in January 2014], PJM incurred extremely high ancillary costs to purchase additional reserve generation needed to keep the bulk electric system reliable throughout these extreme conditions. These costs and additional charges were, in turn invoiced by PJM to all suppliers serving customers throughout the region.

Pursuant to your agreement with FirstEnergy Solutions, these additional costs and charges are deemed a "Pass-Through Event." As a result the electric generation costs for the month of January for your accounts served by FirstEnergy Solutions will be adjusted through a charge which will appear as a separate line item on your bill but will not change your contract price. We anticipate the amount of the charge to be approximately 1-3 percent of your annual electric generation expenditure.

52. Upon receipt of the form notice explained in paragraph 51 of this Complaint, a number of the Complainants delivered correspondence to FES disputing its noticed intent to assess a charge, identified by FES as an "RTO Expense Surcharge," and the alleged Pass-Through Event. An example of such correspondence is attached hereto as Exhibit D.

53. FES replied to a number of Complainants' correspondence disputing the RTO Expense Surcharge at various points in April and May 2014 contending, among other things, that Complainants' attempts to dispute the RTO Expense Surcharge were premature. FES also questioned whether the dispute had been made in good faith.

54. At various points in June and July 2014, FES assessed Complainants the RTO Expense Surcharge in their bills in connection with the occurrence of the alleged Pass-Through Event in January 2014. Complainants' invoices containing the RTO Expense Surcharge are attached hereto as Exhibit E (confidential).

55. Neither Complainants' consolidated bills issued by their respective electric distribution utilities, nor other Complainants' direct bills from FES demonstrated, in any way, the manner in which FES calculated the RTO Expense Surcharges it imposed upon customers.

56. Soon after receiving their bills in which FES invoiced the aforementioned RTO Expense Surcharges or caused the RTO Expense Surcharges to be invoiced by Complainants' respective electric distribution utilities, the Complainants delivered correspondence to FES disputing its assessment of the RTO Expense Surcharge. An example of such correspondence is attached hereto as Exhibit F.

57. On July 24, 2014 and dates thereafter, a number of Complainants received a response from FES which indicated, inter alia, that despite Complainants' dispute of FES' assessment of the RTO Expense Surcharge, "FES intends to take all appropriate action to collect from [Complainant] the full amount of the RTO Expense Surcharge." An example of FES' correspondence is attached hereto as Exhibit G.

58. Upon information and belief, PJM did not impose any new or additional charges on FES or other CRES providers, assess an RTO Expense Surcharge on FES or other suppliers,

or separately invoice FES or other CRES providers for the amounts charged to FES' customers via the RTO Expense Surcharge.

59. Upon information and belief, no other CRES providers have assessed an RTO Expense Surcharge on Ohio consumers, or alleged the occurrence of a pass-through event in January 2014.

60. Pursuant to Paragraph 18 of the Customer Supply Agreement and the Commission's rules, Complainants have paid the undisputed portions of their bills and, through counsel, have attempted to resolve their dispute with FES.

61. Having previously disputed, in good faith, FES' attempt to characterize certain events in January 2014 as "Pass-Through Events" and thereby pass increased ancillary services costs on to customers, Complainants now file this Complaint with the Commission, asserting the following violations of Ohio law and Commission regulations resulting from FES' assessment of an RTO Expense Surcharge in customers' bills.

COUNT I

62. The allegations contained in paragraphs 1 through 61 of this Complaint are re-alleged and incorporated as if fully set forth herein.

63. Each and every one of Complainants' Contracts with FES was marketed, labeled, and otherwise held out by FES as a "fixed-price" contract.

64. Pursuant to Section 4928.02(A), Revised Code, it is the policy of the state to ensure the availability to consumers of reasonably priced retail electric service.

65. Pursuant to Section 4928.02(I), Revised Code, it is the policy of the state to protect consumers against unreasonable sales practices.

66. Pursuant to Rule 4901:1-21-03(A)(1) through (3), O.A.C, FES is prohibited from engaging in unfair, misleading, deceptive, or unconscionable acts or practices related to the marketing, solicitation, or sale of a CRES, the administration of contracts for CRES, and the provision of CRES, including interactions with customers.

67. Pursuant to Rule 4901:1-21-11(A), O.A.C., FES is prohibited from engaging in unfair, deceptive, misleading and unconscionable acts and practices in its administration of CRES contracts.

68. FES' attempt to pass through to customers increased costs for ancillary charges, which are specifically included in the pricing structure of Complainants' Contracts, amounts to engaging in unfair, misleading, deceptive, or unconscionable acts or practices in violation of Sections 4928.10 and 4928.02(I), Revised Code, and Rules 4901:1-21-03(A)(1) through (3) and 4901:1-21-11(A), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code.

COUNT II

69. The allegations contained in paragraphs 1 through 68 of this Complaint are re-alleged and incorporated as if fully set forth herein.

70. As described in paragraph 51 of this Complaint, FES indicated in its March 2014 correspondence to Complainants that the RTO Expense Surcharge "will not change your contract price."

71. As evidenced in Paragraph 6 of the Complainants' Customer Supply Agreements with FES, and as set forth in paragraphs 38 through 44 of this Complaint, the contract price each Complainant secured with FES included ancillary services charges.

72. FES' assessment of the RTO Expense Surcharge on Complainants for increased costs of ancillary services, which are included in each Complainant's contract price, constitutes an unfair, misleading, deceptive or unconscionable practice in violation of Sections 4928.10 and 4928.02(I), Revised Code, and Rules 4901:1-21-03(A)(1) through (3) and 4901:1-21-11(A), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code.

COUNT III

73. The allegations contained in paragraphs 1 through 72 of this Complaint are re-alleged and incorporated as if fully set forth herein.

74. Pursuant to Section 4928.02(B), Revised Code, it is the policy of the state to "ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."

75. Rule 4901:1-21-12(A)(7)(a), O.A.C., provides, in pertinent part, that all CRES provider customer contracts shall include an "itemized list and explanation of all prices and fees associated with the service[.]" and "[f]or fixed rate offers, such information shall, at a minimum, include . . . the amount of any other recurring or nonrecurring CRES provider charges[.]"

76. To the extent that the RTO Expense Surcharge assessed by FES upon Complainants may be determined to be a "recurring or nonrecurring" CRES provider charge under Rule 4901:1-21-12(A)(7)(a), O.A.C., FES' failure to include the amount associated with such charge in Complainants' Contracts is unfair, misleading, deceptive or unconscionable in violation of Sections 4928.10, 4928.02(B), and 4928.02(I), Revised Code, Rules 4901:1-21-02(E), 4901:1-21-03(A)(1) through (3), 4901:1-21-11(A), and Rule 4901:1-21-12(A)(7)(a), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code.

COUNT IV

77. The allegations contained in paragraphs 1 through 76 of this Complaint are re-alleged and incorporated as if fully set forth herein.

78. As explained in paragraph 51 of this Complaint and stated by FES in correspondence to Complainants, the charges FES has attempted to pass through to customers are associated with ancillary services costs and resulted from “the extremely high ancillary costs” incurred by PJM to purchase additional reserve generation during January 2014.

79. As previously asserted in paragraphs 38 through 44 of this Complaint, Paragraph 6 of the Complainants’ Customer Supply Agreements states that FES is responsible for costs associated with all ancillary services under Complainants’ Contracts, regardless of the level or amount of the costs.

80. As recognized by FES in its letters dated July 31, 2014 and thereafter, the RTO Expense Surcharge consists of costs associated with ancillary services as defined by Section 4928.01(A)(1), Revised Code, and by PJM: “In fact, the RTO Expense Surcharge includes Operating Reserves, Regulation Service and Day-Ahead Scheduling Reserves, as well as Synchronized Reserve Service.”⁵ Upon information and belief, FES knew or should have known at the time of drafting Complainants’ Contracts that the costs of ancillary services are variable in nature, reconciled by PJM.

81. Nevertheless, FES agreed, in Paragraph 6 of Complainants’ Contracts, that it would be responsible for all ancillary services costs or charges under the Contracts.

82. Because variability is inherent in ancillary services charges, and FES was or should have been aware of the variable nature of ancillary services costs, it may not reasonably claim that the charges imposed on it by PJM for extremely high ancillary costs were “new or

⁵ See Exhibit G.

additional” costs that would permit FES to pass these costs on to Complainants under Paragraphs 31 and 32 of Complainants’ Customer Supply Agreements.

83. FES’ claim that PJM’s charges for high ancillary costs constituted a “Pass-Through Event” under Paragraphs 31 and 32 of Complainants’ Customer Supply Agreements is unreasonable, as the charges at issue were not “new or additional” under the terms of the Contracts or otherwise.

84. FES’ assessment of the RTO Expense Surcharge as a “new or additional” charge constituting a Pass-Through Event is an unfair, misleading, deceptive, and/or unconscionable practice in violation of Sections 4928.10, 4928.02(B), and 4928.02(I), Revised Code, Rules 4901:1-21-03(A)(1) through (3), 4901:1-21-05(C), 4901:1-21-11(A), and Rule 4901:1-21-12(A)(7)(a), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code.

COUNT V

85. The allegations contained in paragraphs 1 through 84 of this Complaint are re-alleged and incorporated as if fully set forth herein.

86. As stated in paragraph 54 of this Complaint, on various dates in June and July 2014, FES invoiced Complainants an RTO Expense Surcharge in bills issued directly by FES, or in Complainants’ consolidated bills received from their respective electric distribution utilities.

87. Neither the Complainants’ bills issued directly by FES nor the Complainants’ consolidated bills issued by their respective EDUs included any formula, calculation, or other basis or metric for the RTO Expense Surcharge that appeared in Complainants’ bills.

88. Rule 4901:1-21-14(C)(2), O.A.C., which applies to CRES bills that do not include any electric distribution utility charges, provides that CRES bills must include, inter alia, the

“dates of service covered by the bill, an itemization of each type of competitive service covered by the bill, any related billing components, the charge for each type of service, and any other information the customer would need to recalculate the bill for accuracy.”

89. Rule 4901:1-21-18(E)(2), O.A.C., which applies to consolidated electric bills, provides that the portion of the bill which details the charges from the CRES provider must include, inter alia, “[t]o the extent applicable, itemization for each charge including: for fixed price offers, the unit price per kWh for competitive service; for all other offers for electric generation service, an explanation of how the rate is derived; and any other information the customer would need to recalculate the bill for accuracy.”

90. Without the presence of any formula, calculation, or other metric in Complainants’ FES bills or consolidated bills supporting the invoiced RTO Expense Surcharge amount, Complainants do not have the requisite information necessary to “recalculate their bills for accuracy” pursuant to Rules 4901:1-21-14(C)(2) or 4901:1-21-18(E)(2), O.A.C.

91. FES’ failure to include any basis, calculation, or other foundation for the amounts invoiced to Complainants as an “RTO Expense Surcharge” violates the Commission’s requirements for customer billing and payments and consolidated billing under Rules 4901:1-21-14(C)(2) and 4901:1-21-18(E)(2), O.A.C., respectively, violates state policy, and is unjust and unreasonable under Section 4905.26, Revised Code.

COUNT VI

92. The allegations contained in paragraphs 1 through 91 of this Complaint are re-alleged and incorporated as if fully set forth herein.

93. Pursuant to Rule 4901:1-24-05(D), O.A.C., FES agreed to comply with all applicable Commission rules or orders adopted pursuant to Chapter 4928, Revised Code.

94. Upon such finding that FES has violated the Commission's rules adopted pursuant to Chapter 4928, Revised Code, and that FES has failed to comply with state laws or rules designed to protect consumers in this state as set forth in Counts I through V above, the Commission may suspend, rescind or conditionally rescind FES' CRES certification pursuant to Rule 4901:1-24-12, O.A.C.

COUNT VII

95. The allegations contained in paragraphs 1 through 94 of this Complaint are re-alleged and incorporated as if fully set forth herein.

96. Pursuant to Rule 4901:1-24-13, O.A.C., any CRES provider that fails to comply with any rule in Chapter 4901:1-24, O.A.C., or with Section 4928.01 through 4928.10, Revised Code, or any Commission order issued thereunder, may be subject to remedies including forfeitures to the state of not more than \$10,000 for each failure to comply with the Sections or Rules at issue, with each day's continuance of the violation constituting a separate offense; rescission of a customer contract; and/or restitution or damages to the customer.

97. Pursuant to Rule 4901:1-21-02(E), O.A.C., the Commission's rules in Chapter 4901:1-21, O.A.C., "supersede any inconsistent provisions, terms, and conditions of each CRES provider's contracts or other documents describing service offerings for customers or potential customers in Ohio."

98. Pursuant to Rule 4901:1-21-15, O.A.C, any CRES provider that fails to comply with Chapter 4928, Revised Code, any Rule in Chapter 4901:1-21, O.A.C., or any Commission order adopted thereunder, may, after an opportunity for hearing, be subject to forfeitures to the state of not more than \$10,000 for each failure to comply with the Sections or Rules at issue, with each day's continuance of the violation constituting a separate offense; suspension,

rescission, conditional rescission, or revocation of the CRES provider's certificate or denial of a request for renewal of a certificate; rescission of a customer contract; and/or restitution or damages to the customer.

99. Given the numerous and substantial violations of Chapter 4928, Revised Code, and Chapters 4901:1-21 and 4901:1-24, O.A.C., committed by FES, as alleged herein, the Commission should enforce the provisions contained in Rules 4901:1-21-15 and 4901:1-24-13, O.A.C., as a method by which it may ensure retail electric consumers protection against unreasonable sales practices as enumerated in the state policy set forth in Section 4928.02(I), Revised Code.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated herein, Complainants respectfully request that the Commission grant the following relief:

1. Find that Complainants have set forth reasonable grounds for their Complaint pursuant to Sections 4905.26 and 4928.16, Revised Code;
2. Pursuant to the Customer Supply Agreement and the Commission's rules, find that a bona fide dispute exists, pursuant to Paragraph 18 of Complainants' Contracts and the Commission's rules, and therefore, the disputed portions of the Complainants' bills are not subject to late fees or charges and/or default or termination provisions of the Customer Supply Agreement.
3. Find that FES is responsible for the increased cost of ancillary services that occurred during January 2014;

4. Find that FES' attempt to pass through increased ancillary services costs to Complainants, who were or continue to be parties to fixed-price Contracts with FES, constitutes an unfair, misleading, deceptive, or unconscionable act or practice in violation of Sections 4928.10, and 4928.02(I), Revised Code, and Rules 4901:1-21-03(A)(1) through (3) and 4901:1-21-11(A), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code;

5. Find that, to the extent the RTO Expense Surcharge may be determined to be a "recurring or nonrecurring" CRES provider charge under Rule 4901:1-21-12(A)(7)(a), O.A.C., FES' failure to include the amount associated with such charge in Complainants' Contracts is unfair, misleading, deceptive or unconscionable in violation of Sections 4928.10 and 4928.02(I), Revised Code, Rules 4901:1-21-03(A)(1) through (3), 4901:1-21-11(A), and Rule 4901:1-21-12(A)(7)(a), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code;

6. Find that FES' assessment of the RTO Expense Surcharge as a "new or additional" charge constituting a Pass-Through Event is an unfair, misleading, deceptive, and/or unconscionable practice in violation of Sections 4928.10, 4928.02(B), and 4928.02(I), Revised Code, Rules 4901:1-21-03(A)(1) through (3), 4901:1-21-05(C), 4901:1-21-11(A), and Rule 4901:1-21-12(A)(7)(a), O.A.C., and is unjust and unreasonable under Sections 4905.26 and 4928.02(A), Revised Code;

7. Find that FES' failure to include any basis, calculation, or other foundation for the amounts invoiced to Complainants as an "RTO Expense Surcharge" violates the Commission's requirements for customer billing and payments and consolidated billing under Rules 4901:1-21-14(C)(2) and 4901:1-21-18(E)(2), O.A.C., respectively, violates state policy, as set forth in

Section 4928.02, Revised Code, and is unjust and unreasonable under Section 4905.26, Revised Code;

8. Find that, pursuant to Rule 4901:1-21-02(E), O.A.C., FES' interpretation and application of certain provisions contained in its fixed-price Contract are inconsistent with the Commission's rules;

9. Construe any ambiguities in the Contracts against FES, the drafter of the contracts;

10. Find that FES has violated the Commission's rules and Ohio law, which should be remedied pursuant to Chapters 4901:1-21 and 4901:1-24, O.A.C.;

11. Find, pursuant to Section 4928.16(A)(2), Revised Code, that FES has violated or failed to comply with several provisions of Sections 4928.01 to 4928.10, Revised Code;

12. Order FES to discontinue its unfair, misleading, deceptive, and unconscionable practices which violate the state policy of ensuring retail electric service consumers protection against unreasonable sales practices advanced in Section 4928.02(I), Revised Code;

13. Order FES to cease collection of any amounts from Complainants associated with the unlawful RTO Expense Surcharge pursuant to Section 4928.16(B), Revised Code, and Rule 4901:1-24-13, O.A.C.;

14. Order FES to refund, with interest, any amounts previously collected from Complainants for the unlawful RTO Expense Surcharge, in connection with the requirements of Section 4928.16(B), Revised Code, and Rules 4901:1-21-15 and 4901:1-24-13, O.A.C.;

15. Enforce the provisions contained in Rules 4901:1-21-15 and 4901:1-24-13, O.A.C., as a method by which it may ensure retail electric consumers protection against

unreasonable sales practices, in connection with the state policy enumerated in Section 4928.02(I), Revised Code;

16. Grant Complainants' Motion for Assistance to Prevent Termination of Service pursuant to Rule 4901-1-9, O.A.C., which is filed contemporaneously in the above-captioned docket with this Complaint;

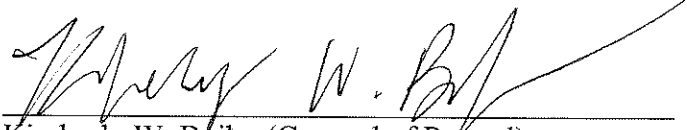
17. Assess the maximum civil forfeitures permitted by law;

18. Award Complainants attorneys' fees as statutorily authorized by Sections 4928.16 and 4905.54, Revised Code, in connection with restitution and/or damages to the customer pursuant to Rules 4901:1-21-15(A)(4) and 4901:1-24-13(C), O.A.C., and Complainants' Contracts;

19. Order any other remedy permitted by Section 4928.16, Revised Code, and/or Chapters 4901:1-21 and 4901:1-24, O.A.C., and Complainants' Contracts; and

20. Order any other relief that the Commission deems appropriate, just, and reasonable.

Respectfully submitted,



Kimberly W. Bojko (Counsel of Record)

Jonathan A. Allison

Rebecca L. Hussey

Carpenter Lipps & Leland LLP

280 North High Street

Suite 1300

Columbus, Ohio 43215

Telephone: 614-365-4100

Fax: 614-365-9145

Bojko@CarpenterLipps.com

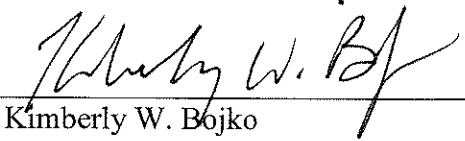
Allison@CarpenterLipps.com

Hussey@CarpenterLipps.com

Counsel for Complainants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 12th day of September, 2014 by electronic mail upon the persons listed below.


Kimberly W. Bojko

Mark A. Hayden
Jacob A McDermott
Christine M. Weber
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com
jmcdermott@firstenergycorp.com
cweber@firstenergycorp.com

James F. Lang
N. Trevor Alexander
Calfee, Halter & Griswold LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
jlang@calfee.com
talexander@calfee.com

1625-004.408926v3

EXHIBIT A

**Dates of FES Customer Supply Agreement(s) and
Effective Fixed Price Pricing Attachment(s) – All Complainants**

EXHIBIT A

**Dates of FES Customer Supply Agreement(s) and
Effective Fixed Price Pricing Attachment(s)**

Customer/Complainant	Date of Customer Supply Agreement(s)	Date of Fixed Price Pricing Attachment(s)
Carbo Forge, Inc.	September 16, 2009	October 4, 2010
Wyandot, Inc.	June 2, 2009	February 1, 2012
Plaskolite, Inc	August 23, 2010	Two, both dated August 23, 2010
American Trim, LLC	June 8, 2011	September 30, 2013
Whirlpool Corporation	September 10, 2009; September 29, 2011	October 5, 2010; December 5, 2011; November 7, 2012; March 12, 2013
Clow Water Systems Company/McWane, Inc.	November 21, 2012; June 19, 2013	November 21, 2012; June 19, 2013
Navistar, Inc.	April 24, 2013	April 24, 2013
Sauder Woodworking Co.	April 13, 2011	April 13, 2011
McDonald Steel Corporation	September 10, 2009	October 21, 2011
Henny Penny Corporation	December 16, 2011	December 16, 2011; February 21, 2012
Lima Refining Company	February 26, 2013	February 26, 2013
Campbell Soup Supply Company, LLC	June 2, 2009	November 5, 2010
Cooper Tire & Rubber Company	June 21, 2012	June 21, 2012
Manteline Corporation	October 9, 2009	October 9, 2009
Republic Steel	October 1, 2012; June 27, 2013	August 23, 2013, and Amendment No. 1 thereto, dated October 10, 2013; January 21, 2013; June 27, 2013
Jay Industries, Inc.	July 13, 2009	November 7, 2011
Sun Chemical Corporation	November 8, 2011	March 1, 2013; March 15, 2013
3M Company	June 30, 2010	(not attached)

EXHIBIT B (Confidential)

**FES Customer Supply Agreement(s) and
Effective Fixed Price Pricing Attachment(s) – All Complainants**

The FES Customer Supply Agreements and Effective Fixed Price Pricing Attachments for each Complainant have been filed under seal in this docket.

EXHIBIT C

**Sample of March 2014 Correspondence from FES to Complainants
(Notifying Complainants of the FES' Upcoming Assessment of the
RTO Expense Surcharge)**



Roy Warnock
Lima Refining Company
1150 S Metcalf St
Lima, OH 45804-1145

Re: RTO Expense Surcharge

Dear Roy Warnock:

Thank you for selecting FirstEnergy Solutions as your electric generation supplier. As you know, January was an extremely cold month with temperatures reaching record lows, which resulted in a significant increase in energy consumption. In fact, PJM Interconnection – the regional transmission organization that coordinates reliability and the movement of wholesale electricity in our region – initiated emergency operations throughout the month of January.

During these periods of time, PJM incurred extremely high ancillary costs to purchase additional reserve generation needed to keep the bulk electric system reliable throughout these extreme conditions. These costs and additional charges were, in turn, invoiced by PJM to all suppliers serving customers throughout the region.

Pursuant to your agreement with FirstEnergy Solutions, these additional costs and charges are deemed a "Pass-Through Event." As a result, the electric generation costs for the month of January for your accounts served by FirstEnergy Solutions will be adjusted through a charge which will appear as a separate line item on your bill but will not change your contract price. We anticipate the amount of the charge to be approximately 1-3 percent of your annual electric generation expenditure. If your electric generation supply charges are billed by your electric utility, the charge will be reflected in bills rendered after June 1, 2014. If your electric generation supply charges are billed directly by FirstEnergy Solutions, the charge will be reflected in bills rendered after April 15, 2014. The charge appearing in your bill will be based upon your actual usage for the month of January.

This letter does not require you to take any action. This is simply a notification of this Pass-Through Event and that the additional costs and charges will be reflected in future electric bills.

If you have any questions or concerns regarding your charges or this notice, please feel free to visit our website at www.fes.com/RTOexpenseCI. Thank you once again for selecting FirstEnergy Solutions. We appreciate your business and look forward to being your electric generation supplier in the years ahead.

Sincerely,

FirstEnergy Solutions Customer Care

EXHIBIT D

**Sample Initial Correspondence from Counsel for Complainants to
Counsel for FES Disputing the Assessment of the RTO Expense Surcharge**

CARPENTER LIPPS & LELAND LLP

TELEPHONE: (614) 365-4100

180 NORTH LASALLE
SUITE 2640
CHICAGO, ILLINOIS 60601
TELEPHONE (312) 777-4300

1025 CONNECTICUT AVENUE N.W.
SUITE 1000
WASHINGTON, DC 20036-5417
TELEPHONE (202) 365-2808

ATTORNEYS AT LAW

280 PLAZA, SUITE 1300
280 NORTH HIGH STREET
COLUMBUS, OHIO 43215

WWW.CARPENTERLIPPS.COM

WRITER'S DIRECT NUMBER:

(614) 365-4124
BOJKO@CARPENTERLIPPS.COM

April 24, 2014

Via U.S. Mail and Electronic Transmission

FirstEnergy Solutions Customer Care
FirstEnergy Solutions Corp.
341 White Pond Drive, Building B3
Akron, OH 44320
firstchoice@fes.com

Re: Alleged Pass-Through Event and "RTO Expense Surcharge"

To Whom it May Concern:

Campbell Soup Supply Co., LLC (Campbell) is in receipt of your undated notice regarding FirstEnergy Solutions' (FES) supplier contract and alleged Pass-Through Event. Upon review of the applicable provisions of Campbell's agreement with FES, Campbell does not believe that an increase in ancillary services, which represent a variable component embedded in FES' fixed priced contract with its facilities, qualifies as a Pass-Through Event as defined in FES' Customer Supply Agreement.¹ Accordingly, Campbell hereby disputes the assessment of any "RTO Expense Surcharge" to Campbell or the inclusion of any such line item charge on Campbell's electric generation bills, to be assessed in addition to Campbell's fixed contract price.

Campbell's Contract is a fixed price contract for the purchase of Full Requirements Service from FES for all services listed in the Contract, including ancillary services. Ancillary services are variable costs that are reconciled and billed monthly by PJM Interconnection (PJM) to suppliers. Ancillary services represent a variable component that is embedded in the fixed price and, regardless of the reconciliation completed by PJM, FES is required to bill the customer for its usage at the contracted-for fixed monthly rate. Just as FES does not decrease a customer's fixed rate (or provide a credit) if such reconciled charge for ancillary services is lower one month than previous months (or the average of previous months), FES cannot increase a customer's fixed price contract if one of the underlying components of the fixed rate increases.

¹ Campbell and FES' contract encompasses the Fixed Price Blend and Extend Amendment No. 1, dated November 5, 2010, which amends and expressly incorporates by reference FES' Customer Supply Agreement dated June 2, 2009 (collectively, "Contract").

April 24, 2014
Page 2

CARPENTER LIPPS & LELAND LLP

Paragraphs 31 and 32 of the applicable Supply Agreement do not permit FES to pass through increases to variable components of the underlying fixed price because a mere increase in an existing variable component does not constitute a "new or additional charge or requirement." These paragraphs do not envision ancillary services as additional costs that would fall under the provisions of the Contract and be passed on to customers. Higher than normal costs associated with "extremely high ancillary costs to purchase additional reserve generation" to support the transmission system are not new or additional charges. The costs assessed and reconciliation conducted by PJM after a colder than average month are the same costs, albeit higher, which are reconciled utilizing the same PJM method and passed onto suppliers by PJM in the normal course of business.

Pursuant to Campbell's Contract, Campbell is hereby notifying FES that it disputes FES' interpretation of the terms and conditions of the parties' governing Contract, as well as FES' intended assessment of a surcharge for the alleged Pass-Through Event.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly W. Bojko", with a stylized flourish at the end.

Kimberly W. Bojko
Attorney for Campbell Soup Supply Co., LLC

CC: Samuel R. Wolfe via electronic transmission (srwolfe@firstenergycorp.com)

EXHIBIT E (Confidential)

Invoices from FES and Ohio EDUs assessing Complainants the RTO Expense Surcharge – All Complainants

The FES and Ohio EDU invoices assessing Complainants the RTO Expense Surcharge have been filed under seal in this docket.

EXHIBIT F

**Sample Correspondence from Counsel for Complainants to
Counsel for FES Disputing the Invoiced RTO Expense Surcharge**

PUBLIC VERSION

CARPENTER LIPPS & LELAND LLP

TELEPHONE: (814) 365-4100

180 NORTH LASALLE
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CHICAGO, ILLINOIS 60601
TELEPHONE (312) 777-4300

1025 CONNECTICUT AVENUE N.W.
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WASHINGTON, DC 20036-5417
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ATTORNEYS AT LAW

280 PLAZA, SUITE 1300
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COLUMBUS, OHIO 43215

WWW.CARPENTERLIPPS.COM

WRITER'S DIRECT NUMBER:
(614) 365-4124
BOJ/KO-CARPENTERLIPPS.COM

July 17, 2014

VIA U.S. MAIL AND/OR ELECTRONIC TRANSMISSION

James F. Lang
Calfec Halter & Griswold LLP
The Calfec Building
1405 East Sixth Street
Cleveland, OH 44114
jlang@calfec.com

Re: Dispute of RTO Expense Surcharge

Dear Mr. Lang:

My firm represents Campbell Soup Supply Co., LLC (Campbell Soup), which is in receipt of an invoice dated July 3, 2014 assessing Campbell Soup, in addition to its monthly usage charges, an RTO Expense Surcharge in the amount of \$[REDACTED]. As stated in previous correspondence to FES, dated April 24, 2014, Campbell Soup does not believe that an increase in ancillary services, which represent a variable component embedded in FES' fixed priced contract with Campbell Soup's facilities, qualifies as a Pass-Through Event as defined in FES' Customer Supply Agreement.¹ Accordingly, Campbell Soup hereby disputes FES' assessment of the RTO Expense Surcharge, in the amount of \$[REDACTED], pursuant to Paragraph 18 of the Supply Agreement.

Campbell Soup's Contract is a fixed-price contract for the purchase of Full Requirements Service from FES for all services listed in the Contract, including ancillary services. Ancillary services are variable costs that are reconciled and billed monthly by PJM Interconnection (PJM) to suppliers. Ancillary services represent a variable component that is embedded in the fixed price and, regardless of the reconciliation completed by PJM, FES is required to bill the customer for its usage at the contracted-for fixed monthly rate.

¹ Campbell and FES' contract encompasses the Fixed Price Blend and Extend Amendment No. 1, dated November 5, 2010, which amends and expressly incorporates by reference FES' Customer Supply Agreement dated June 2, 2009 (collectively, "Contract").

July 17, 2014
Page 2

Paragraphs 31 and 32 of the applicable Supply Agreement do not permit FES to pass through increases to variable components of the underlying fixed price because a mere increase in an existing variable component does not constitute a "new or additional charge or requirement." These paragraphs do not envision ancillary services as additional costs that would fall under the provisions of the Contract and be passed on to customers. Higher than normal ancillary costs, regardless of whether they "significantly exceed historical levels," are not new or additional charges.² The spinning reserves purchased from PJM's Synchronized Reserve Market, the costs assessed for such service, and reconciliation conducted by PJM after a colder than average month are the same costs, albeit higher, which are reconciled utilizing the same PJM method and passed onto suppliers by PJM in the normal course of business. PJM has not imposed on FES new or additional charges or requirements that would trigger any pass-through clause in the Contract. In fact, the RTO Expense Surcharge that FES has assessed is associated with synchronized reserve service, an ancillary service which is not required to be purchased from PJM.³ FES chose to purchase the required reserves from PJM rather than providing those reserves through its own generation or through a contract with a third party. Importantly, it is our understanding that no other competitive retail electric service (CRES) supplier has assessed such charges to similarly situated customers to date. In its Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events, PJM stated, "[d]uring the Polar Vortex, high prices for regulation, synchronized and non-synchronized reserves occurred at the same time as high real-time energy [locational marginal prices]. During these stressed conditions, ancillary service prices increased as the reserve margin decreases, and system capacity competes to meet the ancillary services requirement while maintaining power balance."⁴ Thus, PJM concurs with Campbell Soup that the ancillary service costs incurred during the Polar Vortex were increased charges, not new or additional charges.

Given the language included in Paragraphs 6, 31, and 32 of the Supply Agreement, Campbell Soup accordingly disputes FES' attempt to pass through inflated ancillary charges, in the form of an RTO Expense Surcharge, to Campbell Soup as new or additional costs. Despite any representations by FES to the contrary, Campbell Soup's dispute of the charges, as supported by the express language of the Supply Agreement, PJM's statements, actions by other CRES suppliers, and the ongoing investigation of the Public Utilities Commission of Ohio (PUCO) in Case No. 14-568-EL-COI, is undertaken in good faith.

² FES Letter at 1 (April 24, 2014) (emphasis omitted).

³ See PJM Markets Fact Sheet, Ancillary Services Section (June 18, 2014) ("[l]oad serving entities can meet their obligations to provide regulation or synchronized reserve to the grid by using their own generation, by purchasing the required regulation or synchronized reserve under contract with another party[,] or by buying them in the Regulation or Synchronized Reserve markets"), available at <http://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/pjms-markets-fact-sheet.ashx>.

⁴ PJM Interconnection's Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events (May 8, 2014) at 28, available at <http://www.pjm.com/~media/documents/reports/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx>.

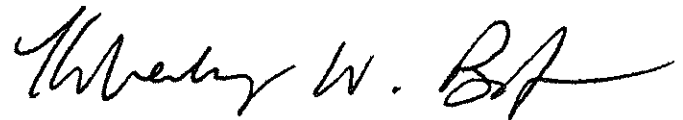
July 17, 2014
Page 3

CARPENTER LIPPS & LELAND LLP

Not only is the dispute regarding the proper application, in this instance, of the pass-through clause undertaken in good faith, the PUCO is presently investigating whether it was even permissible for FES to include a pass-through clause in a customer's fixed-price contract.⁵ As you are aware, CRES suppliers are prohibited from engaging in unfair, deceptive, misleading, and unconscionable acts and practices, including sales practices, and must include an itemized list and explanation of all prices and fees associated with the fixed-price service.⁶

Pursuant to Campbell Soup's Contract, Campbell Soup hereby notifies FES that it disputes FES' interpretation of the terms and conditions of the parties' Contract, as well as FES' assessment of an RTO Expense Surcharge for the alleged Pass-Through Event. Accordingly, Campbell Soup is exercising its right under Paragraph 18 of the Supply Agreement to not remit the amount in dispute, \$[REDACTED] pending resolution of this matter.

Sincerely,



Kimberly W. Bojko
Attorney for Campbell Soup Supply Co., LLC

CC: Samuel Wolfe (srwolfe@firstenergycorp.com)
Randy Puckett (randy_puckett@campbellsoup.com)

401278v1

⁵ See *In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market*, Case No. 14-568-EL-COI, Entry at 1, 2 (April 9, 2014).

⁶ See Section 4928.02(1), Revised Code, and Rules 4901:1-21-02(A)(2)(c) and 4901:1-21-12(A)(7), Ohio Administrative Code.

EXHIBIT G

**Sample Correspondence from Counsel for FES to Counsel for Complainants
Regarding Complainants' Dispute of the RTO Expense Surcharge**

jlang@calfee.com
216.622.8563 Direct

Calfee, Halter & Griswold LLP
Attorneys at Law

The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607
216.622.8200 Phone
calfee.com

July 24, 2014

VIA E-MAIL AND REGULAR MAIL

Kimberly Bojko
Carpenter, Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
bojko@CarpenterLipps.com

Re: Dispute of RTO Expense Surcharge

Dear Kim:

FirstEnergy Solutions Corp. is in receipt of your July 17, 2014 letter disputing on behalf of Campbell Soup Supply Co., LLC ("Campbell Soup") the additional cost of a Pass-Through Event invoiced to Campbell Soup under its contract with FES (the "Agreement"). As you note in your letter, your recent correspondence follows our exchange of correspondence in April on this matter. I will not repeat the explanation of the RTO Expense Surcharge provided in April, but write to respond to arguments you make for the first time in your July 17, 2014 letter.

Your letter claims that the costs at issue are a variable component embedded in the fixed price of the contract. This is not accurate. As explained in my April correspondence, the costs passed through to Campbell Soup via the RTO Expense Surcharge were not included in the existing pricing Campbell Soup is receiving under the Agreement. The RTO Expense Surcharge is intended to recover only those additional costs imposed by PJM on FES that were not included in your contract pricing.

FES rejects your attempt to mischaracterize the Pass-Through Event as simply "inflated" charges or "a mere increase in an existing variable component". Indeed, your objection ignores that the Agreement permits FES to pass through PJM costs that are new or additional. "Contracts must be interpreted in a way that gives meaning to each term." *O'Brien v. Ohio State Univ.*, 2007-Ohio-4833, 2007 Ohio App. LEXIS 4316, ¶ 52 (Franklin App. Sept. 20, 2007). Under your interpretation, "additional" simply repeats the requirement that a PJM-imposed charge be "new" and, thus, gives no meaning to the word "additional" as used in the Agreement. As explained above, the RTO Expense Surcharge passes through a PJM-imposed charge that is additional to the costs included in Campbell Soup's fixed price agreement. Thus, it is authorized by the Agreement.

Likewise, your letter mistakenly states that the RTO Expense Surcharge resulted solely from Synchronized Reserve Service, which FES could have avoided purchasing from PJM. In fact, the RTO Expense Surcharge includes Operating Reserves, Regulation Service and Day-Ahead Scheduling Reserves, as well as Synchronized Reserve Service. Of these charges, Operating Reserves were the largest single component of the PJM ancillary services charges imposed on FES. In addition, FES did not have viable alternatives to the Synchronized Reserve Service purchased from PJM. Purchasing ancillaries from the PJM market is the lowest cost solution and standard industry practice. Reducing generation output to self-schedule reserve or regulation is not an economically or operationally reasonable alternative. Purchasing ancillaries from a third party is not a viable alternative because there are significant liquidity challenges in the bilateral ancillary market. And self-scheduling generation and bilateral contracting would have had no impact on the largest components of PJM's ancillary service charges imposed on load serving entities in January.

Your reliance on the PJM Report¹ is surprising, given that the report makes clear the ancillary services charges PJM imposed in January were not mere increases. The PJM Report describes, among other things, the extraordinary weather conditions, natural gas transmission constraints and forced outages which caused severe strain on the grid, PJM's declaration of eight Maximum Emergency Generation Alerts, PJM's making of unit and natural gas scheduling requests outside of its traditional Day-Ahead Energy Market commitment mechanism and the resulting make-whole payments, and PJM's requests to FERC for waivers of PJM's tariff rules. The PJM Report describes how the nature of January's events caused PJM to deviate from its normal practices and how the resulting extraordinary level of ancillary service charges was also unexpected. The PJM Report lends no support to your argument.

Your reliance on the PUCO's investigation in Case No. 14-568-EL-COI also is misplaced. That investigation is a forward-looking review of CRES marketing practices related to pass-through clauses in fixed-price contracts. It is not meant to litigate the specific terms to which FES's customers agreed, or the applicability of FES's contracts to the events of January. Under Ohio law, matters of private contract interpretation are left to the civil courts, not to the PUCO.

Similarly, while you cite to O.A.C. 4901:1-21-02(A)(2)(c) and 4901:1-21-12(A)(7) [sic], you neglect to cite the specific rule recognizing the validity of contingency clauses in CRES contracts. O.A.C. 4901:1-21-05(A)(1)(d) and (A)(2)(d) require CRES providers to provide customers, in marketing materials that include or accompany a service contract, with "[a] statement of any contract contingencies or conditions precedent." O.A.C. 4901:1-21-12(B)(8) requires CRES providers to include in small commercial or residential contracts "[t]he terms and conditions of service, including any restrictions, limitations, contingencies, or conditions precedent associated with the service or product offered." FES rejects your suggestion that it has engaged in unfair, deceptive, misleading, or unconscionable acts and practices. All of FES' fixed-price contracts include an itemized list and explanation of all prices and fees associated

¹ *Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events* (PJM Interconnection May 8, 2014), pp. 5, 34-35 (hereinafter "PJM Analysis").

Calfee, Halter & Griswold LLP

July 24, 2014

Page 3

with service. In addition, as explained above, paragraph 31 of the Agreement is a contingency clause that expressly authorizes FES to pass through the RTO Expense Surcharge.

FES intends to take all appropriate action to collect from Campbell Soup the full amount of the RTO Expense Surcharge. FES looks forward to answering any additional questions you may have regarding this matter in a good faith effort to resolve Campbell Soup's dispute under the Agreement's terms.

Very truly yours,

A handwritten signature in black ink, appearing to read "James F. Lang", with a stylized flourish at the end.

James F. Lang

cc: Christine M. Weber, FirstEnergy (via e-mail)

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/12/2014 3:43:06 PM

in

Case No(s). 14-1610-EL-CSS

Summary: Application In the Matter of the Complaint of Carbo Forge, Inc., et al. v. FirstEnergy Solutions Corp. electronically filed by Ms. Rebecca L Hussey on behalf of Carbo Forge, Inc., et al.