

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Carbo Forge, Inc., Wyandot, Inc.,</b>	)	
<b>Plaskolite, Inc., American Trim, LLC,</b>	)	
<b>Whirlpool Corporation, McWane, Inc.,</b>	)	
<b>Navistar, Inc., Sauder Woodworking Co.,</b>	)	
<b>McDonald Steel Corporation, Henny</b>	)	<b>CASE NO. 14-1610-EL-CSS</b>
<b>Penny Corporation, Lima Refining</b>	)	
<b>Company, Campbell Soup Supply</b>	)	
<b>Company, LLC., Cooper Tire &amp; Rubber</b>	)	
<b>Company, Mantaline Corporation,</b>	)	
<b>Republic Steel, Jay Industries, Inc., Sun</b>	)	
<b>Chemical Corporation, and 3M Company.</b>	)	
	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>FirstEnergy Solutions Corp.</b>	)	
	)	
<b>Respondent.</b>	)	

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**DEFENDANT FIRSTENERGY SOLUTIONS CORP.’S ANSWER TO COMPLAINT**

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For its Answer to Complainants’ Complaint, Respondent FirstEnergy Solutions Corp. (“FES”) states as follows:

**Parties and Jurisdiction:**

1. FES denies the allegations in paragraph 1 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.
2. FES denies the allegations in paragraph 2 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.
3. FES denies the allegations in paragraph 3 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

4. FES denies the allegations in paragraph 4 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

5. FES denies the allegations in paragraph 5 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

6. FES denies the allegations in paragraph 6 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

7. FES denies the allegations in paragraph 7 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

8. FES denies the allegations in paragraph 8 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

9. FES denies the allegations in paragraph 9 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

10. FES denies the allegations in paragraph 10 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

11. FES denies the allegations in paragraph 11 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

12. FES denies the allegations in paragraph 12 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

13. FES denies the allegations in paragraph 13 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

14. FES denies the allegations in paragraph 14 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

15. FES denies the allegations in paragraph 15 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

16. FES denies the allegations in paragraph 16 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

17. FES denies the allegations in paragraph 17 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

18. FES denies the allegations in paragraph 18 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

19. FES admits the allegations in paragraph 19 of the Complaint.

**Jurisdiction**

20. FES admits the allegations in paragraph 20 of the Complaint.

21. FES admits the allegations in paragraph 21 of the Complaint.

22. FES admits the allegations in paragraph 22 of the Complaint.

23. FES admits the allegations in paragraph 23 of the Complaint.

24. FES admits the allegations in paragraph 24 of the Complaint.

25. FES states that Ohio Administrative Code §§4928:1-24-(01-13) and 4901:1-21-(01-15) and Ohio Revised Code §4928.08 and speak for themselves. FES denies any remaining allegations in paragraph 25 of the Complaint..

26. FES admits that the certificate is quoted accurately. FES denies any remaining allegations in paragraph 26 of the Complaint.

27. FES states that Ohio Revised Code § 4928.08(D) speaks for itself. FES denies any remaining allegations in paragraph 27 of the Complaint.

28. FES states that Ohio Revised Code § 4928.16(A)(1) speaks for itself. FES denies any remaining allegations in paragraph 28 of the Complaint.

29. FES states that Ohio Revised Code § 4928.16(A)(2) speaks for itself. FES denies any remaining allegations in paragraph 29 of the Complaint.

30. FES denies the allegations in paragraph 30 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth since Complainants have failed to identify the rules or statutes referenced in this paragraph.

31. FES states that O.A.C. 4901:1-21-02(E) speaks for itself. FES denies any remaining allegations in paragraph 31 of the Complaint.

32. FES denies the allegations in paragraph 32 of the Complaint.

33. FES denies the allegations in paragraph 33 of the Complaint.

34. FES denies the allegations in paragraph 34 of the Complaint.

35. FES denies the allegations in paragraph 35 of the Complaint.

#### **General Allegations**

36. FES incorporates all the preceding paragraphs as if fully rewritten herein.

37. FES admits that Complainants are FES customers. FES denies any remaining allegations in paragraph 37 of the Complaint.

38. FES admits that the Supply Agreement quote is from a form of a Supply Agreement. FES denies any remaining allegations in paragraph 38 of the Complaint.

39. FES denies the allegations in paragraph 39 of the Complaint.

40. FES admits that the Supply Agreement quote is from a form of a Supply Agreement. FES denies any remaining allegations in paragraph 38 of the Complaint.

41. FES denies the allegations in paragraph 41 of the Complaint.
42. FES states that Ohio Revised Code §4928.01(A)(1) speaks for itself.
43. FES admits PJM's website is quoted accurately, and denies any remaining allegations in paragraph 43 of the Complaint.
44. FES denies the allegations in paragraph 44 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.
45. FES admits that the Supply Agreement is quoted correctly. FES denies any remaining allegations in paragraph 45 of the Complaint.
46. FES denies that the Supply Agreement is quoted correctly. *See* Complaint, Confidential Ex. B, p. 5. FES denies any remaining allegations in paragraph 46 of the Complaint.
47. FES admits that the Supply Agreement is quoted correctly. FES denies any remaining allegations in paragraph 47 of the Complaint.
48. FES admits the allegations in paragraph 48 of the Complaint.
49. FES admits that the Pricing Attachment is quoted correctly. FES denies any remaining allegations in paragraph 38 of the Complaint.
50. FES denies the allegations in paragraph 50 of the Complaint.
51. FES admits the letter is quoted accurately, and denies any remaining allegations in paragraph 51 of the Complaint.
52. FES admits that some Complainants wrote to FES regarding the Surcharge. FES denies any remaining allegations in paragraph 52 of the Complaint.
53. FES admits letters were sent to some Complainants and that the letters speak for themselves. FES denies any remaining allegations in paragraph 53 of the Complaint.

54. FES admits invoices were sent to some Complainants and that the invoices speak for themselves. FES denies any remaining allegations in paragraph 54 of the Complaint.

55. FES denies the allegations in paragraph 55 of the Complaint.

56. FES admits receiving letters from some Complainants. FES denies any remaining allegations in paragraph 56 of the Complaint.

57. FES admits letters were sent to some Complainants and that the letters speak for themselves. FES denies any remaining allegations in paragraph 57 of the Complaint.

58. FES denies the allegations in paragraph 58 of the Complaint.

59. FES denies the allegations contained in paragraph 59 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

60. FES denies the allegations contained in paragraph 59 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

61. FES denies the allegations in paragraph 61 of the Complaint for lack of knowledge or information sufficient to form a belief as to their truth.

### **COUNT I**

62. FES incorporates all the preceding paragraphs as if fully rewritten herein.

63. FES denies the allegations in paragraph 63 of the Complaint.

64. FES states that Ohio Revised Code § 4928.02(A) speaks for itself. FES denies any remaining allegations in paragraph 64 of the Complaint.

65. FES states that Ohio Revised Code. § 4928.02(I) speaks for itself. FES denies any remaining allegations in paragraph 65 of the Complaint.

66. FES states that Ohio Administrative Code §§ 4901:1-21-03(A)(1) -(3) speak themselves. FES denies any remaining allegations in paragraph 66 of the Complaint.

67. FES states that Ohio Administrative Code §4901:1-21-11(A) speaks for itself.

FES denies any remaining allegations in paragraph 67 of the Complaint.

68. FES denies the allegations in paragraph 68 of the Complaint.

### **COUNT II**

69. FES incorporates all the preceding paragraphs as if fully rewritten herein.

70. FES admits the allegations in paragraph 70 of the Complaint.

71. FES denies the allegations in paragraph 71 of the Complaint.

72. FES denies the allegations in paragraph 72 of the Complaint.

### **COUNT III**

73. FES incorporates all the preceding paragraphs as if fully rewritten herein.

74. FES states that O.R.C. § 4928.02(B) speaks for itself. FES denies any remaining allegations in paragraph 74 of the Complaint.

75. FES states that O.A.C. § 4901:1-21-12(A)(7)(a) does not exist, that O.A.C. § 4901:1-21-12(B)(7)(a) applies only to contracts with residential and small commercial customers, and that O.A.C. 4901:1-21-12(B)(8) allows for contingency clauses in such contracts. FES denies any remaining allegations in paragraph 75 of the Complaint.

76. FES denies the allegations in paragraph 76 of the Complaint.

### **COUNT IV**

77. FES incorporates all the preceding paragraphs as if fully rewritten herein.

78. FES admits the allegations in paragraph 78 of the Complaint.

79. FES denies the allegations in paragraph 79 of the Complaint.

80. FES admits the Surcharge is related to PJM-imposed ancillary services costs.

FES denies any remaining allegations in paragraph 80 of the Complaint.

81. FES denies the allegations in paragraph 81 of the Complaint.

82. FES denies the allegations in paragraph 82 of the Complaint.

83. FES denies the allegations in paragraph 83 of the Complaint.

84. FES denies the allegations in paragraph 84 of the Complaint.

#### **COUNT V**

85. FES incorporates all the preceding paragraphs as if fully rewritten herein.

86. FES admits the allegations in paragraph 86 of the Complaint.

87. FES denies the allegations in paragraph 87 of the Complaint.

88. FES states O.A.C. 4901:1-21-14(C)(2) speaks for itself. FES denies any remaining allegations in paragraph 88 of the Complaint.

89. FES states O.A.C. 4901:1-21-18(E)(2) speaks for itself. FES denies any remaining allegations in paragraph 89 of the Complaint.

90. FES denies the allegations in paragraph 90 of the Complaint.

91. FES denies the allegations in paragraph 91 of the Complaint.

#### **COUNT VI**

92. FES incorporates all the preceding paragraphs as if fully rewritten herein.

93. FES states that Ohio Revised Code O.R.C. § 4901:1-24-05(D), the Ohio Administrative Code, and Ohio Revised Code Chapter 4928 speak for themselves. FES denies any remaining allegations in paragraph 93 of the Complaint.

94. FES denies the allegations in paragraph 94 of the Complaint.

#### **COUNT VII**

95. FES incorporates all the preceding paragraphs as if fully rewritten herein.



96. FES states O.A.C. 4901:1-24-13 speaks for itself. FES denies any remaining allegations in paragraph 96 of the Complaint.

97. FES states O.A.C. 4901:1-21-02(E) speaks for itself. FES denies any remaining allegations in paragraph 97 of the Complaint.

98. FES states O.A.C. 4901:1-21-15 speaks for itself. FES denies any remaining allegations in paragraph 98 of the Complaint.

99. FES denies the allegations in paragraph 99 of the Complaint.

### **AFFIRMATIVE DEFENSES**

FES hereby sets forth its affirmative defenses to the claims asserted in the Complaint as follows:

100. Complainants claims are barred in whole or in part for failure to state a claim upon which relief can be granted.

101. Complainants claims are barred in whole or in part because the Commission does not have jurisdiction over the terms of a contract, including but not limited to the price and term, between a CRES provider and its customers.

102. Complainants claims are barred in whole or in part by the doctrine of estoppel.

103. Complainants claims are barred in whole or in part by the parol evidence rule.

Respectfully submitted,

/s/ Mark A. Hayden

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*Attorneys for FirstEnergy Solutions Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Answer* was served this 6th day of October, 2014, via e-mail upon the parties below.

/s/ N. Trevor Alexander  
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Summary: Answer electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.