

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Ohio Schools Council, Ohio School Boards)	
Association, Ohio Association of School)	
Business Officials, and Buckeye Association)	
of School Administrators, dba)	
Power4Schools,)	
)	
Complainants,)	Case No. 14-1182-EL-CSS
)	
v.)	
)	
FirstEnergy Solutions Corp.,)	
)	
Respondent.)	

**REPLY OF THE TIMKEN COMPANY, MARATHON PETROLEUM COMPANY, WAUSAU
PAPER TOWEL AND TISSUE LLC, ASHTA CHEMICALS INC., COLUMBUS
CASTINGS, THE LINCOLN ELECTRIC COMPANY, DELPHI CORPORATION,
LANDMARK PLASTIC CORPORATION, NAVCO ENTERPRISES.COM, INC., NAVCO
ENTERPRISES OF P.V., INC., NAVCO ENTERPRISES, INC., FOODLIFE
INTERNATIONAL, INC., NAVCO ENTERPRISES OF O.V., INC., AND NAVCO OF YORK
ROAD TO THE MEMORANDA CONTRA OF COMPLAINANTS AND RESPONDENT TO
MOTIONS TO INTERVENE AND FOR INTERIM AND PRELIMINARY ORDERS**

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ATTORNEYS FOR MOVANTS

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I. INTRODUCTION

On July 3, 2014, Ohio Schools Council, Ohio School Boards Association, Ohio Association of School Business Officials, and Buckeye Association of School Administrators, dba Power4Schools (“Complainants”), filed a multi-count Complaint in this proceeding. The Complaint alleges that certain of the Complainants’ participating members are customers that receive competitive retail electric service (“CRES”) from FirstEnergy Solutions Corp. (“FES”). As part of their request for relief, Complainants

have asked the Public Utilities Commission of Ohio (“Commission”) to find that FES’s communications, billing, or collection of the RTO Expense Surcharge violate certain provisions of the Ohio Revised Code and Ohio Administrative Code that apply to FES as a CRES provider. The Complainants also request that the Commission suspend FES’s certificate to provide CRES in the State of Ohio. To the extent that FES’s CRES certificate is suspended as Complainants have requested, FES may be unable to perform in accordance with its existing retail service agreements since such certification is a condition for the provision of CRES in the State of Ohio. This portion of the Complainants’ requested relief will, if granted by the Commission, affect all FES retail customers in Ohio including Movants.

On July 17, 2014, The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation filed Motions to Intervene and for Interim and Preliminary Orders (“Motions for Preliminary and Interim Orders”). On July 21, 2014, Navco Enterprises.Com, Inc., Navco Enterprises of P.V., Inc., Navco Enterprises, Inc., Foodlife International, Inc., Navco Enterprises of O.V., Inc., and Navco of York Road, Inc. filed similar motions. (Collectively, these parties are referred to as the “Movants.”)

In support of their Motions to Intervene, Movants state that they are customers of FES and Ohio electric distribution companies (“EDU”).¹ They further allege they are

¹ Motion to Intervene and Memorandum in Support of the Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation at 3-4 (July 21, 2014). The Motion to Intervene of Navco Enterprises.Com, Inc., *et al.*, alleges similar facts on behalf of those parties. To avoid redundant citations, the two motions are referred to as the Motions to Intervene herein, and citations are to the Motion to Intervene filed on behalf of The Timken Company, *et al.*

receiving service pursuant to contracts with FES that are identical or substantially similar to the provisions contained in the contracts which are the subject matter of the Complaint.² The Movants either have been charged or threatened with an extra charge, an RTO Expense Surcharge, similar to the charge complained of by the Complainants.³ They also state that they have disputed the charges with FES and some have withheld payment of the disputed amounts.⁴ Movants' business interests are either not represented at all by Complainants or are not adequately represented by Complainants.⁵ Based on Movants' experience with PJM Interconnection, LLC ("PJM") and, more broadly, wholesale electric markets, Movants will significantly contribute to full development and equitable resolution of factual issues raised by the Complaint and the relief requested therein.⁶ To address the additional concerns not addressed by the Complainants, the Movants filed Motions for Preliminary and Interim Orders to assure that they are not affected adversely while they and FES address the bona fide billing disputes regarding the RTO Expense Surcharges.⁷

The Complainants and FES have opposed the Motions to Intervene. Although Complainants initially assert that the Movants' interests in this proceeding are

² *Id.* at 4.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 5.

⁶ *Id.* at 5-6.

⁷ Motion for Interim and Preliminary Orders and Memorandum In Support of The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, and Landmark Plastic Corporation (July 21, 2014) ("Motion for Interim and Preliminary Orders"). The Motion of Navco Enterprises.Com, Inc., *et al.*, for Interim and Preliminary Orders alleges similar facts on behalf of those parties. To avoid redundant references, the two motions are referred to as the Motions for Interim and Preliminary Orders herein, and citations are to the Motion for Interim and Preliminary Orders filed on behalf of The Timken Company, *et al.*

speculative,⁸ Complainants more specifically argue that the Movants must allege that they are similarly situated to the Complainants such that their contract terms are the same or similar.⁹ From this assumption, Complainants claim that intervention should be denied because the Movants have not shown that their interests would be impaired by a resolution of the Complaint.¹⁰ The Complainants further argue that the conditional nature of their request for orders suspending FES's certificate to serve as a CRES provider also renders the Movants' Motions to Intervene too speculative.¹¹

FES argues that intervention should not be granted because resolution of the Complaint will not affect the Movants' rights to pursue any remedies and that they are seeking to defend FES's certification.¹² It also argues that the Movants should proceed with their own complaints in separate proceedings.¹³

FES also has opposed the Motions for Interim and Preliminary Orders. It argues that the Commission lacks subject matter jurisdiction over the Complaint and Motions for Preliminary and Interim Orders and that the Movants failed to demonstrate a need for the interim and preliminary relief.¹⁴

⁸ Power4Schools' Memorandum Contra Industrial Customers' and Ohio Manufacturers' Association Motions to Intervene at 2 (Aug. 4, 2014) ("Complainants' Memo Contra").

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.* at 6.

¹² FirstEnergy Solutions Corp.'s Memorandum Contra Motions to Intervene and for Interim and Preliminary Orders by The Timken Company, *et al.*, and Navco Enterprises, *et al.*, at 3-7 (Aug. 4, 2014) ("FES Memo Contra").

¹³ *Id.* at 5.

¹⁴ *Id.* at 13.

The Complainants and FES's arguments are without merit. As shown by their Motions, the Movants have established sufficient grounds for intervention and the requested interim and preliminary orders.

II. THE MOVANTS' MOTIONS TO INTERVENE SHOULD BE GRANTED

Intervention in Commission matters is governed by R.C. 4903.221, which provides that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. In ruling on a motion to intervene, the Commission is to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention will unduly prolong or delay the proceeding, and whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.¹⁵

Rule 4901-1-11, Ohio Administrative Code, ("OAC"), further provides that intervention "shall" be allowed by the Commission if the prospective intervenor "has a real and substantial interest in the proceeding, and ... is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties."¹⁶ "The regulation's text is very similar to Civ.R. 24—the rule governing

¹⁵ R.C. 4903.221; *Ohio Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 111 Ohio St. 3d 384 ¶15 (2006) (summarizing the statutory requirements of R.C. 4905.221).

¹⁶ Rule 4901-1-11, OAC, provides in relevant part:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

...

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or

intervention in civil cases in Ohio—which ‘is generally liberally construed in favor of intervention.’”¹⁷ The Commission is to proceed based on the allegations contained in the Motion. “In the absence of some evidence in the record calling those claims into doubt or showing that intervention would unduly prolong or delay the proceedings, intervention should [be] granted.”¹⁸

Under the criteria the Commission is to consider when addressing a motion to intervene, the Movants have alleged sufficient grounds to support granting their requests for intervention. They have demonstrated that they have a real and substantial interest in the outcome of the case in that it may both directly and indirectly affect their rights under their contracts with FES, particularly if the Commission finds that FES’s certificate should be suspended. They have also detailed their legal position that is adverse to the claims made by FES that the Movants are liable for RTO Expense Surcharges under their contracts: Movants are disputing FES’s attempt to bill and collect the RTO Expense Surcharge and in some instances have withheld payment of

impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

(B) In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner shall consider:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

¹⁷ *Ohio Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 111 Ohio St.3d 384 ¶16 (2006).

¹⁸ *Id.*, ¶20.

the disputed charge. Their intervention at this early stage of the proceedings will not unduly prolong or delay the proceedings. Further, their collective involvement will contribute to the full development of issues in this proceeding. In particular, there are additional concerns raised by the actions of FES that the Movants have asked the Commission to address while this matter proceeds. These additional matters are raised by the Motions for Preliminary and Interim Orders and are not addressed by the Complaint. Finally, Movants allege that they can contribute significantly to the resolution of these matters, as they are sophisticated parties with experience in the CRES market. Thus, the Movants have demonstrated sufficient grounds for intervention under the criteria set out in both R.C. 4903.221 and the Commission's rule.

In their opposition to the Motions to Intervene, Complainants argue that the Movants must allege that they are similarly situated to the Complainants such that their contract terms are similar or the same as those contained in the contracts of the Complainants. Initially, the Movants have alleged that that their contract terms are similar or the same as those contained in the contracts of the Complainants; thus, the argument raised by the Complainants is already addressed by the Motions to Intervene.

The Complainants' argument that Movants must allege that that their contract terms are similar or the same as those contained in the contracts of the Complainants, however, is not required for intervention under either R.C. 4903.221 or the Commission rule. If the Commission inserted such a requirement, its decision would be an abuse of discretion.¹⁹ What is required is a showing that Movants have a real and substantial interest in the proceeding and that they are so situated that the disposition of the

¹⁹ *Ohio Consumers' Counsel v. Pub. Util. Comm'n of Ohio*, 111 Ohio St. 3d 384 ¶18 (2006).

proceeding may, as a practical matter, impair or impede their ability to protect those interests. R.C. 4903.221. Movants have satisfied that requirement in their Motions.

Complainants further assert that the concerns that Movants raised concerning the suspension of the FES certificate are “too speculative.”²⁰ Contrary to Complainants’ assertion that Movants’ interests are speculative, the Complaint’s request for relief raises the potential that the resolution of the Complaint may impair or impede Movants’ ability to protect their interests in their contracts with FES. Thus, the relief sought by the Complainants raises a matter of real and substantial interest in the outcome of the case that warrants the Movants’ intervention under R.C. 4903.221.

FES begins its Memorandum Contra with an extended argument that the Movants (and presumably the Complainants as well) are seeking to modify the contract between them and FES. Yet, FES does not specify how the relief requested by the Movants would provide them a “better deal.”²¹ In fact, Movants are seeking to protect the right they have under their contracts with FES from unlawful interference from FES or a third party such as an EDU. FES’s argument that the parties are seeking relief not provided by law is not correct.

Further, FES’s argument misstates the issues before the Commission. At issue in this Complaint and the Motions for Interim and Preliminary Relief is whether FES’s actions comply with the requirement that it conduct its business in compliance with R.C. 4928.10 and the Commission rules implementing those requirements. The Motions for Preliminary and Interim Orders request that the Commission address issues not

²⁰ Complainants’ Memo Contra at 6.

²¹ FES Memo Contra at 3.

addressed in the Complaint that may arise while the Complaint is pending and which present material concerns to the Movants because they are also disputing the charges FES is seeking to collect. These issues fall squarely within the jurisdiction of the Commission to decide, as discussed below. Accordingly, FES's misstatement of the nature of the relief sought by the Movants does not warrant denial of the Motions to Intervene (or the Motions for Preliminary and Interim Orders).

On the merits of the Motions to Intervene, FES argues that intervention should not be granted because resolution of the Complaint will not affect the Movants' interests and that they are seeking to defend FES's certification.²² It also argues that the Movants should proceed with their own complaint in a separate proceeding.²³

The first argument, that the Movants' interest in the case is limited to its precedential outcome, is not correct. As alleged in their Motions, Movants have similar contractual issues with FES as the Complainants and have demonstrated that they have an immediate interest in preserving their statutory and administrative rights while this matter is pending.

Moreover, the cases cited by FES to support this position are inapposite. Contrary to FES's argument, the first case, the *XO Complaint Case*,²⁴ supports the Movants' Motions to Intervene, as discussed below. The other case cited by FES, the *Columbus Southern Self-Complaint Case*, is inapplicable because the facts on which the Commission denied the motion to intervene are materially different from those

²² *Id.* at 3-7.

²³ *Id.* at 3-4.

²⁴ *In the Matter of the Complaint of XO Ohio, Inc. v. City of Upper Arlington*, Case No. 03-870-AU-PWC, Entry (hereinafter "*XO Complaint Case*").

presented here. In that case, the coalition of persons seeking intervention were not served by the utility that had filed the self-complaint.²⁵ The Commission found that the only interest of the coalition was in the legal precedent that might be established by the pending case and denied the motion to intervene.²⁶ In contrast to the facts of the *Columbus Southern Self-Complaint Case*, Movants have demonstrated a real and substantial interest in the outcome of this case, particularly in regard to the continued provision of service under the contract and FES's certificate.

As to the second argument that the Movants should be required to file a separate complaint, the Commission has already rejected it in the *XO Complaint Case*. In that case, SBC Ohio and AT&T sought intervention because they were similarly affected by an ordinance passed by the City of Upper Arlington, and the City of Upper Arlington opposed the intervention, arguing that SBC Ohio and AT&T should have filed their own complaints to challenge the ordinance.²⁷ Over the City of Upper Arlington's objection, the Commission granted the motions to intervene of SBC Ohio and AT&T, finding "each ha[d] a real and substantial interest in [the] proceedings."²⁸ Similarly, the Movants have a real and substantial interest in the proceedings, as discussed above. Because of that interest, the Commission should grant Movants' Motions to Intervene as it did in the *XO Complaint Case*

²⁵ *In the Matter of the Self-Complaint of Columbus Southern Power Company and Ohio Power Company Regarding the Implementation of Programs to Enhance Distribution Service Reliability*, Case No. 06-222-EL-SLF, Entry at 2 (Mar. 21, 2007) (hereinafter "*Columbus Southern Self-Complaint Case*").

²⁶ *Id.*

²⁷ *OX Complaint Case*, Respondent City of Upper Arlington's Memorandum Contra to AT&T Corp.'s Motion to Intervene at 2 (May 1, 2003); Respondent City of Upper Arlington's Memorandum Contra to SBC Ohio's Motion to Intervene at 2 (Apr. 29, 2003).

²⁸ *Id.*, Entry at 14 (May 14, 2003).

FES further argues that the Movants must seek relief through a complaint so that its due process rights are protected.²⁹ This argument, however, is without merit because the Movants have demonstrated that their intervention is proper. Because the Movants have provided notice of their interest in the matter and the interim relief they are seeking and FES has an opportunity to respond to the request for relief, FES cannot legitimately claim that its rights to due process have been violated. As noted above, Movants are not required to file a separate complaint to secure relief.³⁰

FES also makes the odd argument that each Movant must file its own complaint because class actions and “second complaints” are not permitted under Commission rules.³¹ The suggestion that Movants are seeking class status or attempting to join a second cause of action is not correct or even alleged by the Movants in their Motion; thus, the argument is a red herring and should be rejected as a basis to deny the Motions to Intervene.

Finally, the Movants are not seeking to defend FES’s certificate of service. Rather, the Complaint threatens a challenge to FES’s certificate and thus raises the possibility that FES will not be permitted to serve the Movants under their current contracts. It is that possibility that give the Movants a real and substantial interest in the outcome of the case.

For the reasons set out in their Motions to Intervene, Movants have stated grounds supporting their intervention in this case. Neither the Complainants nor FES

²⁹ FES Memo Contra at 6.

³⁰ *XO Complaint Case*, Entry at 14.

³¹ FES Memo Contra at 7.

provides a basis for denying the Motions. Accordingly, the Commission should grant the Motions to Intervene.

III. THE MOTION FOR INTERIM AND PRELIMINARY ORDERS SHOULD BE GRANTED

Movants seek by separate Motions for Interim and Preliminary Orders to assure that the Movants are not adversely affected by actions of FES while the bona fide disputes over RTO Expense Surcharges are resolved. FES has opposed the Motions for Interim and Preliminary Orders. It argues that the Commission lacks subject matter jurisdiction to address the merits of the Complaint and the Motions and that the Movants failed to demonstrate sufficient grounds for the requested orders.³² These arguments are without merit.

Initially, FES incorrectly argues that the Commission lacks subject matter jurisdiction over the Motions for Interim and Preliminary Orders, relying on its Motion to Dismiss the Complaint filed separately.³³ In its Motion to Dismiss, FES attempts to restate the Complaint to confine it narrowly to a dispute regarding contract interpretation.³⁴ While it is clear that the parties are under contract with FES and FES is seeking to reinterpret the contract provisions to authorize an RTO Expense Surcharge, the Complaint and Movants' Motions for Interim and Preliminary Relief request the Commission to invoke its authority to establish and enforce the service requirements applicable to CRES providers.³⁵ R.C. 4928.10(A) provides the Commission with

³² *Id.* at 7-13.

³³ *Id.* at 9.

³⁴ Respondent FirstEnergy Solutions Corp.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction *passim* (Aug. 4, 2014) ("Motion to Dismiss").

³⁵ See, e.g., Complaint at 3; Motion for Interim and Preliminary Orders at 8.

authority to adopt rules prohibiting unfair, deceptive, and unconscionable business practices. Further, the Commission's subject matter jurisdiction extends to the billing practices and coordination of switching of suppliers by FES. R.C. 4928.10(D). Under this authority, the Commission has adopted rules prohibiting CRES providers from engaging in unfair, deceptive, and unconscionable business practices regarding the marketing, administration, and provision of service.³⁶ R.C. 4928.16 then extends the provisions of R.C. 4905.26 so that the Commission may address complaints by any person regarding the provision of services by an electric services company subject to certification.

The Complaint and Motions for Interim and Preliminary Orders raise issues within the Commission's jurisdiction under R.C. 4928.10 and 4905.26. The Complaint alleges multiple violations of the prohibitions contained in R.C. 4928.10 and the Commission's rules implementing the statutory requirements.³⁷ Likewise, the Motions for Interim and Preliminary Orders identify the billing and other concerns that the Commission should address to prevent unfair business practices arising out of the disputed bills while the disputes are resolved.³⁸ Thus, the Complaint and Motions for Interim and Preliminary Orders are within the subject matter jurisdiction of the Commission to address the unfair business practices, including the billing and switching issues that are raised by FES's attempt to bill and collect the RTO Expense Surcharge.

³⁶ Rule 4901:1-21-03, OAC.

³⁷ Complaint at 19-25.

³⁸ Motion for Interim and Preliminary Orders at 8-10.

Next, FES incorrectly argues that the Commission is not authorized to provide interim relief.³⁹ Repeatedly, however, the Commission has issued interim relief to parties that have sought it under the authority of R.C. 4905.26.⁴⁰ In a self-complaint seeking authorization to provide new gas service, for example, East Ohio Gas Company (“East Ohio”) sought interim relief to connect new industrial customers by motion while the Commission considered the merits of the complaint. The Commission granted the interim relief after addressing the public interest considerations and stating that the interim relief was subject to the final resolution of the case.⁴¹

As in the *East Ohio* case, this matter is before the Commission on a complaint filed under R.C. 4905.26. The Complaint seeks a resolution of whether certain practices violate R.C. 4928.10 and Commission rules. Pursuant to the Commission’s recognized authority to issue preliminary and interim orders, the Movants have requested that the Commission address preliminary issues to assure that FES does not act in a manner that would result in violations of the Commission’s rules prohibiting unfair business practices. The requested relief sought by Movants will assure that they are not adversely affected by actions of FES and the EDUs serving the Movants while this matter is pending. Based on the authority the Commission has under R.C. 4928.10

³⁹ FES Memo Contra at 10-11.

⁴⁰ *In the Matter of the New or Reestablished Gas Service for Residential, Commercial, and Industrial Customers*, Case No. 77-1440-GA-SLF, 1978 WL 442231, Entry (Feb. 2, 1978) (“*East Ohio*”); *In the Matter of the Complaint of Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P. v. Ameritech Ohio*, Case No. 96-66-TP-CSS, Opinion and Order at 10 (Mar. 21, 1996) (directing Ameritech to file interim tariffs pending resolution of case setting permanent rates). The Commission has granted interim relief in proceedings initiated under other provisions of Ohio law as well. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Finding and Order at 3 (Mar. 3, 2010); *In the Matter of the Review of SBC Ohio’s TELRIC Costs for Unbundled Network Elements*, Case No. 02-1280-TP-UNC, Finding and Order at 6 (Mar. 11, 2004).

⁴¹ *East Ohio*, 1978 WL 442231 at *2.

and 4905.26 to grant interim relief, the Motions for Preliminary and Interim Orders are within the authority of the Commission.

FES further argues that the statute and rules cited by the Movants do not authorize the requested relief because R.C. 4928.10 only authorizes the promulgation of rules.⁴² FES, however, misreads the applicable law and rules. R.C. 4928.10 provides the Commission with authority to adopt rules addressing unfair business practices including billing and transfer of service. Under this provision, the Commission has adopted rules prohibiting unfair business practices and addressing particular billing concerns outlined in the Movant's Motions for Preliminary and Interim Orders. Under R.C. 4928.16, the Commission is provided subject matter jurisdiction to address violations of the general proscription concerning unfair business practices and the other rules regarding billing and transfer of service. As discussed above, the Motions for Interim and Preliminary Orders seek Commission orders addressing the application of the Commission's authority to address unfair business practices and billing disputes that may also affect the transfer of service. Thus, Motions for Interim and Preliminary Orders properly invoke the Commission's authority.

Finally, FES incorrectly argues that Movants failed to explain why their requests are reasonable.⁴³ As outlined in their Motions, Movants have identified issues that are not addressed by Commission rules, but which if left unresolved could result in a loss of the benefits of their contracts with FES and their rights under Ohio law and Commission rules. As they stated in their Motions:

⁴² FES Memo Contra at 11.

⁴³ *Id.* at 12-13.

As the dispute resolution process proceeds, there is potential for confusion and unintended consequences if there is no common understanding regarding such things as how the disputes affect FES's supply obligation to each Movant, EDU billings on behalf of FES that contain a disputed amount, and the potential for a Movant's return to Standard Service Offer ("SSO") service either as a result of FES's directions to an EDU or actions by an EDU that occur as a result of a lack of clarity about the significance of the dispute or how the EDU should exercise its billing and collection function in light of the billing dispute.⁴⁴

To address those issues, the Movants identified the necessary preliminary and interim orders they are seeking:

While this Complaint is pending, it would be lawful and reasonable for the Commission to direct FES to treat the disputed amounts of the RTO Expense Surcharge as not due and payable, to avoid taking action that would terminate the contracts of Movants or that would otherwise result in the return of the Movants to the SSO during the remaining terms of their contracts with FES, to resolve the billing disputes in good faith, to prohibit FES from imposing a late fee on those amounts that are the subject to the bona fide dispute, and to prohibit FES from taking actions that adversely affect the business relationship between FES, third parties, and the Movants.⁴⁵

Thus, Movants have stated in their Motions, and again here, that there are reasonable grounds for the Commission to grant their Motions for Interim and Preliminary Orders.

IV. CONCLUSION

The Motions to Intervene should be granted because intervention is proper under both R.C. 4903.122 and the Commission's rules. Further, the Commission should grant the Motions for Interim and Preliminary Orders because the Commission has subject matter jurisdiction to provide the requested relief, and the relief is necessary to assure that the Movants' contractual and statutory rights are protected while the bona fide disputes between FES and the Movants are resolved.

⁴⁴ Motion for Interim and Preliminary Orders at 7-8.

⁴⁵ *Id.* at 9-10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Reply of The Timken Company, Marathon Petroleum Company, Wausau Paper Towel and Tissue LLC, ASHTA Chemicals Inc., Columbus Castings, The Lincoln Electric Company, Delphi Corporation, Landmark Plastic Corporation, Navco Enterprises.Com, Inc., Navco Enterprises of P.V., Inc., Navco Enterprises, Inc., Foodlife International, Inc., Navco Enterprises of O.V., Inc., and Navco of York Road to the Memoranda Contra of Complainants and Respondent to Motions to Intervene and for Interim and Preliminary Orders* was sent by, or on behalf of, the undersigned counsel for Movants to the following parties of record this 11th day of August 2014, via electronic transmission.

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Summary: Reply of Movants to the Memoranda Contra of Complainants and Respondent to Motions to Intervene and for Interim and Preliminary Orders electronically filed by Mr. Frank P Darr on behalf of The Timken Company and Marathon Petroleum Company and Wausau Paper Towel and Tissue LLC and ASHTA Chemicals, Inc. and Columbus Castings and The Lincoln Electric Company and Delphi Corporation and Landmark Plastic Corporation and Navco Enterprises.Com, Inc. et al.