

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Retail Energy Supply Association,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 18-0736-EL-CSS</b>
	)	
<b>Ohio Edison Company, The Cleveland</b>	)	
<b>Electric Illuminating Company, and The</b>	)	
<b>Toledo Edison Company,</b>	)	
	)	
<b>Respondents.</b>	)	

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**ANSWER OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO THE  
COMPLAINT OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

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For their Answer to the Complaint of Retail Energy Supply Association (“Complainant”), Respondents, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “Companies”), state as follows:

**Parties and Jurisdiction:**

1. The Companies deny the allegations in paragraph 1 for lack of knowledge or information sufficient to form a belief as to their truth.
2. The Companies admit the allegations in paragraph 2.
3. The Companies admit the allegations in paragraph 3.
4. The Companies admit the allegations in paragraph 4.
5. The Companies admit the allegations in paragraph 5, except the allegation that FirstEnergy Corp. is the parent and sole shareholder of an entity called “FirstEnergy Service Corp.,” which is denied.

6. The allegations in paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 6.

### **SUMMARY OF THE CASE**

7. The allegations in paragraph 7 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 7.

8. The allegations in paragraph 8 are legal conclusions to which no response is required. The Ohio Revised Code is a written document which speaks for itself. To the extent a response is required, the Companies deny the allegations in paragraph 8.

9. The allegations in paragraph 9 are legal conclusions to which no response is required. The Ohio Revised Code is a written document which speaks for itself. To the extent a response is required, the Companies deny the allegations in paragraph 9.

10. The allegations in paragraph 10 are legal conclusions to which no response is required. The Ohio Revised Code, the Ohio Administrative Code and the Companies' Application in Case No. 14-1297-EL-SSO are written documents which speak for themselves. To the extent a response is required, the Companies deny the allegations in paragraph 10.

11. The allegations in paragraph 11 are legal conclusions to which no response is required. The Ohio Revised Code is a written document which speaks for itself. To the extent a response is required, the Companies deny the allegations in paragraph 11.

12. The allegations in paragraph 12 are legal conclusions to which no response is required. The Ohio Revised Code is a written document which speaks for itself. To the extent a response is required, the Companies deny the allegations in paragraph 12.

13. The Companies admit that the Companies offer Special Customer Services as described in paragraph 19 below, and deny the remaining allegations in paragraph 13.

14. The Companies admit that they offer Special Customer Services as described in paragraph 19 below through a website referred to as “Smartmart™ by FirstEnergy”, including products and services described in the second sentence of paragraph 14, and deny the remaining allegations in paragraph 14.

15. The Companies admit that they have arranged with HomeServe USA Repair Management Corp. to offer various repair plans to the Companies’ customers, with charges for these plans appearing on the customers’ utility bill, and deny the remaining allegations in paragraph 15.

16. The Companies admit that they use utility assets and resources to offer Special Customer Services as described in paragraph 19 below, and deny the remaining allegations in paragraph 16.

17. The Companies deny providing any undue preference or advantage, and deny the remaining allegations in paragraph 17 for want of knowledge or information sufficient to form a belief as to their truth.

18. The Companies admit that they offer Special Customer Services as described in paragraph 19 below through a website referred to as “Smartmart™ by FirstEnergy” and that some of these products or services are provided by independent companies, but deny the remaining allegations in paragraph 18.

19. The Companies deny the allegations in paragraph 19. To the contrary, the Companies’ Corporate Separation Plan permits the Companies to offer products and services other than retail electric service:

## **VI. Consumer Products**

The Companies offer a limited number of products and services other than retail electric service pursuant to existing tariff

provisions and plan to continue offering the same types of products and services in the same manner. Upon customer request, the Companies may use contractors to provide other utility-related services, programs, maintenance and repairs related to customer-owned property, equipment and facilities. In addition, the Companies plan to provide products and services other than retail electric service in an effort to comply with energy efficiency and peak demand reduction benchmarks set out in R.C. Section 4928.66. These programs give the Companies the opportunity to more completely serve customers and assist in meeting statutory requirements.

The Companies requested Commission approval of the Corporate Separation Plan in Case No. 09-462-EL-UNC. The Commission approved the Corporate Separation Plan in the Companies' second Electric Security Plan ("ESP") proceeding, Case No. 10-388-EL-SSO, and approved continuation of the Corporate Separation Plan in the Companies' third and fourth ESP proceedings, Case No. 12-1230-EL-SSO and Case No. 14-1297-EL-SSO, respectively.

The Commission also approved the Companies' tariff provisions relating to Special Customer Services in Case No. 07-551-EL-AIR, including the provision of customer equipment maintenance, repair or installation.

20. The Companies deny the allegations in paragraph 20.

21. The allegations in paragraph 21 are legal conclusions to which no response is required. The Ohio Revised Code is a written document which speaks for itself. To the extent a response is required, the Companies deny the allegations in paragraph 21.

22. The Companies deny the allegations in paragraph 22.

23. The Companies deny the allegations in paragraph 23 for lack of knowledge or information sufficient to form a belief as to their truth.

24. The Companies deny any improper, discriminatory, preferential, anticompetitive or deceptive conduct, and deny the remaining allegations in paragraph 24 for lack of knowledge or information sufficient to form a belief as to their truth.

**FACTS COMMON TO ALL CLAIMS**

25. The Companies incorporate all the preceding paragraphs as if fully set forth herein.

26. The Companies deny the allegations in paragraph 26 for lack of knowledge or information sufficient to form a belief as to their truth.

27. The Companies admit that they have arranged with HomeServe USA Repair Management Corp. to offer various repair plans to the Companies' customers, with charges for these plans appearing on the customers' utility bill, and deny the remaining allegations in paragraph 27.

28. The Companies admit that they offer Special Customer Services as described in paragraph 19 above through a website referred to as "Smartmart™ by FirstEnergy", and deny the remaining allegations in paragraph 28.

29. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

30. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

31. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

32. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

33. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

34. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

35. The linked web page is a written document which speaks for itself, and the Companies deny any allegations not found on the referenced webpage.

36. The Companies admit that they offer Special Customer Services as described in paragraph 19 above, including products and services as generally described in paragraph 36, and deny the remaining allegations in paragraph 36.

37. The Companies state that they offer Special Customer Services to their customers in furtherance, inter alia, of their Electric Security Plans, energy efficiency programs, Commission-approved tariffs, and Commission-approved Corporate Separation Plan, and deny the remaining allegations in paragraph 37.

38. The Companies deny the allegations in paragraph 38 for lack of knowledge or information sufficient to form a belief as to their truth.

39. The Companies deny the allegations in paragraph 39.

40. The Companies' state that their tariff sheets are written documents which speak for themselves and deny the remaining allegation in paragraph 40.

41. The Companies admit that they offer Special Customer Services as described in paragraph 19 above pursuant to their Commission-approved tariffs and Corporate Separation Plan, and deny the remaining allegations in paragraph 41.

42. The Companies admit the allegations in paragraph 42.

43. The allegations in paragraph 43 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 43.

44. The allegations in paragraph 44 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 44.

45. The Corporate Separation Plan and its Attachments are written documents which speak for themselves. To the extent a response is required, the Companies deny the allegations in paragraph 45.

46. The Companies admit that they have not sought to amend their Commission-approved Corporate Separation Plan, and deny the remaining allegations in paragraph 46.

47. The Companies state that Exhibits A and B to the Complaint are written documents which speak for themselves, and otherwise deny the allegations in paragraph 47.

48. The allegations in paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 48.

49. The Companies deny any violations alleged, and deny the remaining allegations in paragraph 49 for lack of knowledge or information sufficient to form a belief as to their truth.

**Count I:**

50. The Companies incorporate all the preceding paragraphs as if fully set forth herein.

51. The Companies deny the allegations in paragraph 51.

52. The Companies deny the allegations in paragraph 52.

**Count II:**

- 53. The Companies incorporate all the preceding paragraphs as if fully set forth herein.
- 54. The Companies deny the allegations in paragraph 54.
- 55. The Corporate Separation Plan is a written document which speaks for itself.
- 56. The Companies deny the allegations in paragraph 56.

**Count III:**

- 57. The Companies incorporate all the preceding paragraphs as if fully set forth herein.
- 58. The allegations in paragraph 58 are legal conclusions to which no response is required. To the extent the allegations suggest that the Companies are not in compliance with all statutory obligations, the Companies deny the allegations in paragraph 58.
- 59. The Companies deny the allegations in paragraph 59.

**Count IV:**

- 60. The Companies incorporate all the preceding paragraphs as if fully set forth herein.
- 61. The allegations in paragraph 61 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 61.
- 62. The allegations in paragraph 62 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 62.
- 63. The allegations in paragraph 63 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 63.



64. The allegations in paragraph 64 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 64.

65. The allegations in paragraph 65 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 65.

66. The allegations in paragraph 66 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 66.

67. The allegations in paragraph 67 are legal conclusions to which no response is required. To the extent a response is required, the Companies deny the allegations in paragraph 67.

68. The Companies deny the allegations in paragraph 68.

#### **PRAYER FOR RELIEF**

69. Complainant's Prayer for Relief states legal conclusions to which no response is required. Under no circumstances is Complainant entitled to an interim, emergency order. The Complaint makes no showing that Complainant is likely to prevail on the merits, much less a strong showing, since the Companies are permitted to offer Special Customer Services by their Corporate Separation Plan and Commission-approved tariffs. Neither does the Complaint show that an immediate Commission ruling is necessary to prevent Complainant from suffering irreparable harm. To the contrary, paragraph 49 of the Complaint alleges that Complainant's members, but not Complainant itself, have suffered actual damages. Economic harm is not irreparable. In contrast, an interim emergency order would cause substantial harm to the

Companies and their customers who benefit from the availability of Special Customer Services. Further, the public interest is served by allowing the Companies to offer, and customers to purchase, Special Customer Services consistent with the Companies' Corporate Separation Plan and Commission-approved tariffs.

### **AFFIRMATIVE DEFENSES**

The Companies set forth their affirmative defenses to the claims asserted in the Complaint as follows:

1. Complainant's claims are barred in whole or in part for failure to state a claim upon which relief can be granted.
2. Complainant's claims are barred in whole or in part because Complainant does not have standing to bring this action.
3. The Companies have breached no legal duty or contractual obligation owed to Complainant.
4. The Companies have acted at all times in accordance with the Corporate Separation Plan and Commission-approved tariffs, as well as all rules, regulations and Orders as promulgated and issued by the PUCO, and the laws existing in the State of Ohio.
5. Complainant's claims are barred in whole or in part by the doctrine of laches.
6. 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 Complaint, the Companies respectfully request that the instant action 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 hereby certify that a copy of the foregoing *Answer of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to the Complaint of the Retail Energy Supply Association* was served this 15th day of May, 2018, via e-mail upon the counsel below.

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/s/ James F. Lang  
One of the Attorneys for Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and the Toledo  
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Summary: Answer electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company