

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Edison Company and The Cleveland)	
Electric Illuminating Company,)	
)	
Complainants/Counterclaim Respondents,)	Case No. 17-1967-EL-CSS
)	
v.)	
)	
Direct Energy Business, LLC,)	
)	
Respondent/Counterclaim Complainant.)	
)	

**OHIO EDISON COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY’S ANSWER TO DIRECT ENERGY BUSINESS, LLC’S COUNTERCLAIMS**

Complainants/Counterclaim Respondents, Ohio Edison Company and The Cleveland Electric Illuminating Company (collectively, the “Companies”), for their Answer to the Counterclaims filed by Respondent/Counterclaim Complainant Direct Energy Business, LLC (“Direct”) in the instant action respond as follows:

**COMPANIES’ RESPONSE TO ALLEGATIONS RELATING TO THE PARTIES AND
JURISDICTION**

1. The Companies admit that Direct is the successor-in-interest to Strategic Energy LLC. The Companies deny the remaining allegations in paragraph 1 of the Counterclaims.
2. The Companies admit the allegations in paragraph 2 of the Counterclaims.
3. The Companies admit the allegations in paragraph 3 of the Counterclaims.
4. The Companies admit the Commission has personal jurisdiction over the Companies and subject matter jurisdiction over the Supplier Tariff and the Coordination Agreements. The Companies deny the remaining allegations in paragraph 4 of the Counterclaims.

**COMPANIES' RESPONSE TO ALLEGATIONS RELATING TO FACTS COMMON TO
ALL CLAIMS**

5. As to paragraph 5 of the Counterclaims, the Companies hereby incorporate the preceding paragraphs as if fully restated herein.

6. The Companies admit the allegations in paragraph 6 of the Counterclaims.

7. The Companies admit the allegations in paragraph 7 of the Counterclaims.

8. The Companies admit the allegations in paragraph 8 of the Counterclaims.

9. The Companies admit that on or around December 18, 2015, Cindy Teamann, Manager, Regulated Settlements for FirstEnergy Service Company, notified Direct via email of the Companies' error. The Companies admit the remaining allegations contained within paragraph 9 of the Counterclaims.

10. The Companies admit the allegations in paragraph 10 of the Counterclaims.

11. The Companies admit that as a result of the error, Direct was not charged \$5.6 million for the load of affected customers despite being credited with millions in revenues from those customers. The Companies further admit that the cost of energy and capacity that should have been charged to Direct was not; instead, those costs were charged to the affected customers' previous supplier. Further answering, the Companies admit that Ms. Teamann's email maintained the confidentiality of the identity of the previous supplier. The Companies deny the remaining allegations in paragraph 11 of the Counterclaims.

12. The Companies admit that Ms. Teamann requested via a December 31, 2015 email that Direct agree to refund \$5.3 million related to one of Direct's retail customers for which the Companies had provided Direct with detailed data showing energy and capacity

adjustments on an hourly basis. The Companies deny the remaining allegations in paragraph 12 of the Counterclaims.

13. The Companies admit that Direct told Edward Stein, Manager, Regulated Settlements for FirstEnergy Service Company, over the telephone that Direct wanted to communicate directly with the prior supplier. Further answering, the Companies admit they maintained the confidentiality of the prior supplier. Moreover, the Companies state that disclosing the name of the prior supplier was unnecessary to resolve Direct's \$5.6 million resettlement with PJM. The Companies deny the remaining allegations in paragraph 13 of the Counterclaims.

14. The Companies state that Mr. Stein discussed remedies under the Supplier Tariff with Direct, and otherwise deny the allegations in paragraph 14 of the Counterclaims.

15. The Companies admit that Direct asked via e-mail for the specific sections of the Supplier Tariff and Supplier Agreement Mr. Stein referenced during the February 13 call. The Companies deny the remaining allegations in paragraph 15 of the Counterclaims.

16. The Companies admit that, on February 16, 2017, Mr. Stein provided Direct with hyperlinks via email to the Supplier Tariff and Agreements. Further answering, Mr. Stein explained to Direct via e-mail that "Direct has enjoyed the benefits of over \$5.6 million retail revenue (based on the wholesale expense determination) with no actual expense associated/coordinated with delivery of wholesale market products/services – an outcome to which it was never entitled in the first place under state tariffs and agreements." The Companies deny the remaining allegations in paragraph 16 of the Counterclaims.

17. The Companies admit the allegations in paragraph 17 of the Counterclaims.

18. The Companies deny the allegations in paragraph 18 of the Counterclaims because Direct has failed to cooperate by refusing to provide accurate data to PJM as a way to avoid returning the \$5.6 million it owes.

19. The Companies admit the allegations in paragraph 19 of the Counterclaims. The Companies have not served written notice of an Event of Breach on Direct because the Companies anticipated that Direct would cooperate in reaching a reasonable resolution instead of choosing to litigate to maintain its \$5.6 million windfall.

20. The Companies admit the allegations in paragraph 20 of the Counterclaims.

21. The Companies state that paragraph 21 of the Counterclaims contains legal conclusions to which no response is required and otherwise deny the allegations contained within paragraph 21 of the Counterclaims.

22. The Companies admit the allegations in paragraph 22 of the Counterclaims.

23. The Companies have advised Direct that drawing on Direct's letter of credit is an option if Direct does not settle its \$5.6 million windfall. The Companies deny the remaining allegations in paragraph 23 of the Counterclaims.

24. The Companies admit the allegations in paragraph 24 of the Counterclaims.

25. The Companies admit that they filed a civil action against Direct in the United States District Court, Northern District of Ohio, Case No. 5:17-cv-746, asserting that Direct's refusal to surrender its \$5.6 million windfall constituted unjust enrichment. Further answering, the Companies admit that the Court dismissed the unjust enrichment claim on or

around July 26, 2017. The Companies deny the remaining allegations in paragraph 25 of the Counterclaims.

26. The Companies deny the allegations in paragraph 26 of the Counterclaims.

27. The Companies admit the allegations in paragraph 27 of the Counterclaims.

28. The Companies admit the allegations in paragraph 28 of the Counterclaims.

COMPANIES' RESPONSE TO COUNT I: VIOLATIONS OF THE SUPPLIER TARIFF

29. As to paragraph 29 of the Counterclaims, the Companies hereby incorporate the preceding paragraphs as if fully restated herein.

30. The Companies deny the allegations in paragraph 30 of the Counterclaims.

31. The Companies state that Section XII.C. of the Supplier Tariff speaks for itself. The Companies deny the remaining allegations in paragraph 31 of the Counterclaims and further state that Direct's obligation is to cooperate in the provision of coordination services so that Direct resettles with PJM for its actual retail load obligation.

32. The Companies state that Section XV.A. of the Supplier Tariff speaks for itself. The Companies deny the remaining allegations in paragraph 32 of the Counterclaims.

33. The Companies deny the allegations in paragraph 33 of the Counterclaims that Direct has been damaged at all; to the contrary, Direct has unjustly enriched itself by refusing to settle with PJM the \$5.6 million it owes.

COMPANIES' RESPONSE TO COUNT II: VIOLATION OF THE AGREEMENTS

34. As to paragraph 34 of the Counterclaims, the Companies hereby incorporate the preceding paragraphs as if fully restated herein.

35. The Companies admit the allegations in paragraph 35 of the Counterclaims.

36. The Companies deny the allegations in paragraph 36 of the Counterclaims.

37. The Companies deny the allegations in paragraph 37 of the Counterclaims.

COMPANIES' RESPONSE TO COUNT III: STATUTORY VIOLATIONS

38. As to paragraph 38 of the Counterclaims, the Companies hereby incorporate the preceding paragraphs as if fully restated herein.

39. The Companies deny the allegations in paragraph 39 of the Counterclaims.

40. The Companies deny the allegations in paragraph 40 of the Counterclaims.

41. The Companies deny the allegations in paragraph 41 of the Counterclaims.

42. The Companies deny the allegations in paragraph 42 of the Counterclaims.

43. The Companies deny the allegations in paragraph 43 of the Counterclaims.

44. The Companies deny the allegations in paragraph 44 of the Counterclaims.

45. The Companies deny the allegations in paragraph 45 of the Counterclaims.

46. The Request for Relief should not contain factual allegations that form the basis of the Counterclaims. As such, no response is required. However, to the extent Direct's Request for Relief may be interpreted as doing so, the Companies re-allege and incorporate by reference, as if fully rewritten herein, their responses to paragraphs 1 through 45.

AFFIRMATIVE DEFENSES

1. Direct has failed to set forth reasonable grounds for complaint upon which relief may be granted. Direct has incurred no damages but, to the contrary, has been unjustly enriched in the amount of \$5,602,981.39. Because Direct has failed to cooperate as required by

the Companies' Supplier Tariffs and Supplier Agreements, the Commission should find that Direct has not stated reasonable grounds for complaint.

2. The Companies have breached no legal duty or contractual obligation owed to Direct.

3. The Counterclaims are barred by the doctrine of equitable estoppel.

4. The Counterclaims are barred by the doctrines of unclean hands and laches.

5. The Counterclaims are barred by Direct's gross negligence, recklessness or fraud in concealing from the Companies that Direct was not being billed for the Affected Customers' usage.

6. The Companies have acted at all times in accordance with the terms of the Agreements and Supplier Tariff, as well as all rules, regulations and Orders as promulgated and issued by the PUCO, the laws existing in the State of Ohio, and accepted standards and practices in the electric industry.

7. The Companies reserve the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

WHEREFORE, having fully answered the Counterclaims, the Companies respectfully request that the Counterclaims be dismissed, and that they be granted any other relief that this Commission may deem just and reasonable.

Respectfully Submitted,

/s/ James F. Lang

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CERTIFICATE OF SERVICE

I certify that the foregoing Answer to Counterclaims was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 23rd day of October, 2017. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Mark T. Keaney

One of the Attorneys for Ohio Edison
Company and The Cleveland Electric
Illuminating Company

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/23/2017 11:50:46 AM

in

Case No(s). 17-1967-EL-CSS

Summary: Answer Answer to Direct Energy Business, LLC's Counterclaims electronically filed by Mr. Mark T Keaney on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company