

THE PUBLIC UTILITIES COMMISSION OF OHIO

**CARBO FORGE, INC., WYANDOT, INC.,
PLASKOLITE, INC., AMERICAN TRIM,
LLC, WHIRLPOOL CORPORATION,
MCWANE, INC., NAVISTAR, INC., SAUER
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,**

CASE NO. 14-1610-EL-CSS

COMPLAINANTS,

V.

FIRSTENERGY SOLUTIONS CORP.,

RESPONDENT.

ENTRY

Entered in the Journal on June 17, 2016

{¶ 1} In this Entry, the attorney examiner schedules a hearing for September 13, 2016, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.

{¶ 2} FirstEnergy Solutions Corp. (FES) is an electric services company as defined in R.C. 4928.01(A)(9), and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice furnished by the public utility that is in any

respect unjust, unreasonable, insufficient, or unjustly discriminatory. Pursuant to R.C. 4928.16, the Commission has jurisdiction under R.C. 4905.26, upon complaint of any person, regarding the provision by an electric services company subject to certification under R.C. 4928.08 of any service for which it is subject to certification.

{¶ 4} On September 12, 2014, pursuant to R.C. 4905.26, 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 (collectively, Complainants), filed a complaint against FES. Complainants alleged several counts relating to their fixed-price competitive retail electric service (CRES) contracts with FES. Complainants asserted that they were assessed an “RTO Expense Surcharge” in June and July 2014 relating to an alleged pass-through event of costs and charges assessed on FES by PJM, occurring due to extremely cold weather in January 2014. FES’ actions of passing through these costs, Complainants allege, amounts to engaging in unfair, misleading, deceptive, or unconscionable acts or practices in violation of R.C. 4928.02 and 4928.10 and Ohio Adm.Code 4901:1-21-03, 4901:1-21-05, 4901:1-21-11, 4901:1-21-12, 4901:1-21-14, 4901:1-21-18, and is unjust and unreasonable pursuant to R.C. 4905.26 and 4928.02. Contemporaneously, the Complainants filed a motion and memorandum in support for assistance to prevent termination of service.

{¶ 5} On September 19, 2014, FES filed a memorandum in opposition to the motion for assistance, as well as a motion to dismiss the complaint for lack of subject matter jurisdiction.

{¶ 6} On September 22, 2014, Duke Energy Ohio, Inc. (Duke), filed correspondence in the docket. In its letter, Duke explains that Complainants’ motion to prevent termination of service, if granted, will essentially direct Duke, as the electric

distribution utility (EDU) for a number of the Complainants, to refrain from engaging in certain activities even though Duke is a nonparty. Duke asserts that it offers no comment on the merits of the complaint, motions, or responses, but asserts that Duke should not be subject to a blanket order from the Commission restricting it from disconnecting unpaid bills or charging a late fee for the same.

{¶ 7} Similarly, on September 23, 2014, Ohio Power Company (AEP Ohio) filed a similar letter asserting that it too should not be subjected to a blanket order prohibiting it from disconnecting the Complainants. AEP Ohio further advises that it plans to mark the disputed charges on affected customers' accounts so that the amounts contested do not cause late payments or disconnection, provided that FES and Complainants jointly identify the accounts involved and charges in dispute.

{¶ 8} On October 6, 2014, FES filed its answer to the complaint, denying Complainants' allegations. Additionally, on October 6, 2014, the Complainants filed a memorandum contra FES' motion to dismiss. On October 14, 2014, FES filed a reply in support of its motion to dismiss.

{¶ 9} By Entry issued on January 6, 2016, the Commission found, as it did in *Power4Schools*, and based upon statutory authority, state policy, and Ohio Supreme Court precedent, that the issues raised in the complaint are within the Commission's jurisdiction and, consequently, the motion to dismiss should be denied. The Commission noted that it is the state's policy to safeguard consumers against unreasonable sales practices from CRES providers, and it is the Commission's responsibility to ensure those protections are in place. This is not a matter of the Commission deciding matters of contract interpretation regarding the Complainants' CRES contracts; rather, at issue is how the CRES provider is administering its contracts and the CRES provider's practices related to the contract disclosures. Further, the Commission has both extensive regulations regarding CRES contracts and the expertise necessary to interpret the law at issue in this case. See, *In re Ohio Schools Council d.b.a.*

Power4Schools v. FES, Case No. 14-1182-EL-CSS, Entry (Nov. 18, 2015) (*Power4Schools*) at 5, citing R.C. 4928.02(I) and 4928.06. The Commission then found that FES and the EDUs shall not terminate service to any of the Complainants on the basis of the amounts disputed in this case until otherwise ordered by the Commission, the legal director, or an attorney examiner. Finally, the Commission directed the attorney examiner to set this matter for hearing.

{¶ 10} Accordingly, the attorney examiner finds that this case should be scheduled for hearing. The hearing will commence on September 13, 2016, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215. As is the case in all Commission complaint proceedings, the complainants have the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That this case be scheduled for hearing on September 13, 2016, at 10:00 a.m., in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Bryce McKenney

By: Bryce A. McKenney
Attorney Examiner

JRJ/sc

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

Summary: Attorney Examiner Entry scheduling a hearing for 09/13/2016 at 10:00 a.m. at the offices of the Commission, 180 E. Broad St., Rm. 11-A, Columbus, Ohio. - electronically filed by Sandra Coffey on behalf of Bryce McKenney, Attorney Examiner, Public Utilities Commission of Ohio