

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Bruce)	
Snyder,)	Case No. 13-2031-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
FirstEnergy Solutions Corp.,)	
)	
Respondent.)	

FIRSTENERGY SOLUTIONS CORP.'S
INITIAL POST-HEARING BRIEF

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I. INTRODUCTION

The Complaint filed by Complainant Bruce Snyder (“Snyder”) essentially seeks to require Respondent FirstEnergy Solutions Corp. (“FES”) to provide him with electric service at a price not available to other similarly-situated customers and to penalize FES for the fact that Snyder was not eligible for the price he wanted.

It is undisputed that Snyder applied, in May 2013, for a price offer for customers of Duke Energy Ohio (“Duke”) that he knew he was not eligible to receive because he was a customer of The Dayton Power & Light Company (“DP&L”). After his attempted internet enrollment, FES worked with Snyder for several months to try to figure out what the issue was – a process that spurred significant confusion on FES’s end because it was an issue never previously encountered. When the actual problem was identified, Snyder was unsatisfied and continued to demand an offer available only to another utility’s customers. When that offer was not made available to him, he filed an informal complaint with the Commission. That, in turn, led to further settlement discussions between FES and Snyder, during which Snyder agreed to receive the most he was ever eligible for – the lowest price offer available to him and lost savings to put him in the position he would have been in had he properly enrolled with FES in May 2013.

Snyder now asserts in his formal Amended Complaint (the “Complaint”) a number of alleged rule violations that are unsupported and do not reflect the reality of the sequence of events. He lacks standing as a matter of law to assert some allegations and all of them are baseless. At best, his Complaint reflects an unhappiness with FES’s customer service that is not actionable and that FES has taken steps on its own to improve. None of Snyder’s allegations, however, change the fact that he is not and never was entitled to receive the price he continues to demand. As the Staff investigator summarized to Snyder directly: “[I]f [FES] would have caught the error on the

first call, this would have been taken care of a lot sooner. Still . . . resulting in you not receiving the rate that was for Duke customers only.”¹ Snyder’s Complaint should be dismissed and denied in its entirety.

II. STATEMENT OF FACTS

Snyder is a resident of Beavercreek, Ohio, and receives electric distribution service from his local utility, DP&L.² On or about May 22, 2013, Snyder reviewed information regarding competitive retail electric service (“CRES”) offers on the Commission’s “Apples-to-Apples” website.³ He acknowledges that he knew at that time that he received electric distribution service from DP&L, his local electric distribution utility (“EDU”).⁴ At the time, FES’s lowest price offer for DP&L customers was 5.94 cents per kWh for three years.⁵ However, Snyder instead selected FES’s offer available only to electric distribution customers of Duke – which, at 5.36 cents per kWh, was lower than the available offer to DP&L customers.⁶

After clicking on the link for the best FES offer for Duke customers, Snyder was transferred to FES’s website to complete an internet enrollment in that offer.⁷ Because he had pre-selected the Duke offer, Duke was already identified as his EDU in the relevant sections of the enrollment form.⁸ However, the FES website would allow the applicant to change the EDU and provides additional information for applicants to help them identify their EDU if they are unsure.⁹ Snyder was required to confirm on *multiple* occasions during the internet enrollment process that his EDU

¹ Snyder Ex. 9.

² See Complaint, Tr., p. 7.

³ Tr., p. 91 (Snyder’s admission to that effect); Direct Testimony of Matthew C. Green (“Green Testimony”), p. 3.

⁴ Tr., p. 92.

⁵ Green Testimony, p. 4.

⁶ Green Testimony, pp. 3-4.

⁷ Green Testimony, p. 3; Tr., p. 103.

⁸ Tr., p. 104 (FES witness Green’s explanation).

⁹ Green Testimony, pp. 4-5, Ex. MCG-2.

was Duke.¹⁰ After his enrollment application was complete and he submitted it to FES, Snyder received a confirmation email from FES that again referenced the need for Duke to process his enrollment request and included terms and conditions that also confirm his EDU as Duke.¹¹

After receiving Snyder's enrollment request on May 22, 2013, FES submitted a switch request to Duke, in accordance with Snyder's submitted information.¹² Duke, not surprisingly, denied the request on the basis of "Account Not Found" on May 23, 2013.¹³ FES promptly notified Snyder via letter of the rejection and suggested Snyder follow-up with FES to try to rectify the situation.¹⁴ Snyder then called FES and spoke with a FES representative, who worked to identify the problem with the enrollment rejection.¹⁵ As described by FES witness Matt Green, FES's Manager of Retail Services Management, FES has tens of thousands of enrollment requests rejected each year by EDUs.¹⁶ "Account Not Found" is one of the most common bases on which enrollment requests are rejected.¹⁷ This large subset of rejections most often arises based on incorrect account numbers, incorrect addresses, or the incorrect account holder name.¹⁸ Accordingly, the FES representative during Snyder's initial (and subsequent) follow-up calls was focused on making sure that this information was accurate in his enrollment request.¹⁹ And, in fact, there were some potential inaccuracies that led the representatives to believe that they had identified the issue. For example, Snyder's account is actually held in his wife's name (although he submitted his name in the internet enrollment) and Snyder's account number looked incorrect

¹⁰ Green Testimony, pp. 4-5, Ex. MCG-2; Tr., pp.103, 108-110, 111-112, 113.

¹¹ Green Testimony, p. 5, Exs. MCG-2 and MCG-3.

¹² Green Testimony, pp. 5-6.

¹³ Green Testimony, pp. 5-6; *see also* Snyder Ex. 17.

¹⁴ Snyder Ex. 4.

¹⁵ *See* Snyder Ex. 1; Green Testimony, p. 7.

¹⁶ Green Testimony, pp. 6-7.

¹⁷ Green Testimony, p. 6.

¹⁸ Green Testimony, pp. 6-7; Tr., p. 124.

¹⁹ Tr., pp. 124-125; Green Testimony, p. 7.

in the system.²⁰ It was not until later, during Snyder's call with a FES representative in August 2013, that FES identified the fact that Snyder had applied for an offer only available to Duke customers when he was in fact a DP&L customer.²¹ FES witness Green, who manages a team responsible for resolving FES customer issues and inquiries testified that this is the first instance of which he is aware where an applicant incorrectly identified his or her EDU.²²

Even after Snyder was informed that he had applied for an offer that was only available to Duke customers, he continued to demand a right to the lower-priced 5.36 cents per kWh Duke offer.²³ When FES maintained that it could only provide him with the lowest-then-available offer for DP&L customers at 5.94 cents per kWh, he indicated he would submit the issue to the Commission.²⁴ Snyder subsequently filed an informal complaint with the Commission on August 12, 2013.²⁵ After Snyder's informal complaint was filed and FES was notified by the Commission, a FES representative, Fred Maurer, called Snyder on August 16, 2013, to discuss his complaint and try to resolve the issue.²⁶ Mr. Maurer identified the issue with Snyder's attempted enrollment and offered to: (a) enroll him the 5.94 cents per kWh and (b) reimburse Snyder for lost savings between May–August 2013, which all together would put Snyder in the same position as he would have been in had he correctly submitted his internet enrollment.²⁷ At the time, the best-available offer for DP&L customers had increased significantly, to 6.60 cents per Kwh.²⁸ When Snyder indicated that he was "okay" with Mr. Maurer's offer, Mr. Maurer believed that Snyder had

²⁰ Tr. pp. 141-145 (FES witness Green explaining the process).

²¹ Green Testimony, p. 8.

²² Green Testimony, p. 6.

²³ See Green Testimony, p. 8; Tr. p. 182 Ex. 13.

²⁴ Green Testimony, p. 8.

²⁵ See Snyder Ex. 1.

²⁶ Green Testimony, p. 9.

²⁷ Green Testimony, p. 9; Tr. pp. 226-228 Ex. 16.

²⁸ Green Testimony, p. 9.

accepted the offer.²⁹ Thus, he sent the same day a letter to Snyder and the Commission Staff confirming the agreement and resolution of Snyder's informal complaint.³⁰ Snyder subsequently contacted FES and Commission Staff on August 19, 2013, stating that he not agreed to FES's offer.³¹ Accordingly, FES immediately cancelled the enrollment – before Snyder ever was billed by FES or received any service from FES.³²

Thereafter, FES continued to try to work with Snyder to resolve his informal complaint, including working with Commission Staff to provide requested audio recordings and other information.³³ Snyder did not accept any of FES's offers and subsequently filed a formal Complaint with the Commission on October 2, 2013.³⁴ The parties engaged in extensive pre-hearing discovery, including the exchange of numerous written documents and audio recordings.³⁵ Shortly after his "Motion to Enforce PUCO Rules" was denied, Snyder filed an "Amended Complaint" on or about May 7, 2014, that makes various false allegations regarding FES's alleged violation of numerous specific Commission rules. As described herein, those allegations all lack merit.

²⁹ Green Testimony, p. 9; Tr. p. 227 Ex. 16.

³⁰ Green Testimony, p. 9; Snyder Exs. 17 (letter to Staff), 18 (letter to Snyder).

³¹ Snyder Exs. 1, 19.

³² Green Testimony, pp. 9-10.

³³ Green Testimony, p. 10.

³⁴ See Complaint.

³⁵ Green Testimony, p. 11; Snyder Exs. 8, 10.

III. LAW & ARGUMENT

A. **Snyder's Inability To Enroll In An Offer For Which He Was Not Eligible Does Not Constitute A "Complaint" Under O.A.C. 4901:1-21-01(G).**

Much of Snyder's Complaint focuses on his assertion that his first follow-up discussion with FES after his initial enrollment was rejected by Duke, and subsequent discussions with various FES representatives thereafter, constituted a "complaint" as defined by O.A.C. 4901:1-21-01(G).³⁶ Under Snyder's construction, his "complaint" then required specific status reports at defined intervals as called for by O.A.C. 4901:1-21-08(B)(2) and (3). The suggestion that difficulty enrolling a customer with a CRES provider would constitute such a "complaint" is unsupported and would paralyze CRES providers, utilities, and the Commission.

OAC 4901:1-21-01(G) defines a "complaint" as "any customer/consumer contact when such contact necessitates follow-up by or with the supplier of electric service or electric utility to resolve a point of contention." FES's inability to enroll Snyder because Snyder's enrollment request was rejected by Duke (because it was not Snyder's utility) and FES's follow-up efforts to identify the problem with the enrollment request do not reflect any "point of contention" between Snyder and FES. Enrollment requests are often rejected by EDUs due to inaccuracies in various data points required for enrollment, such as incorrect addresses or account numbers.³⁷ In fact, **FES, alone, has tens of thousands of enrollment requests rejected by EDUs each year.**³⁸ FES has no "point of contention" with the applicant when an enrollment request is rejected. FES and the applicant are on the same side; they both want to enroll the applicant with FES.³⁹ If a CRES provider's inability to enroll a customer through an EDU constituted a "complaint" with an

³⁶ See Complaint, pp. 1-2.

³⁷ Green Testimony, p. 6.

³⁸ Green Testimony, p. 6.

³⁹ See Tr., p. 154.

applicant, then CRES providers would be overwhelmed and paralyzed by the need to provide 5-day status reports and conduct “investigations” for each such rejection.⁴⁰ Moreover, if unsuccessful applicants contacted Staff and CRES providers were required to provide status reports and investigation results to Staff,⁴¹ Staff too would be quickly overwhelmed by an every-day issue that does not warrant Staff’s time or energy. Snyder’s suggestion that the issues associated with his enrollment request, which were triggered by his representation that his EDU was Duke (when it was not), does not fall within the definition of a “complaint” and cannot be reasonably be construed to constitute a “complaint.”

Neither do Snyder’s continued demands to enroll in an offer to which he was not eligible constitute a “complaint” under O.A.C. 4901:1-21-01(G). Under such a misconstruction of the rule, CRES providers would be required to provide 5-day status reports and perform an “investigation” on an issue that could never be reasonably “resolve[d]” to the applicant’s satisfaction. There is no point of “contention” in such a scenario. The applicant simply is or is not eligible for a specific offer. The applicant cannot create a “complaint” warranting follow-up by a CRES provider based only the fact that they are unhappy with the available offers or would prefer another utility’s offer. The CRES market is available to them to identify the best *available* offer. Accordingly, Snyder’s allegations that FES violated O.A.C. 4901:1-21-08(B)(2) and (3) fail and should be dismissed.

⁴⁰ See O.A.C. 4901:1-21-08(B)(2), (3).

⁴¹ See *id.* (requiring similar status reports and investigations to be provided to Staff if the “complaint” comes through the Commission).

B. Snyder's Enrollment Request Was Timely Submitted To The Utility He (Incorrectly) Identified.

Snyder alleges that FES violated O.A.C. 4901:1-21-06(D)(3)(d) by failing to submit his enrollment request to DP&L after his initial follow-up call with FES.⁴² This allegation fails because it is not applicable to the situation and because, in any event, the evidence reflects that FES did submit Snyder's enrollment request to the EDU he identified in his application: Duke.

OAC 4901:1-21-06(D)(3)(d) provides that, in connection with an internet enrollment: "The CRES provider shall send an electronic enrollment request to the electric utility within three calendar days following completion of the enrollment transaction with the customer, unless a later start date is agreed to in the contract." Snyder confirmed that he completed and submitted his internet enrollment application on May 22, 2013.⁴³ FES subsequently submitted the enrollment request to the EDU he identified (Duke) and received a rejection from Duke on May 24, 2013 – within 2 days after Snyder's enrollment request.⁴⁴ Thus, FES complied with the requirements of O.A.C. 4901:1-21-06(D)(3)(d).

To the extent Snyder suggests that FES was somehow obligated by the rule to submit his enrollment request to DP&L as opposed to Duke, the argument fails. As emphasized in the testimony of Matt Green and at hearing, Snyder submitted an application to enroll in an FES offer available *only* to Duke customers.⁴⁵ In addition, he incorrectly stated that Duke was his EDU numerous times through the application process; his confirmation email from FES affirmed that his EDU was Duke; and the terms and conditions of the offer reaffirmed that Duke was the

⁴² Complaint, p. 2.

⁴³ Tr. p. 8.

⁴⁴ See Snyder Exs. 17, 4 (reflecting FES's follow-up notice to Snyder on May 28, 2013, that Duke had rejected the enrollment request).

⁴⁵ See Green Testimony, pp. 3-4.

applicable EDU.⁴⁶ Thus, his “enrollment transaction” sought to enroll in an offer for Duke customers and Duke was the only proper EDU to which FES was obligated to submit an enrollment request. And, as confirmed above, FES did timely submit the enrollment request to Duke.

Taken to its logical end, Snyder’s misapplication of the rule would purportedly require FES to enroll Snyder in an offer that was not available to him because an enrollment request to DP&L presumably would have been accepted – but the price was not available to DP&L customers. This is not and cannot be the rule. Accordingly, Snyder’s allegations that FES violated O.A.C. 4901:1-21-06(D)(3)(d) fail and should be dismissed.

C. Snyder’s Allegations About ‘Slamming’ And FES’ Failure To Refer Him To The Commission Are Unfounded Because He Was Informed And Had Already Engaged The Commission Before The Proposed Settlement Enrollment Terms Were Offered And Accepted.

1. FES reasonably believed Snyder had consented to receive, as a settlement, the best offer that was available to him and his enrollment was immediately terminated prior to any switch in service.

Snyder alleges that FES violated O.A.C. 4901:1-21-03(C) and 4901:1-21-06(C) by enrolling him with FES without his consent.⁴⁷ The basis for Snyder’s allegation is his August 2013 enrollment after his discussion with FES representative Fred Maurer.⁴⁸ That discussion arose after Snyder had filed an informal complaint with the Commission several days earlier regarding his inability to enroll in the lower-priced Duke offer.⁴⁹ Thus, Mr. Maurer was reaching out to Snyder in an effort to resolve his informal complaint. As reflected in the audio recording, Mr. Maurer (again) explained to Snyder that he was never eligible to receive the lower-priced Duke

⁴⁶ See Green Testimony, pp. 4-5, Ex. MCG-2, and Ex. MCG-3.

⁴⁷ Complaint, pp. 2-3.

⁴⁸ *Id.*; Snyder Ex. 1 (reflecting discussions with Fred Maurer on August 16, 2013, prior to the enrollment).

⁴⁹ Tr., p. 10 (Snyder acknowledging that he filed the informal complaint because FES would not enroll him in the lower-priced Duke offer).

offer.⁵⁰ Mr. Maurer also confirmed that the best offer Snyder could have received was the slightly higher 5.94 cents per kWh offer available to DP&L customers at that time (which was no longer available). Mr. Maurer then offered to enroll Snyder in that rate plan with lost savings going back to May 2013.⁵¹ Snyder consented to the settlement offer by indicating “ok.” Mr. Maurer then indicated he would follow-up with the necessary information, which he did. When Snyder got confirmation, he contacted both FES and DP&L to inform them that he, in fact, did not consent to the enrollment. It is easy to understand why there was confusion associated with Snyder’s settlement enrollment – between his continued efforts to switch to FES at a lower price, his verbal *consent*, and the fact that FES was offering him the most he was ever entitled to, if not more. The cancellation period is designed to catch such apparent mistakes and it worked. FES promptly cancelled his enrollment and, importantly, Snyder was never switched to FES or received any bill or any service from FES.⁵² Accordingly, this is not an instance of ‘slamming’ as defined in O.A.C. 4901:1-21-08(C). Snyder’s allegations lack merit and his allegations should be dismissed.

2. Snyder had already filed his informal complaint with the Commission before his settlement discussion with FES.

Snyder alleges that FES violated O.A.C. 4901:1-21-08(C)(2)(b) by failing to refer him to the Commission after an allegation of ‘slamming.’⁵³ This allegation is simply ridiculous because the alleged ‘slamming’ occurred **after** Snyder had already filed his informal complaint with the Commission.⁵⁴ Snyder’s suggestion that FES violated Commission rules by failing to inform Snyder of a resource he had already availed himself of is wholly without merit and illustrates

⁵⁰ Tr. p. 226 Ex. 16.

⁵¹ Tr. pp. 226-228 Ex. 16.

⁵² Green Testimony, pp. 9-10.

⁵³ Complaint, p. 3.

⁵⁴ Tr., pp. 97-98 (Snyder admitting he had already filed informal complaint before speaking with Mr. Maurer in August 2013); Snyder Ex. 1 (Snyder’s timeline acknowledging that he filed his informal complaint on August 12, 2013, and he spoke with Mr. Maurer on August 16, 2013).

Snyder's lack of good faith in demanding a price not available to him and initiating this proceeding. Moreover, FES did provide Snyder with information regarding the resources and assistance available from the Commission in his initial internet enrollment terms and conditions.⁵⁵ Of course, Snyder admitted under cross-examination that he did not read those terms and conditions until after he filed his informal complaint.⁵⁶ Snyder's allegation should be dismissed.

3. Snyder's settlement discussion with FES, including proposed terms for enrollment with FES, were not subject to the requirements for telephone enrollments.

Snyder asserts that his discussion with FES representative Maurer and subsequent enrollment in the best available offer (plus lost savings) in September 2013 was improper because it failed to meet the requirements for telephone enrollments set forth in O.A.C. 4901:1-21-06(D)(2).⁵⁷ However, those requirements did not apply to Snyder's enrollment in August 2013. First, Snyder's transaction with FES was initiated via his *internet enrollment* in May 2013.⁵⁸ Thereafter, his communications with FES reflect his and FES's efforts to finalize his internet enrollment at appropriate and available price terms. This is not a situation, as anticipated by the rules, in which the parties' only communications were via telephone and/or Snyder's intentions were not documented otherwise in writing (electronically). Snyder provided his consent to switch to FES and the other non-price terms and conditions in connection with his internet enrollment.⁵⁹ His subsequent discussions with FES, including representative Maurer, reflect only the parties' efforts to clarify the remaining term in question: price. Further, Snyder's discussion with Mr. Maurer arose, as discussed above, after he filed his informal complaint with the Commission.

⁵⁵ See Snyder Ex. 11.

⁵⁶ Tr., p. 98.

⁵⁷ Complaint, p. 3 (pointing to numerous subparts of O.A.C. 4901:1-21-06(D)(2)).

⁵⁸ See Green Testimony, pp. 3-4.

⁵⁹ See Green Testimony, Exs. MCG-2, 3, and 4; Snyder Ex. 11.

Their discussion and the offer and acceptance of the 5.94 cents per kWh offer plus lost savings constitute settlement discussions that fall outside the scope of the Commission's marketing rules.⁶⁰ There is no legal or reasonable basis on which to apply the rules for telephone enrollments to Snyder's August 2013 settlement discussion with FES. Snyder's allegations lack merit and should be dismissed.

D. Snyder's Allegations Regarding FES's Purported Failure To Maintain Or Provide Certain Information Lack Merit And He Lacks Standing To Enforce Certain Of The Requirements.

Snyder's Complaint includes several unfounded allegations regarding the completeness of information maintained by FES in connection with his internet enrollment and information provided by FES to Commission Staff. Notably, nowhere in Snyder's Complaint or the facts is there any suggestion that any purported violation of the relevant rules had any negative impact on Snyder or his attempted enrollment in any way. Regardless, the facts do not support Snyder's allegations.

1. FES has at all times maintained Snyder's U.S. mailing address in connection with his attempted internet enrollment.

Snyder alleges that FES violated O.A.C. 4901:1-21-06(D)(3)(g)(vii), which requires that, in connection with internet enrollments: "The CRES provider shall require the customer to complete an electronic customer consent form in a format retrievable by the CRES provider that includes the . . . account holder's U.S. mailing address." Snyder alleges in his Complaint that information provided by FES to Snyder did not include his U.S. mailing address and that,

⁶⁰ See Snyder Ex. 17 (Maurer's summary report back to Commission staff).

presumably, he is somehow entitled to redress.⁶¹ However, as provided to Snyder in connection with discovery in this proceeding, FES's database does include Snyder's mailing address.⁶²

2. FES timely cooperated with Commission Staff in providing requested audio recordings and, regardless, Snyder lacks standing to enforce the applicable rule.

While Snyder acknowledges that he received all available audio recordings during discovery in this proceeding, Snyder alleges that FES violated various rules by failing to provide to Commission Staff audio recordings of his various calls with FES representatives:

- (1) O.A.C. 4901:1-21-06(D)(2)(b)(iii), which requires that, in connection with telephonic enrollments, competitive retail electric service providers must "[p]rovide a copy of the audio recording to the customer, commission, or the staff within five calendar days of a request";⁶³ and,
- (2) O.A.C. 4901:1-21-06(C), which requires that, "[u]nless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the staff within five calendar days of its request."⁶⁴

First, Snyder does not have the right to seek enforcement of these rules. As the Commission held in *In the Matter of the Complaint of Plastex Indus., Inc.*, a customer "does not have standing to bring a complaint . . . for failing to provide records to the Commission upon its request."⁶⁵

[The rule] requires a utility to maintain certain records and provide them to the Commission and its employees upon request. The purpose of this section is related to the Commission's audit and inspection activities. The failure of the utility to adhere to that section is enforceable by this Commission. . . . [The customer] does not allege that the Commission failed to provide documents in its possession, but that [the utility] failed to deliver all relevant records to the Commission. **That is a matter between the Commission and the utility.** . . . [The customer] does not have standing to bring

⁶¹ Complaint, p. 4.

⁶² Snyder Ex. 10, p. 6.

⁶³ Complaint, p. 3.

⁶⁴ Complaint, p. 3. Snyder also cites O.A.C. 4901:1-21-08(C)(2)(a) and (C)(4)(b). *See id.* However, neither rule requires CRES providers to provide audio recordings of calls to customers.

⁶⁵ *In the Matter of the Complaint of Plastex Indus., Inc.*, Case No. 00-2132-EL-CSS, Entry, Jan. 3, 2002, p. 2 (construing a similar provision in O.A.C. 4901:1-9-06).

a complaint against a utility for failing to provide records to the Commission upon its request.⁶⁶

Snyder's sole factual basis for his allegations is that he believes that FES failed to provide documents requested by Staff to Staff within five days.⁶⁷ He does not have standing to enforce such a rule and his allegations should be dismissed.

Regardless, Snyder did not provide any competent evidence to suggest that FES failed to provide Staff with the relevant information. Snyder's proffered "evidence" contains only emails between Snyder himself and Commission Staff that not only reflects inadmissible hearsay, but also does not establish that FES failed to provide the information requested by Staff.⁶⁸ To the contrary, FES confirmed that it provided audio recordings and other information to Staff on September 17, 2013, via email and then via hard copy on September 18, 2013, when Staff informed FES that the email attachments had not come through.⁶⁹ FES provided additional information on September 30, 2013, when Staff requested another copy of the audio CD – and again on November 4, 2013, when yet another request for the same CD.⁷⁰ FES further made efforts to confirm with Staff that Staff had the information it needed, but Staff did not respond to those inquiries.⁷¹ Accordingly, there is absolutely no merit to Snyder's allegations (even if he had standing to bring them) that FES failed to provide appropriate information to Staff at Staff's request. Snyder's allegations lack merit and should be dismissed based on the law and the facts.

⁶⁶ *Id.* (emphasis added).

⁶⁷ Both rules reflect that CRES providers may provide the relevant information to Staff, rather than the customer. See 4901:1-21-06(D)(2)(b)(iii) (must provide audio recording to "customer, commission, or the staff within five calendar days of a request") (emphasis added); 4901:1-21-08(C)(2) ("[u]nless otherwise prescribed by the commission or its authorized representatives, all records required by this chapter shall be provided to the staff within five calendar days of its request) (emphasis added).

⁶⁸ Tr., p. 79, 87.

⁶⁹ Green Testimony, p. 10.

⁷⁰ Green Testimony, p. 11.

⁷¹ *Id.*

E. FES Made Numerous Good Faith Efforts To Resolve Snyder's Complaints, Including – But Not Limited To – By Making Available The Best Price He Would Have Been Eligible For In June When He Tried To Enroll In A Lower Offer Available To A Different Utility's Customers.

Perhaps the most unsubstantiated allegation asserted by Snyder in his Complaint is that FES failed to make “good faith efforts” to resolve the “dispute” with Snyder, in violation of O.A.C. 4901:1-21-08(B)(7).⁷² His allegations are wholly without merit. On multiple occasions, FES representatives had prolonged discussions with Snyder in an effort to try to figure out the source of the problem with his enrollment request.⁷³ FES made multiple efforts to explain to Snyder why his request for a lower rate was not possible – and never was available to him.⁷⁴ FES also made repeated efforts – before and after his informal and formal Complaints were filed – to resolve the dispute by offering him the lowest available price to DP&L customers and lost savings.⁷⁵ While the process may have been frustrating for everyone involved, it cannot be disputed that FES acted in good faith throughout the process to try to identify the issue and then offer to correct it as best it could. Snyder's unwillingness to accept the fact that he was not eligible for an offer (that he knew he was not eligible for) is insufficient to support his allegations. Snyder's allegations lack merit and should be dismissed.

IV. CONCLUSION

For the reasons set forth herein, Snyder's Complaint should be dismissed in its entirety.

⁷² See Complaint, pp. 2, 4.

⁷³ See Snyder Ex. 7; Tr. Exs. 5, 12, 13, 14, 16.

⁷⁴ See Snyder Ex. 7; Tr. Exs. 5, 13, 16.

⁷⁵ See Snyder Exs. 7, 17, 21, 23; Tr. Exs. 13, 16. Additional settlement discussions are protected by, among other things, Ohio Rule of Evidence 408.

Respectfully submitted,

/s/ Scott J. Casto

Scott J. Casto (0085756) Counsel of Record
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
(330) 761-7835 / Fax: (330) 384-3875
scasto@firstenergycorp.com
(Willing to accept service by email)

On behalf of FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

Copies of the foregoing *FirstEnergy Solutions Corp.'s Initial Post-Hearing Brief*
was served this 14th day of October, 2014, via electronic and regular mail on:

Bruce Snyder
4461 Powder Horn Drive
Beavercreek, OH 45432
snyderbd888@sbcglobal.net

/s/ Scott J. Casto
On behalf of FirstEnergy Solutions Corp.

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Summary: Brief electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.