

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE REVIEW OF	)	
THE OHIO EDISON COMPANY, THE	)	
CLEVELAND ELECTRIC ILLUMINATING	)	Case No. 17-0974-EL-UNC
COMPANY, AND THE TOLEDO EDISON	)	
COMPANY'S COMPLIANCE WITH R.C.	)	
4928.17 AND THE OHIO ADM. CODE		
CHAPTER 4901:1-37		

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**COMMENTS OF IGS ENERGY**

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**COMMENTS OF IGS ENERGY**

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**I. INTRODUCTION**

When the General Assembly restructured the Ohio retail electricity market, it recognized that it must establish a level playing field. To that end, Amended Substitute Senate Bill 3 ("SB 3") required electric distribution utilities ("EDU") to structurally separate their unregulated businesses from regulated businesses. Moreover, the law required each EDU to implement a formal corporate separation plan that ensures that the EDU will not use its regulated non-competitive services to provide an advantage, preference, or subsidy for the benefit of an affiliate or business unit that provides unregulated services.

The purpose of this proceeding is to audit and verify that the corporate separation plan of Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (collectively "FirstEnergy") is working. In order to assist the Commission, after a request for proposal, the Commission selected an auditor, Sage Management Consultants, LLC ("Sage"), to draft a report evaluating whether FirstEnergy has complied with R.C. 4928.17 and Chapter 4901:1-37, ie, Ohio's corporate separation

laws and rules. On May 14, 2018, Sage issued its Audit Report assessing FirstEnergy's compliance with Ohio's the corporate separation laws and rules.

Interstate Gas Supply, Inc. ("IGS") supports many of the recommendations contained in the Audit Report, which identify anticompetitive advantages that the FirstEnergy utilities have extended to their affiliate, FirstEnergy Solutions ("FES"). While the audit report correctly identified inappropriate behavior between FirstEnergy and its affiliate, the audit report contains a critical structural flaw—it failed to evaluate FirstEnergy's provision of products and services other than retail electric services, ie unregulated non-electric services and whether additional action is needed to bring FirstEnergy's practices into compliance with Ohio law and Commission precedent.

It is apparent that the Audit Report simply accepts without question that FirstEnergy provides these products under the umbrella of the monopoly utility without evaluating how this practice came to be or whether it is appropriate under Ohio law. It did not evaluate why FirstEnergy provides these products through the EDU—rather than an affiliate as required by the law.

The glaring hole in the Audit Report is particularly troubling, given that the Retail Energy Supply Association recently filed a corporate separation complaint against FirstEnergy alleging that it provides non-electric services in a manner that extends FirstEnergy's unregulated business unit with an undue preference and competitive advantage—all while discriminating against other market participants. Based upon the undisputable facts, FirstEnergy provides unregulated non-electric products and services in violation of Ohio law, precedent, and in a fashion that discriminates against other suppliers of similar products. Therefore, IGS urges the Commission to direct FirstEnergy



to modify its corporate separation plan to require all non-electric products to be provided through a fully separate affiliate, as required by Ohio law.

## **II. BACKGROUND**

### **A. Procedural and Factual Background**

Following the passage of SB 3 in 1999, FirstEnergy filed an electric transition plan (“ETP”) to separate and unbundle competitive and non-competitive services. As part of its ETP, FirstEnergy was required to implement a corporate separation plan, which complied with the requirements of R.C. 4928.17. That section—specifically, R.C. 4928.17(A)(1)—required full structural separation of all unregulated services and businesses from the EDU, although the law permitted a temporary exception from that requirement based upon a finding of good cause. Like many utilities, due to financial entanglements related to the financing of its competitive, unregulated assets, FirstEnergy sought and received, based upon a finding of good cause, an exception from the requirement to fully separate its unregulated businesses.<sup>1</sup>

Although FirstEnergy subsequently amended its corporate separation plan from time to time, including the ultimate transfer of its generating assets to an affiliate, FirstEnergy never again received an exception based upon a finding of good cause from the requirement to provide non-electric services through a separate affiliate. FirstEnergy never sought additional approvals to offer non-electric services, rather it has continued to offer them under the umbrella of tariff language authorized as part of its ETP case.

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<sup>1</sup> *In the Matter of the Application of FirstEnergy Corp. on behalf of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of their Electric Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-ETP Order at 23-27 (Jul. 19, 2000).

On December 12, 2012, the Commission initiated an investigation into the development of the retail electric service market.<sup>2</sup> In that entry, the Commission stated, “[a]s Ohio electric utilities are making the transition from functional to structural separation, the Commission finds it appropriate to evaluate the vitality of the competitive retail electric service markets supported by these legislative mandates now that the mandates have been in place sufficient time to assess the results.”<sup>3</sup> In furtherance of its evaluation, the Commission solicited comments regarding several subjects and questions, including matters related to utilities’ corporate separation practices and their impact on the competitive market.<sup>4</sup>

On January 16, 2014, following the submission of comments, Commission Staff issued a Market Development Work Plan finding, among other things, that “Staff fully believes it is imperative that utility and its affiliate activities should be vigilantly monitored to ensure compliance with section 4928.17, O.R.C. and Chapter 4901:1-37, O.A.C. Furthermore, alignment of cost causation with cost recovery is important in order to further Ohio's policy goals pursuant to Section 4928.02, O.R.C.”<sup>5</sup> To that end, “Staff recommends that each utility's policy and procedures pertaining to compliance with the Code of Conduct rules between affiliates be audited at a minimum, every four years by

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<sup>2</sup> *In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Entry (Dec. 12, 2012) (hereinafter referred to as the “*RMI Docket*”).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 3-5.

<sup>5</sup> *RMI Docket*, Market Development Work Plan at 12 (Jan. 16, 2014) (hereinafter “*Staff Report*”).

the Staff of the Commission or by a third party auditor chosen by the Commission and under the direction of Staff.”<sup>6</sup>

On March 26, 2014, the Commission issued its order in the *RMI Docket*, holding that “in light of the importance of vigilant monitoring of utility and affiliate activities, the Commission adopts Staff’s recommended audit schedule, unless the Commission subsequently orders otherwise, with the recovery of the cost of the audit as a normal operating expense.”<sup>7</sup>

On April 12, 2017, the Commission opened this docket to initiate an audit of FirstEnergy’s compliance with R.C. 4928.17 and OAC 4901:1-37. On July 5, 2017, the Commission selected Sage Management Consultants, LLC to provide audit services to assist the Commission in its review.<sup>8</sup>

On January 4, 2018, the Retail Energy Supply Association submitted a letter requesting that FirstEnergy’s Chief Ethics Officer “investigate probable violations of the FirstEnergy Ohio electric utilities’ (EDUs) Corporate Separation Plan.”<sup>9</sup> The letter identified that FirstEnergy offers products and services other than retail electric service (non-electric services) in a manner that violates of its corporate separation plan, R.C.

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<sup>6</sup> *RMI Docket*, Staff Report at 13.

<sup>7</sup> *RMI Docket*, Finding and Order at 16.

<sup>8</sup> Entry at 1 (Jul. 5, 2017).

<sup>9</sup> *Complaint of the Retail Energy Supply Association vs. Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 18-0736-EL-CSS at Ex. A, p. 1 (Apr. 25, 2018) (Attachment A).

4928.17, and filed tariffs. On February 8, 2018, FirstEnergy submitted a letter to RESA stating that:

1) the EDUs are permitted to offer certain products and services other than retail electric service under their corporate separation plan and existing tariff provisions, including the programs and services currently being offered by the EDUs in the Smartmart program; 2) that the probable violations alleged in RESA's January 4, 2018 letter appear to be unfounded; and 3) that the EDUs' offering of these programs and services are not in violation of RC 4928.17 or RC 4905.30.<sup>10</sup>

On April 25, 2018, RESA filed a complaint against FirstEnergy at the Commission, alleging several violations of R.C. 4928.17 and other Ohio statutes prohibiting regulated entities from discriminating or providing undue preferences in the provision of services.<sup>11</sup> Among other things, the complaint alleges that FirstEnergy utilizes non-competitive assets and resources, including the utility bill, to invoice and collect for non-electric products and services while denying non-affiliated third parties from using the same assets to provide the same or similar products:

16. The FirstEnergy EDUs utilize, or permit their affiliate(s) and/or third-party partner(s) to utilize, utility assets and resources for the marketing, advertising, promotion, financing and/or billing of Smartmart and HomeServe nonelectric products and services.

17. The FirstEnergy EDUs do not permit non-affiliated competitors to utilize the same utility assets and resources for the marketing, advertising, promotion, financing and/or billing of similar nonelectric services and products to the FirstEnergy EDUs' customers.<sup>12</sup>

On May 14, 2018, Sage Management Consultants, LLC issued an audit report assessing Ohio Edison Company's, Cleveland Electric Illuminating Company's, Toledo

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<sup>10</sup> *Id.* at Ex. B.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at para. 16 and 17.

Edison Company's (collectively, "FirstEnergy") compliance with Ohio's the corporate separation law.

On May 15, 2018, FirstEnergy filed an answer, admitting and denying certain aspects of RESA's complaint.<sup>13</sup> The complaint remains pending.

### **B. Corporate Separation Requirements and the Audit Report's Recommendations**

Ohio's corporate separation requirements are set forth in R.C. 4928.17 and OAC Rule 4901:1-37. Specifically, the corporate separation plan must comply with the following:

- The plan provides, at minimum, provision of the competitive retail electric service *or the nonelectric product or service through a fully separated affiliate of the utility.* (emphasis added)
- The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.
- The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training, without compensation based upon fully loaded embedded costs charged to the affiliate; and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.

Regarding the first requirements—structural separation—the law permitted a temporary exception, based upon a finding of good cause for an interim period provided in the order.

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<sup>13</sup> Attachment B.

The Commission has determined that the exception is not available to permit a utility to move backward in the restructuring process.<sup>14</sup>

In evaluating FirstEnergy's compliance with these requirements, the Audit Report largely focuses on FirstEnergy's relationship with its affiliate, FES, recommending that FirstEnergy modify several practices which provide FES with an undue preference and competitive advantage. The Audit Report concludes that FES receives a competitive advantage from inappropriate changes made to the Retail Operations group. Specifically, in 2016, FES' responsibilities and FirstEnergy's management of non-electric products and services were transferred to the service company. "The Retail Sales and Marketing group formerly reported to the President of FES. The reporting relationship was transferred to the Service Company in 2016 when the responsibility for the FirstEnergy Products (FEP) back office was assigned to it."<sup>15</sup> "In 2016, responsibilities were added to this unit and it became a Service Company unit with both FES unregulated and FEP regulated functions."<sup>16</sup> Critical to this recommendation is the fact that the FEP Group is considered a component of EDU and thus has access to information and resources not available to other market participants.

The Audit Report also recommends that FES remove the words FirstEnergy from the name FirstEnergy Solutions. The Audit Report notes that Executives in the FEP Group, "tout the importance of using the FirstEnergy name with FirstEnergy Products,

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<sup>14</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Fourth Amended Corporate Separation Plan Under R.C. 4928.17 and Ohio Adm. Code 4901:1-37*, Case Nos. 14-689-EL-UNC, *et al.*, Order on Remand at 2-4 (Jun. 14, 2017).

<sup>15</sup> Audit Report at 13.

<sup>16</sup> *Id.*

saying FirstEnergy is a ‘trusted supplier’ and the ‘FirstEnergy brand is prominent.’”<sup>17</sup> Based upon this same reasoning, the Audit Report concludes that “[i]t is natural that some would infer that FirstEnergy Solutions is the same as their ‘trusted utility supplier’ and give greater consideration to FES in making their CRES supplier decisions.”<sup>18</sup> Therefore, “Should FES continue to be a CRES provider in Ohio, it should have a different name that does not include “FirstEnergy” or any other name that implies a connection to the Ohio Companies.”<sup>19</sup>

Interestingly, although the Audit Report identifies wrongdoing involving FES’ relationship with the division within FirstEnergy that provides non-electric services (FEP), the Audit Report does not mention or discuss either (1) the letter RESA sent to FirstEnergy alleging corporate separation violations, or (2) the complaint filed against FirstEnergy prior to the issuance of the Audit Report. It is not terribly surprising that the auditor does not appear to be aware of the complaint, given that the cost allocation manual does not contain all of the requirements detailed in the Commission’s rules, including the requirement to keep “[a] log of all complaints brought to the electric utility regarding this chapter.”<sup>20</sup>

What does come as a surprise is that the Audit Report makes no conclusions one way or the other whether FirstEnergy’s provision of non-electric products is in conformity with Ohio’s corporate separation law. As discussed further below, the Audit Report

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<sup>17</sup> Audit Report at 98.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 98-99.

<sup>20</sup> Audit Report at 120.

accepts that FirstEnergy offers these products and treats them as a service to regulated customers.

In various places of the Audit Report identifies that FirstEnergy provides non-electric services through the FirstEnergy Products (FEP) group:

The only products and services other than retail electric service sold to the Ohio Companies' customers by a FirstEnergy legal entity are provided by the Ohio Companies themselves as jobbing and contracting services or through the FirstEnergy Products (FEP) function. Jobbing and contracting services are provided by the Ohio Companies employees under a Public Utilities Commission of Ohio (PUCO) approved tariff. FEP is not a legal entity. It is a business unit operated by the FirstEnergy Service Company (Service Company) on behalf of the Ohio Companies and other FirstEnergy utility operating companies. There are no non-regulated competitive affiliates involved. The FEP function is described in Chapter V, Public Representation Disclosures. Service Company cost accounting and allocations, including for the FEP function, are governed by the FirstEnergy Cost Allocation Manual, which is covered in Chapter VI.<sup>21</sup>

The "FEP back office operation has Ohio Companies' regulated customer information . . ."<sup>22</sup> These services are often provided through a website known as Smart Mart:

The Marketing and Product Development group is responsible for the FirstEnergy Products (FEP) business unit and the FEP web-based Smart Mart. For clarity, it is also referred to as the FEP Business Unit in this report. Smart Mart sells products and services to the Ohio Companies' and other FirstEnergy utility operating companies' "regulated customers."<sup>23</sup>

The services provided by FEP on behalf of FirstEnergy are the same or similar services identified in the complaint filed by RESA.

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<sup>21</sup> Audit Report at 65.

<sup>22</sup> Audit Report at 34.

<sup>23</sup> *Id.* at 94.



The Audit Report assumes that FirstEnergy has authority to provide non-electric products and services under its tariff to “regulated customers”:

The ability to sell products to the Ohio Companies’ regulated customers is through a PUCO tariff which specifies types of products and services which can be sold, but does not specify individual products and prices. Example FEP Smart Mart products include smart thermostats and smart light bulbs (with cameras, speakers, or Wi-Fi boosters). Example services include appliance warranties and electrician referrals.<sup>24</sup>

Further, the Audit Report identifies that “Executives in this program tout the important of using the FirstEnergy name with FirstEnergy products, saying FirstEnergy is a ‘trusted supplier’ and the ‘FirstEnergy brand is prominent.’”<sup>25</sup>

The Audit Report further identifies that FEP and Smart Mart provides services to FES upon request. Indeed, “this group will respond to an FES request for a product to bundle for a CRES sales offering.”<sup>26</sup>

While the Audit Report does not go into detail how these products are invoiced or billed, that information is readily available on the Smart Mart website and acknowledged by FirstEnergy in the complaint filed by RESA.<sup>27</sup> Specifically, FirstEnergy uses its consolidated utility bill to invoice customers for non-electric services.<sup>28</sup> It may also provide this service for its affiliate, FES, as well when it responds to a request to bundle a “CRES sales offering.”<sup>29</sup> FirstEnergy, however, refuses to permit other market

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<sup>24</sup> Audit Report at 94.

<sup>25</sup> Audit Report at 98.

<sup>26</sup> Audit Report at 94.

<sup>27</sup> Attachment B at paras. 15 and 16.

<sup>28</sup> Attachment C (containing the product offerings of several non-electric services offered by FirstEnergy and added to the monthly utility bill).

<sup>29</sup> Audit Report at 94.

participants, such as IGS or the members of the Retail Energy Supply Association to use the consolidated utility bill to invoice and collect non-electric services.

While the Audit Report identifies that FirstEnergy's provision of non-electric products and services is "governed by the FirstEnergy Cost Allocation Manual", the Audit Report does not specifically discuss how FirstEnergy allocates costs and revenues to the FEP group or whether such products are subsidized through non-competitive distribution rates. Moreover, the Audit Report does not evaluate how or if Homeserve is charged for services provided by FirstEnergy—such as billing—or the manner in which FirstEnergy and/or its parent company accounts for revenue or royalties received from Homeserve. In general, the Audit Report failed to evaluate whether FirstEnergy's provision of non-electric services complies with R.C. 4928.17 and the Commission's rules.

### **III. COMMENTS**

#### **A. The Audit Report's Failure to Evaluate FirstEnergy's provision of non-electric services**

IGS is disappointed that the Audit Report failed to consider or evaluate whether FirstEnergy's provision of non-electric services complies with Ohio law. The existence of a nearly two-decade old tariff does not provide a rubber stamp to evade R.C. 4928.17. Moreover, the complaint filed by RESA raised a host of questions that the Audit Report simply failed to address. Specifically, whether FirstEnergy has utilized non-competitive assets to provide an undue preference and competitive advantage to its internal business units that provides non-electric services. Such behavior clearly runs afoul of R.C. 4828.17(A)(2) and (3).

Moreover, as detailed in the complaint filed by RESA and demonstrated further in Attachment C, FirstEnergy is providing non-electric products and services in a discriminatory manner. Specifically, FirstEnergy utilizes non-competitive assets such as the consolidated utility bill to invoice and collect for non-electric services, while prohibiting CRES providers from using the same assets to provide the same or similar services. Again, this practice clearly violates R.C. 4928.17(A)(2) and (3).

Making matters worse, the Audit Report acknowledges that the FEP group has access to restricted utility customer information. This clearly provides a competitive advantage and preference in violation of the purpose and letter of the law.

Finally, the Audit Report fails to provide an evaluation of the manner in which FirstEnergy accounts for costs and revenues related to the provision of non-electric services, as well as costs and revenues related to its third party partner, Homeserve. While the Commission may prospectively mitigate this failure by requiring all non-electric services be provided by a separate affiliate, the Audit Report missed an important opportunity.

**B. The Audit Report's Recommendation to Separate FES from the FEP Group is Insufficient to Comply with the Law**

The Audit Report senses that something is not right with the FirstEnergy structure, though it did not quite contemplate the extent of the wrongdoing. Specifically, the Audit Report identifies that inappropriate changes were made to the Retail Operations group when FEP and FES were brought under the same corporate structure. The problem stems from the sharing of employees and comingling regulated and unregulated businesses when the former has access to "regulated customer information":

The FEP back office operation has Ohio Companies' regulated customer information which the FES back office is prohibited from having. It is inappropriate for the FEP and FES back office operations to report to the same director. Further, the FES Retail Sales Vice President routinely participates in management meetings with other Service Company executives.

The placement of the FES CRES Retail Sales organization under the Service Company Marketing and Branding group makes the FES CRES Retail Sales Vice President part of the senior leadership team for a Service Company group that primarily serves the FirstEnergy regulated operating companies. Attendance by the FES CRES retail sales executive at meetings with other Service Company executives focused on regulated utility operations is problematic. It makes separation of regulated and competitive information highly challenging.<sup>30</sup>

It is concerning that the FEP group may be a conduit to transfer sensitive regulated utility information to FES. But it is more concerning that the FEP group has access to that information in the first place—***the FEP group provides unregulated services***. It should have no access to any sensitive customer information. Such access would provide an undue preference and competitive advantage in violation of R.C. 4928.17(A)(2) and (3).

Rather than separating FES from the FEP group, the more appropriate course of action is to separate FEP from FirstEnergy and to cease offering non-electric services through the regulated utility as required by R.C. 4928.17(A)(1). That section requires FirstEnergy to provide non-electric products and services through a fully separate affiliate. Indeed, by transferring the provision of all non-electric services away from FirstEnergy to an affiliate no change to the current structure of the Retail Operations Group would be necessary.

**C. IGS Supports the Audit Report's Recommendation to Remove a Link to FES from the FirstEnergy Website, But this Recommendation Should be Equally Applicable to Smart Mart**

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<sup>30</sup> Audi Report at 34.

The Audit Report identifies that it is inappropriate for the FirstEnergy website to include a link to the FES website.<sup>31</sup> IGS agrees. But it is equally inappropriate that FirstEnergy advertises non-electric services and includes a link to the Smart Mart website.<sup>32</sup> This is clearly an undue preference and competitive advantage to an internal business unit that provides unregulated services.

**D. IGS Supports the Audit Report's Recommendation to Eliminate the FirstEnergy name from FES, But this Recommendation Should Apply to All Unregulated Businesses**

IGS supports the Audit Report's recommendation that FES cease using the FirstEnergy name.<sup>33</sup> Prohibitions against competitive entities leveraging the brand of the monopoly affiliate are commonplace in other states such as Texas and Illinois.<sup>34</sup> This recommendation, however, should be carried through to apply to all FirstEnergy entities that provide unregulated services.

**IV. CONCLUSION**

For the reasons stated herein, IGS urges the Commission to take action to bring FirstEnergy's practices into conformity with R.C. 4928.17.

Respectfully submitted,

/s/ Joseph Oliker

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<sup>31</sup> *Id.* at 98-99.

<sup>32</sup> <https://www.firstenergycorp.com/content/customer/products/smartmart.html>. (accessible from the Ohio Edison home page). See also Attachment C.

<sup>33</sup> Audit Report at 98-99.

<sup>34</sup> *The Southern Company, AGL Resources Inc., and Northern Illinois Gas Company d/b/a Nicor Gas Company*, Case No. 15-0558 at 16 (Jun. 7, 2016) (authorizing a merger agreement and terminating Nicor Advanced Energy's authority to use the word "Nicor" in the provision of competitive retail natural gas service); *AEP Texas Commercial & Industrial Retail Limited Partnership v. Pub. Util. Commission of Texas*, No. 03-13-00358-CV, Court of Appeals, Austin (Jul. 17, 2014) (affirming Commission prohibition against utilization of name "AEP" in conjunction with the provision of competitive retail electric service).

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Comments of IGS Energy* was served this 31<sup>st</sup> day of December 2018 via electronic mail upon the following:

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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

RETAIL ENERGY SUPPLY	)	
ASSOCIATION,	)	
P.O. Box 6089	)	
Harrisburg, PA 17112,	)	
	)	
Complainant,	)	
v.	)	
	)	
OHIO EDISON COMPANY,	)	
76 South Main Street	)	
Akron, Ohio 44308,	)	Case No. 18-0736-EL-CSS
	)	
THE CLEVELAND ELECTRIC	)	
ILLUMINATING COMPANY,	)	
76 South Main Street	)	
Akron, Ohio 44308,	)	
	)	
THE TOLEDO EDISON COMPANY,	)	
76 South Main Street	)	
Akron, Ohio 44308,	)	
	)	
	)	
Respondents.	)	

**COMPLAINT**

For their Complaint against Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, the Retail Energy Supply Association alleges as follows:

**PARTIES AND JURISDICTION**

1. The Retail Energy Supply Association (RESA) is a non-profit 501c(6) organization comprised of competitive retail energy suppliers to residential, commercial and industrial customers throughout the United States, including Ohio and the distribution service territories of the Respondents. Among other goods and services, RESA members provide “competitive retail electric service” and “retail electric service” as defined in R.C. 4928.01(A)(4)



and (27), respectively, as well as “nonelectric product[s] [and] service[s]” described in R.C. 4928.17.

2. Respondent Ohio Edison Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

3. Respondent Cleveland Electric Illuminating Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

4. Respondent The Toledo Edison Company is an “electric light company” under R.C. 4905.03(C), a “public utility” under R.C. 4905.02(A), and an “electric distribution utility” under R.C. 4928.01(A)(6).

5. Each Respondent is a wholly-owned subsidiary of FirstEnergy Corp. (NYSE: FE), an electric utility holding company. FirstEnergy Corp. is also the parent and sole shareholder of FirstEnergy Solutions Corp. (FES) and FirstEnergy Service Corp. (FE Service). This Complaint refers to Respondents collectively as the “FirstEnergy EDUs.”

6. The Commission has personal and subject matter jurisdiction over this Complaint and all claims herein pursuant to R.C. 4905.04, R.C. 4905.26, R.C. 4928.16, R.C. 4928.17 and R.C. 4928.18.

### **SUMMARY OF THE CASE**

7. The FirstEnergy EDUs have the exclusive right and obligation to furnish electric distribution service within their respective certified territories. Electric distribution service is a “noncompetitive retail electric service” under R.C. 4928.01(A)(21), and may only be furnished in accordance with schedules filed in accordance with R.C. 4909.18 and 4928.15.

8. The FirstEnergy EDUs may not “engage in this state, either directly or through an affiliate, in the business of supplying a noncompetitive retail electric service and supplying a competitive retail electric service . . . or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission[.]” R.C. 4928.17(A).

9. Even under a corporate separation plan, the FirstEnergy EDUs may not furnish any competitive retail electric service or other “nonelectric product or service.” R.C. 4928.17(A)(1). Such services must be provided by “a fully separated affiliate of the utility.” *Id.*

10. R.C. 4928.17(C) authorizes the Commission, for good cause shown, to authorize an interim corporate separation plan that does not comply with division (A)(1) of R.C. 4928.17. The FirstEnergy EDUs do not currently operate under an interim corporate separation plan. “Pursuant to O.A.C. 4901:1-35-03(C)(4), the Companies state that their corporate separation plan is publicly available as filed in Case No. 09-462-EL-UNC and approved in Case No. 10-388-EL-SSO. The Companies have obtained no waivers related to their approved corporate separation plan.” *Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Application at 19 (Aug. 4, 2014).

11. Additionally, the FirstEnergy EDUs may not “extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service” by lending or making available “utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and

training, without compensation based upon fully loaded embedded costs charged to the affiliate[.]” R.C. 4928.17(A)(3).

12. The FirstEnergy EDUs must ensure that such affiliates “will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.” *Id.*

13. As alleged herein, the FirstEnergy EDUs, directly or through one or more affiliates, are developing, marketing, billing, and receiving payment for various nonelectric products and services in a manner which gives an undue preference and advantage to the FirstEnergy EDUs and their affiliates.

14. Many of these nonelectric products and services now offered for sale to the FirstEnergy EDUs’ customers are promoted and sold on an online store and e-commerce website referred to as “Smartmart by FirstEnergy” ([www.smart-mart.com](http://www.smart-mart.com)) (Smartmart). The Smartmart products and services include or will include, among other things, leased electric vehicle chargers, smart thermostats, dimmable LED lights, home protection services, and home repair and maintenance services. The FirstEnergy EDUs include charges for the Smartmart nonelectric products and services on their customers’ electric bills.

15. The FirstEnergy EDUs, directly and/or through their affiliate(s), also have contracted with HomeServe USA (HomeServe) to market and sell various home protection and repair plans for exterior and interior lines and heating and cooling appliances exclusively to the distribution customers of the FirstEnergy EDUs. Customers who purchase HomeServe plans are billed directly for the cost of their plans on their FirstEnergy EDUs’ electric bills.

16. The FirstEnergy EDUs utilize, or permit their affiliate(s) and/or third-party partner(s) to utilize, utility assets and resources for the marketing, advertising, promotion, financing and/or billing of Smartmart and HomeServe nonelectric products and services.

17. The FirstEnergy EDUs do not permit non-affiliated competitors to utilize the same utility assets and resources for the marketing, advertising, promotion, financing and/or billing of similar nonelectric services and products to the FirstEnergy EDUs' customers.

18. Although the FirstEnergy EDUs' advertising and promotion claims that Smartmart and HomeServe nonelectric services and products are provided by independent third-parties, the FirstEnergy EDUs participate in, facilitate and assist in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products, to the confusion and deception of the FirstEnergy EDUs' customers, and to the benefit of the FirstEnergy EDUs, their affiliate(s) and/or their third-party partner(s).

19. The FirstEnergy EDUs do not have the legal authority, Commission approval or the necessary protocols and protections in place to participate in, facilitate and assist in the marketing, billing and sale of nonelectric products and services in a competitively neutral manner.

20. The marketing, advertising, promotion, financing and/or billing for Smartmart and HomeServe nonelectric services and products: (i) do not comply with the State's corporate separation requirements, the FirstEnergy EDUs' Corporate Separation Plan and the FirstEnergy EDUs' Code of Conduct; and (ii) violate Ohio statutory provisions that prohibit the FirstEnergy EDUs from engaging in unfair discriminatory, preferential, anticompetitive and deceptive conduct.

21. The Commission must ensure that “anticompetitive subsidies” do not flow from the regulated electric distribution utility to any affiliate engaged in the business of providing competitive retail electric service or a product or service other than retail electric service. R.C. 4928.02(H). The Commission also must ensure that retail electric service consumers are protected against “unreasonable sales practices, market deficiencies, and market power.” R.C. 4928.02(I). It is incumbent upon the Commission to carry out and enforce these policies and other policies stated in R.C. 4928.02 to both correct and prevent any unfair or otherwise illegal practices by EDUs in competitive markets, including the market for nonelectric services and products in the FirstEnergy EDUs’ service territories.

22. The FirstEnergy EDUs’ participation in, facilitation of and assistance in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products results in “anticompetitive subsidies,” “market deficiencies” and other unfair and illegal discriminatory, preferential, anticompetitive and deceptive practices, to the detriment of unaffiliated competitors.

23. RESA members in Ohio provide the same or substantially similar nonelectric services and products that the FirstEnergy EDUs offer through the Smartmart marketplace or in partnership with HomeServe.

24. RESA members have suffered and will continue to suffer loss of sales and other damages from the FirstEnergy EDUs’ improper, discriminatory, preferential, anticompetitive and deceptive conduct.

#### **FACTS COMMON TO ALL CLAIMS**

25. Complainants incorporate by reference all previous allegations as if fully set forth herein.

26. In addition to competitive retail electric service, RESA members have developed and offer various non-electric products and services, including energy efficiency, demand response, direct load control, smart thermostats, distributed solar and wind generation, microgrids, battery storage technology, loyalty rewards programs, and home warranty protection services for utility lines and systems.

27. The FirstEnergy EDUs have partnered with HomeServe to offer various protection and repair plans to distribution customers of the FirstEnergy EDUs. Customers who purchase HomeServe plans are billed for the costs directly on their FirstEnergy EDUs' electric bills. The plans include protection plans for exterior water, sewer and septic service lines, gas lines, exterior and interior electric lines, interior telephone lines, heating and cooling system repairs, heat pump system protection and water heater repair.

28. The FirstEnergy EDUs also have launched an e-commerce website referred to as "Smartmart by FirstEnergy" ([www.smart-mart.com](http://www.smart-mart.com)) (Smartmart), which offers for sale a range of nonelectric products and services exclusively to the distribution customers of the FirstEnergy EDUs.

29. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised the nonelectric services and products as services and products "you might not expect from your utility." (<https://www.firstenergycorp.com/content/customer/products/smartmart.html>)

30. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised Smartmart as "a better way to shop for all of the great products and services that you'd normally see, and more. Come check it out and see how FirstEnergy can help make your home even more comfortable, convenient and secure." (<https://www.youfirstenergy.com>)



31. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised that the customers of the FirstEnergy EDUs will make “simple, straightforward payments” on their electric bills for the purchased Smartmart nonelectric services and goods.

([https://www.firstenergycorp.com/content/fecorp/newsroom/news\\_articles/firstenergy-will-launch-new-online-marketplace.html](https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-will-launch-new-online-marketplace.html))

32. In launching the Smartmart marketplace, the FirstEnergy EDUs have advertised that “[f]or years, customers have turned to FirstEnergy about ways to better manage their energy use. ... Smartmart builds on that tradition, expanding on our collection of products and services that brings greater comfort, convenience, security and productivity to our customers’ lives.”

([https://www.firstenergycorp.com/content/fecorp/newsroom/news\\_articles/firstenergy-will-launch-new-online-marketplace.html](https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-will-launch-new-online-marketplace.html))

33. In launching the Smartmart marketplace, the FirstEnergy EDUs have claimed that “there’s a lot more to FirstEnergy than energy.” (<https://www.smartmart.com/smartmart/en/aboutUs>)

34. In launching the Smartmart marketplace, the FirstEnergy EDUs intend to leverage the reputation of the electric distribution companies as “trusted sources of information for customers” to promote and sell new nonelectric services and products to create and/or support a new stream of revenue. (<https://www.smart-mart.com/smartmart/en/aboutUs>)

35. In launching the Smartmart marketplace, the FirstEnergy EDUs intend to have any questions related to existing or new Smartmart purchases, including questions regarding the terms and conditions of the purchased services and products, handled by customer service representations of the FirstEnergy EDUs and/or their affiliate(s). (<https://www.smartmart.com/smartmart/en/contactUs>)

36. The Smartmart nonelectric products and services include leased electric vehicle chargers (with installation and repair services), smart thermostats and HVAC monitoring services, various dimmable, smart LED lights, surge protection plans, security and landscape lighting, disaster protection plans, electrical services, tree-care services, appliance repair plans, plumbing repair plans, HVAC maintenance plans, and other home protection and repair plans.

37. The FirstEnergy EDUs intend for their customers to associate the Smartmart nonelectric products and services with the name, reputation and delivery service of the FirstEnergy EDUs.

38. The FirstEnergy EDUs prohibit RESA members from entering into arrangements that would permit RESA members to bill, and for their customers to pay for, nonelectric products and services through the FirstEnergy EDUs bills for electric distribution service.

39. The FirstEnergy EDUs and/or their affiliate(s) intend to utilize the Smartmart marketplace and HomeServe partnership to improperly compete with and discriminate against unaffiliated competitors in the market for nonelectric services and products.

40. The FirstEnergy EDUs currently have tariff sheets that authorize and identify in detail the specific limited “Special Customer Services” that the FirstEnergy EDUs may provide. These service offerings are narrowly related to design, construction, operation and maintenance of customer electric facilities and equipment. *See* Ohio Edison Company, P.U.C.O. No. 11, Original Sheet 4, Page 13 of 21, Section X.C., effective January 23, 2009; The Cleveland Electric Illuminating Company, P.U.C.O No. 13, Original Sheet 4, Page 13 of 21, Section X.C., effective May 1, 2009; and The Toledo Edison Company, P.U.C.O No. 8, Original Sheet 4, Page 13 of 21, Section X.C., effective January 23, 2009.



41. The FirstEnergy EDUs have not sought Commission approval for any tariff changes to “Special Customer Services” to authorize their participation, facilitating, assistance and “arranging” in the marketing, billing for and sale of nonelectric services and products through the Smartmart marketplace and the partnership with HomeServe.

42. The FirstEnergy EDUs’ current corporate separation plan, filed in Case No. 09-462-EL-UNC, was approved in an August 25, 2010 Opinion and Order in Case No. 10-388-EL-SSO.

43. The FirstEnergy EDUs do not have a “fully separate affiliate” responsible for and engaged in the business of marketing, advertising, promotion, financing and billing of Smartmart and HomeServe nonelectric services and products, as required by R.C. 4928.17(A)(1).

44. The FirstEnergy EDUs and their affiliate(s) do not have a separate cost center and separate accounting and procedures in place for the marketing, advertising, promotion, financing and billing of Smartmart and HomeServe nonelectric services and products, as required by R.C. 4928.17(A)(1).

45. The “Consumer Products” section of the FirstEnergy EDUs’ Corporate Separation Plan, and Attachment 1 entitled “Current Affiliates/Products and Services,” do not identify the nonelectric services and products for which the FirstEnergy EDUs and their affiliates participate in, facilitate and assist in the marketing, billing and sale through the Smartmart marketplace and partnerships with HomeServe.

46. The FirstEnergy EDUs have not sought to amend their corporate separation plan or otherwise seek approval from the Commission concerning their participation in, facilitation of and assistance in the marketing, billing and sale of Smartmart and HomeServe nonelectric services and products.

47. By letter dated January 4, 2018, RESA requested the FirstEnergy EDUs to investigate the concerns alleged herein. *See* Exhibit A. The FirstEnergy EDUs summarily dismissed these concerns in return correspondence dated February 8, 2018. *See* Exhibit B.

48. Respondents' actions alleged herein were committed "knowingly" within the meaning of R.C. 4928.01(A)(14).

49. RESA members have suffered actual damages from the violations alleged herein.

**Count I:**  
**Violation of statutory prohibition against the provision of  
nonelectric products and services by an electric distribution utility.**

50. Complainants incorporate by reference all previous allegations as if fully set forth herein.

51. The FirstEnergy EDUs may not furnish any competitive retail electric service or other "nonelectric product or service." R.C. 4928.17(A)(1). Such services must be provided by "a fully separated affiliate of the utility." *Id.*

52. To the extent the FirstEnergy EDUs are directly offering or providing nonelectric products or services, the provision of such products or services violates R.C. 4928.17(A)(1).

**Count II:**  
**Violation of statutory prohibition against an affiliate's provision of nonelectric products  
and services not disclosed in or authorized by an approved corporate separation plan.**

53. Complainants incorporate by reference the previous allegations as if fully set forth herein.

54. To the extent the FirstEnergy EDUs are offering nonelectric products and services through an affiliate, the offering and provision of such services must be conducted in accordance with an approved corporate separation plan.

55. Although the FirstEnergy EDUs have an approved corporate separation plan, the plan does not provide for any affiliate of the FirstEnergy EDUs to offer or provide the products and services available through Smartmart.

56. The offering or provision of nonelectric products and services not authorized by or disclosed in an approved corporate separation plan violates R.C. 4928.17—regardless of whether such nonelectric products and services are provided by the FirstEnergy EDUs directly or through an affiliate.

**Count III:  
Failure to implement and operate under an approved corporate separation plan.**

57. Complainants incorporate by reference the previous allegations as if fully set forth herein.

58. The FirstEnergy EDUs do not fulfill their corporate separation obligations merely by obtaining approval of a corporate separation plan. The FirstEnergy EDUs must “implement[] and operate[] under” the plan approved by the Commission. R.C. 4928.17(A).

59. The FirstEnergy EDUs have not implemented and are not operating under their corporate separation plan in the manner required to prevent unfair competitive advantages and preferences, abuses of market power, subsidies from noncompetitive services to nonelectric services, discrimination, barriers to competition, and other outcomes contrary to R.C. 4928.17 and the state policy reflected in R.C. 4928.02.

**Count IV:  
Violation of statutory prohibitions against discrimination,  
cross-subsidies and anticompetitive conduct**

60. Complainants incorporate by reference the previous allegations as if fully set forth herein.

61. R.C. 4905.32 prohibits the FirstEnergy EDUs from extending “any rule, regulation, privilege, or facility” to any person, firm or corporation “except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.”

62. R.C. 4905.33(A) prohibits the FirstEnergy EDUs from, “directly or indirectly,” through “any special rate, rebate, drawback, or other device or method,” from charging “greater or lesser compensation” for any service rendered than what it charges for “doing a like a contemporaneous service under substantially the same circumstances and conditions.”

63. R.C. 4905.33(B) prohibits the FirstEnergy EDUs from furnishing any service “for less than actual cost for the purpose of destroying competition.”

64. R.C. 4905.35(A) prohibits the FirstEnergy EDUs from giving “any undue or unreasonable preference or advantage to any person, firm, corporation, or locality,” or subjecting “any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.”

65. R.C. 4928.17(A)(3) requires affiliates to compensate the FirstEnergy EDUs for the use of utility resources based upon fully loaded embedded costs.

66. R.C. 4928.17(A)(3) requires that the FirstEnergy EDUs not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying a nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training.

67. R.C. 4928.17(A)(3) requires that no affiliate, division, or part of the FirstEnergy EDUs engaged in nonelectric services receive any undue preference or advantage from any

affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service.

68. The FirstEnergy EDUs, directly or through one or more affiliates, have violated these statutes through the actions and omissions alleged herein.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests the following relief:

- A. An interim, emergency order directing the FirstEnergy EDUs and/or affiliated entities, during the pendency of this Complaint, to immediately cease and desist from advertising, offering, or providing the Smartmart and HomeServe nonelectric products and services identified herein;
- B. Issuance of an entry finding that reasonable grounds for complaint have been alleged, and establishing a procedural schedule;
- C. Issuance of a final order finding that the FirstEnergy EDUs are in violation of R.C. 4928.17, R.C. 4905.32, R.C. 4905.33 and R.C. 4905.35, and therefore subject to a civil complaint for treble damages under R.C. 4905.61;
- D. Issuance of necessary orders to modify or revoke the FirstEnergy EDUs' existing corporate separation plan;
- E. Issuance of necessary orders to impose a forfeiture and order restitution, in accordance with R.C. 4928.18(D); and
- F. All other necessary and proper relief.

Dated: April 25, 2018

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Counsel of Record

Christopher T. Kennedy (0075228)

Rebekah J. Glover (0088798)

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*Attorneys for Complainant*

(All counsel consent to service by e-mail)

### **INSTRUCTIONS FOR SERVICE**

TO THE DOCKETING DIVISION:

Please serve the Complaint to:

Ohio Edison Co., Cleveland Electric Illuminating Co., and Toledo Edison Co.  
c/o CT Corporation System  
1300 East 9<sup>th</sup> Street  
Cleveland, OH 44114

A courtesy copy is being emailed to the following:

[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)

[rendris@firstenergycorp.com](mailto:rendris@firstenergycorp.com)

[jeckert@firstenergycorp.com](mailto:jeckert@firstenergycorp.com)

MARK A. WHITT

Direct: 614.224.3911

whitt@whitt-sturtevant.com

January 4, 2018

Ebony Yeboah-Amankwah  
Vice President, Corporate Secretary & Chief Ethics Officer  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308

Re: Corporate Separation Complaint  
FirstEnergy Ohio distribution utilities/Smartmart

Dear Ebony:

This law firm represents the Ohio chapter of the Retail Energy Supply Association (RESA). Please accept this letter as a request to investigate probable violations of the FirstEnergy Ohio electric distribution utilities' (EDUs) Corporate Separation Plan (those EDUs being Ohio Edison, Toledo Edison, and CEI). Please acknowledge receipt of this letter within five days, and provide the results of your investigation to me, in writing, within thirty days. The results of your investigation will inform RESA's decision of whether to attempt to resolve its concerns informally and privately among the parties, or formally and publicly before the Public Utilities Commission of Ohio.

### Background

RESA members provide both "competitive retail electric services" and "nonelectric products and services" (as defined or referenced in R.C. Chapter 4928) throughout Ohio, including each FirstEnergy EDU's service territory.

RESA's concerns pertain to the recently-launched Smartmart e-commerce website. FirstEnergy issued a press release on October 5, 2017 announcing the October 9 launch of "Smartmart by FirstEnergy" ([www.smart-mart.com](http://www.smart-mart.com)). The press release describes general categories of product offerings, such as "smart home systems and new, energy-saving lighting technology," "professional electric services," and "home warranty and repair plans."

The Smartmart website describes these product offerings in greater detail. Specific product and service offerings include electric vehicle charger leasing, lighting and home audio integration, disaster protection insurance, landscape lighting, professional tree services, and appliance and plumbing repair services, among others. Products and services are also offered for businesses, including electric forklift sales, infrared curing and drying, and resistance and induction heating. LED municipal lighting is also promoted through the website. Various RESA



members currently offer the same or similar products and services, or plan to offer them in the near future.

Neither the press release nor the Smartmart website specifically disclose whether the products and services are provided by the “FirstEnergy” EDUs, one or more “FirstEnergy” non-utility affiliates, or some combination thereof. The “About Us” section of the website implies that the EDUs provide the products and services. The “disclaimer” at the bottom of each page of the website confirms that at least some of the products and services are “sold by FirstEnergy utility companies.” Additionally, both the press release and website indicate, “[w]ith some products and services, customers of a FirstEnergy utility company can make simple, straightforward payments on their electric bill.”

### **Applicable EDU tariff provisions**

The EDUs’ tariffs (Electric Service Regulations, Section X, Paragraph C) authorize them to furnish certain “special customer services as identified in this section,” such as diagnosing power quality problems, maintaining and repairing customer-owned electric equipment, service line siting and relocation, and similar services generally related to the customer-EDU interconnection.

Most of the product and service offerings described in the Smartmart website are not described in the EDUs’ tariff. Indeed, the gist of the press release and subsequent marketing effort is that “FirstEnergy” is now offering products and services it has not traditionally offered.

### **Corporate Separation Plan**

Under R.C. 4928.17(A), the FirstEnergy EDUs may not, either directly or through an affiliate, supply both a noncompetitive retail electric service and a competitive retail electric service, or other nonelectric product or service, unless authorized by an approved corporate separation plan. The EDUs’ Corporate Separation Plan was filed in Case No. 09-0462-EL-UNC, initially approved in Case No. 10-388-EL-SSO, and re-approved in Case No. 12-1230-EL-SSO. The Corporate Separation Plan confirms that the EDUs may only provide nonelectric products and services identified in their respective tariffs. (*See* Section VI, Consumer Products.)

### **Basis for Investigation**

Ohio law requires each FirstEnergy EDU to obtain Commission approval for “*all* rates, joint rates, rentals, tolls, classifications, and charges for service of *every kind* furnished by it, and all rules and regulations affecting them.” R.C. 4905.30 (emphasis added). Most of the products and services promoted through Smartmart are not authorized by the EDUs’ tariffs. The nonelectric goods and services described in the EDUs’ tariffs do not encompass the sale of light



bulbs and lighting kits, home automation, line protection insurance, HVAC and plumbing repair, and other goods and services wholly unrelated to electrical services.

Having an approved Corporate Separation Plan does not permit the EDUs to directly or indirectly offer or sell any nonelectric products and services they wish. The EDUs must “implement[] and operate under” their Commission-approved plan. R.C. 4928.17(A). The approved Corporate Separation Plan limits the sale of nonelectric products and services to those identified in the EDUs’ tariff. By offering and selling nonelectric goods and services that are *not* identified in their tariff, the EDUs are not only violating the tariff, but the Corporate Separation Plan as well.

The EDUs cannot modify their tariff to include additional goods or services offered through Smartmart without first amending their Corporate Separation Plan. As stated in the current Plan, the EDUs “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.*” (Section VI, emphasis added.) The Smartmart goods and services are much different than those offered before the roll-out of this website, as FirstEnergy’s press release makes clear.

RESA’s concerns are not limited to products and services “sold by FirstEnergy utility companies.” Corporate separation restrictions apply to the sale of nonelectric products and services “either directly or through an affiliate.” R.C. 4928.17(A). Allowing payment for products and services on an EDU electric bill amounts to the indirect sale or offering of the product or service by the EDU, and is subject to corporate separation requirements as if the product or service were provided by the EDU directly.

### **Specific violations and scope of investigation**

The FirstEnergy EDUs are directly marketing and selling nonelectric goods and services that they are not authorized to market or sell under existing tariffs. This is a violation of R.C. 4905.30 in its own right. If the EDUs are marketing and selling these unauthorized goods and services in conjunction with goods and services provided directly by non-utility affiliates, the EDUs are also violating R.C. 4928.17. Providing unauthorized goods and services “through an affiliate” rather than directly also violates R.C. 4928.17. These statutory violations are also violations of Section V (Joint Advertising/Marketing), Section VI (Consumer Products), Section X (Compliance Policy Statement), Section XI (Compliance Monitoring and Corrective Action), and Section XIII (Compliance with Commission Rules) of the Corporate Separation Plan.

The Smartmart initiative calls into question whether any aspect of FirstEnergy's Corporate Separation Plan is being implemented, monitored, or enforced. We ask that your investigation look into the adequacy of, and compliance with, the provisions of the Corporate Separation Plan addressing structural safeguards (Section II), separate accounting and financial arrangements (Sections III and IV), Code of Conduct (Section VII), compliance with Cost Allocation Manual (Section VIII), and Education and Training (Section IX) within the specific context of the design, development, and implementation of the Smartmart sales channel.

If any facts or information contained in this letter are in any way incomplete or inaccurate, please let me know. RESA looks forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark A. Whitt".

**Subject:** Letter Pertaining to Ohio Corporate Separation Plan  
**Date:** Thursday, February 8, 2018 at 7:19:40 PM Eastern Standard Time  
**From:** Yeboah, Ebony L  
**To:** Mark Whitt

Mark,

As requested by your letter of January 4, 2018, a preliminary investigation was conducted by my designee, in accordance with the Public Utilities Commission of Ohio's corporate separation rules and the EDUs' corporate separation plan, to address whether the EDUs' offering of Smartmart products is consistent with EDU tariffs and the corporate separation plan.

The conclusions of the preliminary investigation were that: 1) the EDUs are permitted to offer certain products and services other than retail electric service under their corporate separation plan and existing tariff provisions, including the programs and services currently being offered by the EDUs in the Smartmart program; 2) that the probable violations alleged in RESA's January 4, 2018 letter appear to be unfounded; and 3) that the EDUs' offering of these programs and services are not in violation of RC 4928.17 or RC 4905.30.

Based on the above, I have concluded that no further action is necessary.

Ebony L. Yeboah-Amankwah  
Vice President, Corporate Secretary & Chief Ethics Officer  
FirstEnergy Service Company  
[76 South Main Street](#)  
[Akron, Ohio 44308](#)  
(w) [330-384-5969](#)  
(c) [330-819-7313](#)

---

**From:** Yeboah, Ebony L  
**Sent:** Tuesday, January 16, 2018 1:10 PM  
**To:** 'whitt@whitt-sturtevant.com' <whitt@whitt-sturtevant.com>  
**Subject:** Letter Pertaining to Ohio Corporate Separation Plan

Mark,

On January 9, 2018 I received your attached letter requesting an investigation of as your letter states probable violations of our Ohio electric distribution utilities Corporate Separation Plan. I hereby acknowledge receipt of your letter. I have requested an investigation and will provide you in writing the results of such investigation on or before February 8, 2018.

Ebony L. Yeboah-Amankwah  
Vice President, Corporate Secretary & Chief Ethics Officer  
FirstEnergy Service Company  
[76 South Main Street](#)  
[Akron, Ohio 44308](#)  
(w) [330-384-5969](#)  
(c) [330-819-7313](#)

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/25/2018 3:09:12 PM**

**in**

**Case No(s). 18-0736-EL-CSS**

Summary: Text In the Matter of the Complaint against Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company for statutory and corporate separation violations electronically filed by Ms. Rebekah J. Glover on behalf of Retail Energy Supply Association



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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*Attorneys for Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and the Toledo  
Edison Company*



**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.

whitt@whitt-sturtevant.com  
kennedy@whitt-sturtevant.com  
glover@whitt-sturtevant.com

/s/ James F. Lang  
One of the Attorneys for Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and the Toledo  
Edison Company

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/15/2018 12:57:06 PM**

**in**

**Case No(s). 18-0736-EL-CSS**

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



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[HOME](#) / [HOME PRODUCTS](#) / [HOME SERVICES](#) / [ELECTRICAL SERVICES](#)

## Electrical Services | ID FEP-S0000230



Our highly trained professional contractors offer expertise in all types of electrical work—from wiring to repairing and replacing your meter box to fixing the weatherhead that connects the power lines to your home. You can also call on them for new lighting installation, renovations and home safety inspections. When it comes to keeping your home and family safe, don't leave your electrical system to chance.


[REQUEST A CONSULTATION](#)

### DESCRIPTION



## Count on us for professional, high-quality work at an affordable price.

Our highly trained professional contractors offer expertise in all types of electrical work—from wiring to repairing and replacing your meter box to fixing the weatherhead that connects the power lines to your home. You can also call on them for new lighting installation, renovations and home safety inspections. When it comes to keeping your home and family safe, don't leave your electrical system to chance.

Our program offers a wide range of services, including:

- Repairs and upgrades
- Home safety inspections
- Wiring work, plug and switch installation
- Interior and exterior lighting
- Circuit breakers, fuses and meters
- Whole house surge protection installation

Convenient payment plan

- No money down
- Low monthly payments on your electric bill for up to 36 months with approved credit

To schedule your free estimate anytime, simply click the button below. Or call us at 1-800-505-SAVE, Monday – Friday 8:00 a.m. to 10:00 p.m., Saturday and Sunday 9:00 a.m. to 6:00 p.m.

[Click here](#) to read this program's Terms and Conditions.

**PA Tax Notification:** *Pennsylvania sales or use tax may be due in connection with the purchase and delivery of tangible personal property to Pennsylvania individuals and businesses. Pennsylvania requires the purchaser to file a use tax return if tax is due and the tax was not collected by the seller. Please visit [this link](#) to learn more about your use tax obligations under Pennsylvania law. The seller to which you are being referred may or may not collect and remit sales tax. If the seller to whom you are being referred does not collect sales tax, the seller may be required to provide information to you and the Pennsylvania Department of Revenue about the purchase and the potential use tax liability. This notice is required pursuant to the provisions of the Tax Reform Code of 1971. 72 P.S. § 7213.2.*

#### Disclaimer

The customer is not required to purchase the good or service from FirstEnergy or the FirstEnergy operating company and the good or service may be obtained from other suppliers. A customer's decision to receive or not receive the good or service from FirstEnergy or the FirstEnergy operating company will not influence the delivery of competitive or non-competitive retail electric service to that customer by FirstEnergy or the FirstEnergy operating company. For Ohio customers, the Public Utilities Commission of Ohio does not regulate this optional service and has no authority to investigate complaints about this optional service.

### TERMS & CONDITIONS



#### Terms & Conditions

## Other Smartmart Products



### LED MUNICIPAL LIGHTING



### ELECTRIC VEHICLE CHARGER LEASE

**\$39.99 monthly**



### CONNECTED HOME PLAN

**\$14.99 monthly**

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[HOME](#) / [HOME PRODUCTS](#) / [REPAIR AND MAINTENANCE](#) / [AC AND HEAT MAINTENANCE PLANS](#)

## Heat Maintenance Plan | ID FEP-S0000213



### \$9.95 monthly

Heating and cooling systems work hard every day to keep you comfortable and regular maintenance check-ups ensure efficient and dependable operation. By properly maintaining your equipment, it's less likely to break down and require unforeseen repair expenses. Enroll now and our quality-assured technicians will keep your heating or cooling system running at peak performance.

#### COVERAGE

HEAT MAINTENANCE PLAN - \$9.95/MONTH ▼

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ADD TO CART

#### DESCRIPTION ▼

Furnace and Air Conditioning Maintenance made easy and affordable from people you trust

Heating and cooling systems work hard every day to keep you comfortable and regular maintenance check-ups ensure efficient and dependable operation. By properly maintaining your equipment, it's less likely to break down and require unforeseen repair expenses. Enroll now and our local pre-screened technicians will keep your heating or cooling system running at peak performance.

Furnace or Air Conditioning Maintenance Plans for only \$9.95 each per month

- Annual inspection of your heating or cooling system
- Comprehensive safety and performance checklist
- All work performed by pre-screened and quality-assured technicians
- One low monthly fee on your electric bill per plan

FAQ



Why do I need a maintenance plan?

Appliances and systems are subject to wear and tear, and require maintenance to ensure efficient and dependable operation. In fact, many manufacturers will not honor a warranty agreement if equipment is not properly maintained. And in the case of air conditioner, furnace and heat pump maintenance, energy efficiency can be improved when cleaned and properly maintained. Properly maintained equipment and appliances are less likely to break down, which can protect you from unforeseen repair expenses.

### **Why choose my FirstEnergy electric utility company for maintenance plans?**

Your FirstEnergy electric utility company has a reputation for delivering safe, reliable energy, and our commitment to high standards of performance extends into the home. You can trust us to select contractors who will do the job right the first time, and know we will be there tomorrow should you need us. We offer the added convenience of paying for your plans in low monthly amounts that are added to your electric bill.

### **Do I pay a service fee, trip fee or a deductible?**

No. Plans offered by your FirstEnergy electric utility company are designed to maintain appliances and systems with no hidden cost surprises. For work covered under the plans, you will have no additional expense at time of service – just sign the paperwork when the job is done – no need to reach for your wallet.

### **If during my maintenance plan the technician discovers the need for a repair or other services, is the cost of those other services covered?**

No. The maintenance plan covers only the specific maintenance tasks listed in your plan agreement. Any repair or work other than the listed maintenance tasks is not covered by your maintenance plan agreement. If you want to have the service technician perform other services for you, you will need to enter into a separate agreement between you and the service contractor for those services and settle the expense directly with the technician at the time of service.

### **When does coverage begin and when does it end?**

Your maintenance plan coverage begins after your enrollment is processed, however you can schedule your maintenance when you sign up, as long as your appointment is scheduled at least 10 days out.

### **What is my commitment?**

This is a 12-month agreement that will renew automatically.

### **How do I stop or cancel my maintenance plan?**

You may cancel your plan during the first 30 days with no obligation. After 30 days, you can cancel your plan at any time and you will only be responsible for payment for the months you were on the program. However, if you had maintenance done prior to cancellation, you are responsible for paying the monthly charges for the remainder of the 12-month term of the agreement.

### **I'm moving. What do I do about my maintenance plan?**

You may cancel our plans at any time, and you will only be responsible for payment for the months you were on the program. However, if you had a repair or maintenance done prior to cancelling, you will be invoiced for the monthly charges for the remainder of the twelve-month term of the agreement.

### **If I move can the new homeowner assume my agreement?**

No. Your service agreement is between you and your FirstEnergy electric utility company. You can share your plan information with the new homeowner in case they want to call and enroll in a plan in their name.

### **Can I schedule service online? Or do I have to call?**

We can schedule on the phone and will soon be offering the ability to schedule service online. To schedule please call us at (800) 505-SAVE (7283).

**TERMS & CONDITIONS**



**Terms & Conditions**

## **Other Smartmart Products**



## LED MUNICIPAL LIGHTING



## ELECTRIC VEHICLE CHARGER LEASE

**\$39.99 monthly**



## CONNECTED HOME PLAN

**\$14.99 monthly**

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[HOME](#) / [HOME PRODUCTS](#) / [REPAIR AND MAINTENANCE](#) / [KITCHEN APPLIANCE REPAIR PLAN](#)

## Kitchen Appliance Repair Plan | ID FEP-S0000216

### \$19.95 monthly

You count on your home's kitchen appliances, but frequent use can lead to a break down when you least expect it. Avoid the expensive, inconvenient and stressful process that comes with appliance repair with our Kitchen Appliance Repair Plan. It provides peace of mind—you'll know that if your equipment fails, we'll send a qualified person you can trust to fix it. No deductibles, no trip charges and no surprise costs. A small monthly fee covers it all.



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ADD TO CART

### DESCRIPTION



You count on your kitchen appliances every day. So when your refrigerator, dishwasher or stove isn't working, it can be inconvenient and stressful – and repairs can be expensive. Plus, it can be a challenge to find a repair technician you can trust when moments matter.

Our Kitchen Appliance Repair Plan gives you the peace of mind that when the unexpected happens, you can afford the repair – and you'll get a qualified person you can trust in your home to make it. We offer the added convenience of paying for the plan in low monthly amounts. No deductibles, no trip charges and no surprise costs.

Our plan includes:

- Coverage for your refrigerator, dishwasher and stove
- Fast, responsive service from pre-screened and quality-assured repair technicians
- One low monthly fee instead of a potential major expense for repairs
- No deductibles, no trip charges and no surprise costs, like most competitor's plans

#### Disclaimer

The customer is not required to purchase the good or service from FirstEnergy or the FirstEnergy operating company and the good or service may be obtained from other suppliers. A customer's decision to receive or not receive the good or service from FirstEnergy or the FirstEnergy operating company will not influence the delivery of competitive or non-competitive retail electric service to that customer by FirstEnergy or the FirstEnergy operating company. For Ohio customers, the Public Utilities Commission of Ohio does not regulate this optional service and has no authority to investigate complaints about this optional service.

**Why do I need a repair plan?**

Appliances are subject to everyday wear and tear and breakdowns will occur, often when you least expect them. Repair plans give you the peace of mind that if the unexpected should happen, you can afford the repair – and you'll get a qualified person you can trust in your home to make the repair.

**Why choose my FirstEnergy electric utility company for repair plans?**

Your FirstEnergy electric utility company has a reputation for delivering safe, reliable energy, and our commitment to high standards of performance extends into the home. You can trust us to select contractors who will do the job right the first time, and know we will be there tomorrow should you need us. We offer the added convenience of letting you pay for your plan in low monthly amounts added to your electric bill.

**Do I pay a service fee, trip fee or a deductible?**

No. Plans offered by your FirstEnergy electric utility company are designed to repair appliances with no hidden costs or surprises. For work covered under the plans, you will have no additional expense at time of service – just sign the paperwork when the job is done.

**Doesn't homeowner's insurance cover repairs in my home?**

Homeowner's insurance often covers appliances damaged by hazard events like fires, water, wind or other covered events. Our repair plans cover breakdowns related to normal wear and tear or defects in workmanship.

**How do I know what is specifically covered and what is not covered in my repair plan?**

The customer agreement and the **terms and conditions** for each plan outlines specifically what is covered under your plan, what is not covered, and other plan limitations and conditions.

**When does coverage begin and when does it end?**

Your repair plan coverage begins 30 days after your enrollment is processed, giving you 11 months of coverage during the first year.

**What is my commitment?**

This is a 12-month agreement that will renew automatically.

**How do I stop or cancel my repair plan?**

You may cancel your plan during the first 30 days with no obligation. After 30 days, you can cancel your plan at any time and you will only be responsible for payment for the months you were on the program. However, if you had a repair done prior to cancellation, you are responsible for paying the monthly charges for the remainder of the 12-month term of the agreement.

**I'm moving. What do I do about my repair plan?**

You may cancel at any time, and you will only be responsible for payment for the months you were on the plan. However, if you had a repair done prior to cancelling, you will be invoiced for the monthly charges for the remainder of the 12-month term of the agreement.

**If I move can the new homeowner assume my agreement?**

No. Your service agreement is between you and your FirstEnergy electric utility company.

**Who will perform the repair service?**

Work is performed by local service contractors who have been vetted for work quality, on-time performance and customer service standards. Service contractors are independent contractors and not employees or agents of FirstEnergy or your FirstEnergy electric utility company.

**Can I choose my own repair service provider?**

No. We are committed to providing service that meets our high standards, and our network of service contractors go through a vetting and quality assurance process to make sure those standards are met. You will not be reimbursed for work performed by a service provider who is not specifically assigned by us.

**How do I schedule service?**

Call us at (800) 505-SAVE (7283).

[Terms & Conditions](#)

## Other Smartmart Products



**LED MUNICIPAL  
LIGHTING**



**ELECTRIC VEHICLE  
CHARGER LEASE**

**\$39.99 monthly**



**CONNECTED HOME  
PLAN**

**\$14.99 monthly**

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[HOME](#) / [HOME PRODUCTS](#) / [HOME PROTECTION](#) / [SURGE ASSIST PROGRAM](#)


## Surge Assist Program | ID FEP-S0000241



### \$5.49 monthly

Chances are, your home is filled with high-tech computers and devices, televisions and appliances. Damage to any of these from an electrical surge can be expensive. Help protect your investments with this program.

#### COVERAGE

\$5.49 PER MONTH-UP TO \$2,000/YEAR IN PROTECTI 

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ADD TO CART

#### DESCRIPTION



## Surges can happen. Make sure you're covered.

Computers and other electronic devices in our homes do more for us every day, but they are vulnerable to electrical surges that can easily damage their sensitive circuitry, processors and microchips. And as our traditional household appliances incorporate increasingly advanced technology, the potential costs of an unexpected surge climb even higher.

While plug-in surge protectors offer some protection, they can lose effectiveness over time, and outfitting every electronic device in your home with a high-quality, up-to-date protector can be costly. And many insurance policies require deductibles that are higher than the replacement cost.

For many homeowners, a comprehensive protection plan you can trust that covers the repair and replacement of surge-damaged electronics offers the greatest peace of mind.

Surge Assist offers:

- Plans starting at \$5.49 per month, see drop down menu for a list of plans and prices
- No hidden fees
- Personalized claims service
- 30-day, no-hassle, money-back guarantee

This affordable solution saves you the expense of repairing or replacing your home's expensive electronics and electric appliances valued at \$100 or more including:

- Home entertainment equipment, such as televisions, DVD/Blu-ray players and game consoles
- Appliances, such as stoves, ovens, refrigerators, clothes washers, clothes dryers, dishwashers and microwaves
- Computers, printers and scanners
- Window air conditioning units

Some exclusions apply. See terms and conditions for details.

#### Disclaimer

The customer is not required to purchase the good or service from FirstEnergy or the FirstEnergy operating company and the good or service may be obtained from other suppliers. A customer's decision to receive or not receive the good or service from FirstEnergy or the FirstEnergy operating company will not influence the delivery of competitive or non-competitive retail electric service to that customer by FirstEnergy or the FirstEnergy operating company. For Ohio customers, the Public Utilities Commission of Ohio does not regulate this optional service and has no authority to investigate complaints about this optional service.

## FAQ



### What is an electrical surge?

A surge is a burst of electricity or electrical current which can be caused by natural or man-made events including lightning strikes and power coming back on after an outage. This can accelerate wear and tear and result in failure of electrical products.

### What types of items are most commonly damaged by a surge?

An electrical surge can damage the sophisticated computers, devices, televisions and appliances that are common in today's homes.

### What are the sources of electrical surges?

An electrical surge may be caused by natural or man-made events. Common natural events include lightning hitting power, phone, or cable lines, and trees, birds or animals coming into contact with power lines. Man-made events include vehicle accidents involving utility equipment. Other sources include the cycling on and off of large motors or compressors in refrigerators, air conditioners and other equipment, poor grounding and improper or faulty wiring.

### How do electrical surges enter my home?

Surges typically enter your home through electric, cable and telephone utility lines. However other lines – such as electronic dog fences, irrigation systems, yard light circuits, well pump feeds or low voltage lighting systems – can also be an entry point.

### Why should I be concerned about surges?

Every day, homes are using electronics, systems, and appliances that contain extremely sensitive microchips, microprocessors and circuitry. Electrical surges accelerate wear and tear, increasing repair frequency, repair costs and product failure.

### What can I do to protect myself?

High quality plug-in surge protectors are always a good choice. They offer physical and sometimes financial protection. However, protecting every electronic device in your home can be expensive. Our Surge Assist Program is a low-cost plan that offers protection from the cost of damage to the electronics in your home.

### Does this plan require me to install anything?

No. There is no equipment to install or purchase.

### Does my insurance protect against electrical surge damage?

Insurance coverage for losses resulting from power surges may depend on your policy, as well as how the power surge happened. If covered, your deductible can often be as much as the repair or replacement cost.

### How do I file a claim?

Call us at 1-800-505-7283 or email us within 20 days of the surge, and we will start the claim process. We will investigate the claim, evaluate the damage, review estimates and finalize your claim.

### How do I know what is covered?

See the Surge Assist Program [Terms and Conditions](#).

### How do I know what is not covered?

See the Surge Assist Program [Terms and Conditions](#).

### If I have a few more questions, who can I call?

For more information, call 1-800-505-7283.

[TERMS & CONDITIONS](#)



[Terms & Conditions](#)

## Other Smartmart Products



### LED MUNICIPAL LIGHTING



### ELECTRIC VEHICLE CHARGER LEASE

**\$39.99 monthly**



### CONNECTED HOME PLAN

**\$14.99 monthly**

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## **FirstEnergy Services Terms and Conditions**

These Terms and Conditions apply to the following services offered by FirstEnergy Service Company ("FirstEnergy"): Landscape Lighting, Post Lamps, Security Lighting, Electrical Services, Home Insulation Services, and Professional Tree Services (hereinafter the "Services"). Please read these Terms and Conditions before submitting a request for a free estimate for any of the Services. By submitting a request for a free estimate, you are indicating that you have read, understood and agreed to these Terms and Conditions and confirm that you are a FirstEnergy utility company customer.

### **1. Services**

All Services are performed by an independent contractor. By submitting a request for a free estimate for the Services, you represent that you are at least 18 years of age and that you wish to be contacted by one of FirstEnergy's Contractors (hereinafter "Contractor") for the purpose of receiving a free estimate for the Services. FirstEnergy, its parent, subsidiaries and related affiliates, including the FirstEnergy operating companies, do not provide any warranty on the Services performed by Contractor and are not liable for damage or injuries that may arise as a result of the Services provided. The Services may be subject to additional terms and conditions between you and the Contractor.

### **2. Contractor's Performance of the Services**

In performing the Services for you, Contractor is responsible for:

- furnishing all necessary labor, tools, equipment, materials, transportation, supervision, services and other items required to satisfactorily complete the work in a timely fashion;
- performing the work in accordance with generally accepted procedures, practices and standards within the industry and exercise that degree of skill and judgment commensurate with that which is normally exercised with respect to services of a similar nature;
- complying with all applicable laws, ordinances, codes, rules, licenses, permits, orders, and other requirements, now or hereinafter in effect of any governmental authority including, without limitation, (a) installation or materials standards; (b) requirements relating to contractor licensing, building permits, zoning and consumer protection; and (c) workers' compensation and employer's liability insurance;
- providing you with a written warranty and guarantee and copies of all applicable manufacturer's warranties relating to the work;
- taking all precautions necessary to prevent bodily harm or property damage in connection with the work;

- ensuring that only experienced and properly qualified persons perform the work;
- promptly and satisfactorily correcting all defects or deficiencies in the work as identified by you or FirstEnergy within five (5) working days of being notified of the defect. If Contractor fails or refuses to make such correction, FirstEnergy may, at its option, make such correction at Contractor's expense, which shall be promptly paid by Contractor, or offset against any payments owed to Contractor; and
- satisfactorily repairing all damages caused by Contractor to your property, at Contractor's expense, within thirty (30) days of the date upon which the damage occurred. If Contractor fails or refuses to make such correction, FirstEnergy may, at its option, make such correction at Contractor's expense, which shall be promptly paid by Contractor, or offset against any payments owed to Contractor.

### **3. Inspection and Testing**

Contractor's work shall at all times be subject to inspection and testing by you and FirstEnergy. It is hereby agreed and understood that FirstEnergy does not assume any obligation or responsibility to perform or review any inspection or testing.

### **4. Payment for Services**

If eligible, you may elect to pay for the Services in installments with FirstEnergy (see Section 5) or by paying the Contractor directly.

If you are eligible and elect to pay in installments, you may select one of the following ways to be billed: (1) as an additional charge to your monthly electric service billing statement; (2) by separate monthly statement if you do not currently receive an electric service billing statement from a FirstEnergy Company (the "Company"); or (3) by credit card. In addition to your monthly charge, you may be billed for applicable taxes or surcharges associated with your state of residence.

The billing for the payments will generally commence with the electric service billing statement following installation of the equipment or provision of Services and will continue for the number of billing periods set forth in your Payment Agreement provided by the Company. Payments will be due on the same date as payment for your electric service, or if you do not receive an electric service billing statement from the Company, then your payment is due within fifteen (15) days of the billing date of the separate monthly statement. The charge on your bill or credit card shall serve as the invoice for the Services or equipment purchase and installation. On notice to you, Company may change the means by which you are invoiced and billed for the Services or equipment purchase and installation. If your billing method is a utility bill, your payments will be applied in accordance with the utility's prioritization of payments schedule. If you enroll in a payment assistance program for payment of your utility bill, Company reserves the right, in its sole discretion, to remove your monthly charge from your utility bill onto a separate monthly invoice. By submitting a request for a free estimate, you consent to Company inquiring about your credit or payment history at any time as it relates to your ability to pay for the Services or



equipment purchase and installation and you consent to disclosure of your customer information by your electric utility to third parties to the extent necessary.

In the event that your electric service is discontinued for any reason, or if you fail to make said payments for two (2) consecutive billing periods, you understand and agree that any outstanding balance for the Services or equipment and installation will become due and payable immediately upon demand by the Company, without presentment, demand, protest, notice of protest or other notice of any kind, all of which are hereby expressly waived by you. Failure to timely comply with your payment obligations for the Services or equipment and installation may result in Company initiating a collection action and, in the event of such collection action, you agree to pay all fees of collection incurred by FirstEnergy, including but not limited to collection agency fees, credit bureau fees, legal filing fees, service of process fees, publication fees, witness fees, reasonable attorneys' fees and recording fees.

Customer hereby acknowledges that the Company, by advancing such funds for the Services or purchase of the said equipment described above, assumes no liability for any damages, however incurred, arising from the manufacture, installation, operation or performance of said equipment.

## **5. FirstEnergy's Financial Assistance to Customer**

You may be eligible to receive financial assistance from FirstEnergy for the Services. In order to qualify for financial assistance from FirstEnergy, you must: (i) be a customer of FirstEnergy who is the account holder of record on which the charges will be billed, or be credit approved to be invoiced by FirstEnergy; (ii) be the owner or authorized agent of the single-family dwelling where the Services will be performed; (iii) be the owner or authorized agent of eligible commercial property where the Services will be performed; (iv) have acceptable credit with FirstEnergy. Any customer meeting these criteria may finance the Services without interest upon the execution of a Payment Agreement.

If you receive financial assistance from FirstEnergy for the Services, the Contractor will not perform the Services until: (a) the Contractor has completed the Payment Agreement provided by FirstEnergy; (b) the Payment Agreement has been signed by the account holder of record on which the charges for the Services will be billed; (c) approval has been received from the owner (or authorized representative of the owner) of the premises where the Services are to be performed; (d) a copy of the completed and signed Payment Agreement has been left with the account holder of record (or authorized representative); and (e) the financial assistance has been approved by FirstEnergy. The Payment Agreement will indicate the amount of financial assistance available from FirstEnergy under the program.

## **6. Disclaimers**

You understand and agree that the Services are being purchased directly from Contractor and that FirstEnergy or the Company MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You further understand and agree that the ONLY WARRANTIES ARISING FROM THIS TRANSACTION

are those that may be provided by the Contractor and/or the manufacturer of the equipment and that FirstEnergy or the Company has neither assumed nor authorized any person to assume for it any other liability in connection with the Services or sale, installation or operation, or performance of the above described equipment.

## **7. Law and Jurisdiction**

These Terms and Conditions are governed by the laws of the State of Ohio, without regard to its choice of law provisions. The courts of general jurisdiction located within the State of Ohio, will have exclusive jurisdiction over any and all disputes arising out of, relating to or concerning these Terms and Conditions.

## **8. Miscellaneous**

No agency, partnership, joint venture, or employment relationship is created as a result of these Terms and Conditions, and you do not have any authority of any kind to bind FirstEnergy in any respect whatsoever. FirstEnergy's failure to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of the enforcement of such right or provision. If any provision of these Terms and Conditions is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms and Conditions shall otherwise remain in full force and effect and enforceable. These Terms and Conditions are not assignable, transferable or sublicensable by you, except with our prior written consent. The headings in these Terms of Service are for convenience only and have no legal or contractual effect. These Terms and Conditions include and incorporate the Privacy Policy for the Smartmart website.

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## **Surge Assist Program Terms and Conditions**

Please read this document carefully and keep it for reference. These terms and conditions, together with the Declarations Page, constitute the entire agreement ("Agreement") between you and the "Provider" identified on the Declarations Page pertaining to the Surge Assist Program (the "Plan"). By entering into this Agreement, you confirm that you are a FirstEnergy utility company customer. The laws of the state in which your service address is located govern interpretation of this Agreement. The Provider may change the terms of, or add new terms to, the Plan and this Agreement at any time in accordance with applicable law. Plan prices are subject to change. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION (INCLUDING A CLASS ACTION ARBITRATION WAIVER). It is important that you read the Arbitration section carefully.

**What Is Covered:** The Provider will reimburse you for the repair or, if repair is not feasible, then for the replacement of residential Electrical Products that fail due to an Electrical Surge during the term of this Agreement. "Electrical Products" means consumer appliances, electronics, and electrical devices valued at \$100 or greater, including window air conditioning units, stoves, ovens, refrigerators, clothes washers, clothes dryers, dishwashers, microwaves, televisions, DVD/Blu-ray players, game consoles, computers, printers, and scanners. "Electrical Surge" means an occurrence of a sudden and non-continuous increase or burst of electricity or electrical current, caused by natural or man-made events including lightning strikes and power returning after an outage, which can accelerate wear and tear and result in the failure of Electrical Products.

This Agreement provides coverage only for Electrical Products which are owned by you or a member of your household and which are located within the perimeter of the main foundation or attached garage at the service address or account identified on the Declarations Page that fail due to the accelerated wear and tear of Electrical Surges. If the identified service address has multiple units or multiple accounts, a separate Agreement must be purchased for each individual unit or account.

Repair or replacement costs, and diagnostic fees, are covered only up to the Per-Incident and Annual Limits specified on the Declarations Page, and subject to the exclusions described below. Any repair or replacement charges beyond the Per-Incident or Annual Limits are your responsibility. An "incident" means the particular Electrical Surge causing accelerated wear and tear that leads to a need for repair or replacement of Electrical Product(s). The "Annual Limit" specified on the Declarations Page is the aggregate limit on the amount that the Provider will pay for any one or more incidents that occur within an Annual Term of this Agreement. An "Annual Term" of this Agreement means the initial twelve month term of this Agreement commencing on the Effective Date of this Agreement and any successive twelve-month renewal term under this Agreement. The "Effective Date" of this Agreement is listed on the Declarations Page.

**What Is Not Covered:** The Provider will not be responsible for providing any products and services not specifically listed above in "What is Covered," including without limitation any of the following: (1) Damage to your home's electrical system, including the service panel or fuse box and circuit breaker(s); (2) Damage to heating, ventilation, and air conditioning system(s), water heaters, thermostats, and security systems; (3) electrical plumbing equipment including well pumps and sump pumps; (4) medical or life support equipment; (5) plug-in or electric vehicles of any kind; (6) battery operated items and devices that are not plugged in to your electric system; (7) Electrical Products that are damaged by any reason other than an Electrical Surge; (8) Products or items that cannot be replaced with like kind and quality on the current retail market (e.g. antiques); (9) Damage from accident, abuse, and misuse, improper or incomplete installation, or third-party actions; (10) Indirect costs incurred as a result of an Electric Surge, such as loss or corruption of data, programming, or program installation or reconfiguration; (11) Damage to real property, duct work, exhaust systems, pipes or plumbing; (12) Any defect in or problem with an Electrical Product which existed when coverage under this Agreement began; (13) Costs recoverable under any insurance policy, product warranty, home warranty program, or from your utility company; (14) Electrical Products with total replacement value less than \$100.

**How to Make a Claim:** Please follow the process described below to seek reimbursement for repair or replacement costs under the Plan. Provider will not reimburse you for any fees or costs of repairs or replacements without completion of this claim process.

(a) You must call Provider at the telephone number listed on the Declarations Page within twenty (20) days of an Electrical Surge event to provide notice of the event and to request a claim form. The claim form must be completed in full and returned with a copy of a qualified service technician's invoice within thirty (30) days after the date of the claim form cover letter. A "qualified service technician" is defined as a licensed specialist involved in servicing and repairing residential electronics, electrical equipment, and appliances on a regular and ongoing basis. Provider reserves the right in all cases to decide if a particular service technician is qualified. The qualified service technician's invoice must be on business letterhead showing the name, address and telephone number of the qualified service technician, and must include: (a) a description of the Electrical Products and damage; (b) itemized statement of diagnostic fees and repair costs, or a statement that the Electrical Product is not repairable; and (c) a statement that the damage was caused by an Electrical Surge.

(b) If the Electrical Product cannot be repaired, Provider will reimburse for the replacement value of the Electrical Product. You must provide a receipt for the purchase of the replacement item with your claim form. Replacement value shall be the typical purchase price of the most similar and like quality product available on the market at the time of the Electrical Surge incident.

(c) Diagnostic fees charged by the qualified service technician not exceeding \$125 will be reimbursed by Provider if your Claim is substantiated to eligible under this Agreement and provided that such diagnostic fees do not exceed the usual, customary and reasonable charge for such services in the local area in which the services are provided.

You must be current on all payments in order to be covered under this Agreement.

**Term of Coverage and Cancellation:** This Agreement is for a term of twelve (12) months starting on the Effective Date and will renew automatically for additional 12-month annual terms thereafter unless cancelled as provided below. You may cancel this Agreement at any time as described below by notifying Provider at the phone number indicated on the Declarations Page. Provider may cancel this Agreement at any time for misrepresentation or non-payment by you; for violation of any of the terms and conditions of this Agreement; if required to do so by any regulatory authority; or if the Provider, for its convenience and in its sole discretion, makes a commercial decision to generally discontinue the Plan or to discontinue your specific participation in the Plan.

If either of you or Provider cancels this Agreement within 30 days from the Agreement's Effective Date and you have not made any request for reimbursement hereunder, you will receive a full refund of the Plan payments made by you. If either of you or Provider cancels this Agreement more than 30 days from the Agreement's Effective Date, you will receive a refund of any advance payments for coverage that you have made for the period of time beyond the date of cancellation, less the amount of any reimbursement or claim for reimbursement you have received prior to termination. If you move to a new service address, this Agreement will be deemed cancelled by you.

During the first year of this Agreement, you are subject to an initial waiting period of thirty (30) days, during which time you will not be eligible for coverage of Claims, thus giving you eleven (11) months of coverage during the first year. Upon renewal (if applicable), you will not be subject to another waiting period.

**Price/Billing:** The amount of your monthly charge is provided in the Declarations Page. In addition to your monthly charge, you may be billed for applicable taxes or surcharges associated with your state of residence. Payment may be made in monthly installments or in full at the commencement of the Agreement or any renewal term(s). The initial charges will be submitted for billing five (5) business days after the Agreement's Effective Date. Each subsequent monthly charge will be submitted for billing on or about the same day of the month as your initial charge was submitted. The charge for this Agreement on your bill or credit card shall serve as the invoice for the service. On notice to you, Provider may change the means by which you are invoiced and billed for your services. If your billing method is a utility bill, your payments will be applied in accordance with the utility's prioritization of payments schedule. If you enroll in a payment assistance program for payment of your utility bill, Provider reserves the right, in its sole discretion, to either (a) terminate your participation in the Plan and send you an invoice for the remaining balance you owe under the Plan or (b) remove your Plan monthly charge from your utility bill onto a separate monthly invoice. By applying for the services, you consent to Provider inquiring about your credit or payment history at any time as it relates to your ability to pay for the services and you consent to disclosure of your customer information by your electric utility to third parties to the extent necessary to administer the Plan. Failure to timely comply with your payment obligations may result in Provider initiating a collection action and, in the event of such collection action, you agree to pay all fees of collection incurred by Provider, including but not limited to collection agency fees, credit bureau fees, legal filing fees, service of process fees, publication fees, witness fees, reasonable attorneys' fees and recording fees.

**Provider's Limitation of Liability:** TO THE FULLEST EXTENT ALLOWED BY LAW, PROVIDER, ITS PARENT AND AFFILIATES SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. TO THE FULLEST EXTENT ALLOWED BY LAW, THE LIABILITY OF PROVIDER, ITS PARENT AND AFFILIATES SHALL BE LIMITED TO THREE (3) TIMES THE AMOUNT PAID UNDER THE PLAN BY YOU DURING THE PREVIOUS TWELVE (12) MONTHS.

**Reimbursement Insurance Policy (Ohio Only):** If your service address is located in the State of Ohio, then the obligations of Provider under this Agreement are guaranteed under a reimbursement insurance policy. If the Provider fails to perform or make any payment due under the terms of this Agreement within sixty (60) days after you have made a request for performance or payment pursuant to the terms of this Agreement, you may request performance or payment directly from the provider's reimbursement insurance policy insurer, including, but not limited to, Provider's obligation under the "Term of Coverage and Cancellation" section of this Agreement to refund you money upon cancellation of this Agreement. The Provider's reimbursement insurance policy insurer, and contact information for the reimbursement insurance policy insurer, is set forth on the Declarations Page.

**Communications:** Provider may provide notifications to you as required by law or for marketing or other purposes via (at its option) email to the primary email associated with your account, mobile notifications, hard copy, or posting of such notice on [www.firstenergy.com](http://www.firstenergy.com).

**Assignment; Miscellaneous Terms:** This Agreement may be assigned by Provider without notice to you. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and shall be given no effect in the construction or interpretation of this Agreement. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the contractual intent to the maximum extent permitted by applicable legal requirements. Unless the context of this Agreement otherwise clearly requires, references in the plural form include the singular and vice versa.

#### **THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION:**

Except as otherwise required by law or as otherwise expressly permitted under this Agreement, any claim, dispute, or controversy between you and Provider that arises from or relates to this Agreement or the Plan (individually and collectively, a "Claim") shall be resolved by binding individual arbitration. This does not apply to any Claim in which the relief sought is within the jurisdictional limits of, and is filed in, a small claims court. All issues relating to the Claim are for the arbitrator to decide, except that issues relating to the validity, enforceability, and scope of this Arbitration Agreement, including the interpretation of Paragraph (3) below, shall be determined by a court and not the arbitrator. If arbitration is chosen by any party, the following shall apply:

(1) NEITHER YOU NOR PROVIDER WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT OR TO HAVE A JURY TRIAL ON A CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY, EXCEPT AS PROVIDED FOR IN THE APPLICABLE ARBITRATION RULES OR AS OTHERWISE EXPRESSLY PERMITTED UNDER THIS AGREEMENT.

(2) The arbitrator is empowered to resolve the dispute with the same remedies available in court, including compensatory damages, but excluding any categories or types of damages that are not recoverable under the "Limitation of Liability" section of this Agreement; attorneys' fees; and declaratory, injunctive, and equitable relief. However, any relief must be individualized to you and shall not affect or include a recovery for or on behalf of any other person or claimant. The arbitrator is also empowered to resolve the dispute with the same defenses available in court, including but not limited to statutes of limitation.

(3) WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS. All arbitrations shall proceed on an individual basis. You and Provider agree that each may bring claims against the other in arbitration only in your respective individual capacities and in so doing you and Provider hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration, to assert or participate in a private attorney general lawsuit or private attorney general arbitration, and/or to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular cause of action, then that cause of action (and only that cause of action) shall remain in court and be severed from any arbitration. Provider does not consent to, and the arbitrator shall not have authority to conduct, any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims, under any circumstance.

(4) The arbitration shall be performed in accordance with this Arbitration Provision and the rules of the chosen arbitrator in effect when the Claim is filed. Either party may initiate arbitration, which shall be conducted by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules ("AAA Rules"), as modified by this Arbitration Agreement. The AAA Rules are available on the AAA's website [www.adr.org](http://www.adr.org), or by calling the AAA at (800) 778-7879. If AAA is unavailable or unwilling to hear the dispute, the parties shall agree to, or the court shall select, another arbitration provider. Unless you and Provider agree otherwise, any arbitration hearing shall take place in the federal judicial district where you reside. We encourage you to call Provider before filing a claim for arbitration to see if the dispute may be resolved be settled prior to arbitration. Provider will pay all filing, administrative, arbitrator, and hearing costs. Provider waives any rights they may have to recover an award of attorneys' fees and expenses against you. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16, including but not limited to applicable statutes of limitation, and shall honor claims of privilege recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

(5) The arbitrator's decision will generally be final and binding, except for limited rights of appeal provided by the Federal Arbitration Act.

(6) Other rights that you would have if you went to court may not be available in arbitration.

This Arbitration Provision shall survive termination of this Agreement and your enrollment in the Plan. Notwithstanding any language in this Agreement to the contrary, this Arbitration Provision shall be governed by federal law, including the Federal Arbitration Act. Notwithstanding any language of this Agreement to the contrary, should any portion of this Arbitration Provision be held invalid or unenforceable by a court or other body of competent jurisdiction, this entire Arbitration Provision shall be automatically terminated and all other provisions of this Agreement shall remain in full force and effect.

## Laundry Appliance Repair Plan Terms and Conditions

Please read this document carefully and keep it for reference. These Terms and Conditions, together with the Declarations Page, constitute the entire agreement (“Agreement”) between you and the “Provider” identified on the Declarations Page pertaining to the Laundry Appliance Repair Plan (the “Plan”). By entering into this Agreement, you confirm that you are a FirstEnergy utility company customer. The laws of the state in which your service address is located govern interpretation of this Agreement. The Provider may change the terms of, or add new terms to, the Plan and this Agreement at any time in accordance with applicable law. Plan prices are subject to change. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION (INCLUDING A CLASS ACTION ARBITRATION WAIVER). It is important that you read the Arbitration section carefully.

**What Is Covered:** The Plan covers parts and labor costs to repair a Covered Product (described below) for a breakdown resulting from defects in workmanship, damage due to normal wear and tear, or a mechanical failure of any Covered Product during the Term of this Agreement. The Plan covers one (1) appliance of each type located at the service address identified on the Declarations Page (i.e., one clothes washer and one clothes dryer). If the identified service address has more than one appliance of any such type, a separate Plan must be purchased for each such additional unit.

This Agreement provides coverage only for Covered Products which are owned by you or a member of your household and which are located within the perimeter of the main foundation at the service address or account identified on the Declarations Page. If the identified service address has multiple units or multiple accounts, a separate Agreement must be purchased for each individual unit or account. Repair costs are covered only up to the Per-Incident and Annual Limits specified on the Declarations Page, and subject to the exclusions described below. Any repair or replacement charges beyond the Per-Incident or Annual Limits are your responsibility. An “Incident” means a single service call. The “Annual Limit” specified on the Declarations Page is the aggregate limit on the amount that the Provider will pay for any one or more incidents that occur within an Annual Term of this Agreement. An “Annual Term” of this Agreement means the initial twelve (12) month term of this Agreement commencing on the Effective Date of this Agreement and any successive twelve (12) month renewal term under this Agreement. The “Effective Date” of this Agreement is listed on the Declarations Page.

In order to be covered by the Plan, all Covered Products must: (a) be installed to meet local, state and federal codes; (b) satisfy manufacturer requirements for safe and proper operation; and (c) be in good working condition at the time of enrollment. Coverage is for owned or rented residential-use property. If this is a rental property, you represent that you are authorized to make repairs to the rented property. Provider may refuse to provide service or deny enrollment under the Plan if eligibility requirements are not met.

### **Covered Products:**

CLOTHES DRYER – gas valve, main burner, pilot burner, thermocouple, manifold, transformer, relay, regulator, standard thermostat, igniter, fuse, sensor, power pack, seals, drive belt, surface limit control, motor, bearings, pulleys, controls (will be replaced with manufacturer’s standard only), timer and electrical heating element.

CLOTHES WASHER – water level switch, water inlet valve, water temperature switch, drive basket, brakes, clutch assembly, timer, sequencer, lid switch actuator, touch pad, control board, power supply, motor agitator, pump coupling, wigwag, drive belt, boot seal and related electrical parts.

**What is Not Covered:** The Provider will not be responsible for providing any products and services not specifically listed above in “What is Covered,” including without limitation any of the following: Defects, damage, or failure caused by freezing water lines or drains; Nonstandard materials; Defects, damage, or failure caused by accident, abuse, and misuse, improper or incomplete installation, or third-party actions; Defects, damage, or failure caused by a condition of mineral or chemical deposit; Any defect, damage, or failure of a Covered Product which existed when coverage under this

Agreement began; Costs recoverable under any insurance policy, product warranty, or other home warranty program; Bringing non-complying equipment into compliance with local, state, or federal codes; Cosmetic issues such as scratches, dents, or chipping; CLOTHES DRYER – light bulbs, venting, knobs and dials, damage to clothing, lint screens, and dryer cabinet fragrance/humidity center; and CLOTHES WASHER – removable mini-tubs or buckets, filter screens, damage to clothing, water flow restrictions due to mineral deposits, and drawers.

**How to Make a Service Call:** Please follow the process described below to obtain coverage under the Plan. Provider will not reimburse you for any fees or costs of repairs or replacements except under this process. Provider will not reimburse you for work performed by a person not specifically assigned by Provider, or for services performed without Provider’s authorization. Provider’s Service Contractor will submit its fees for authorized Plan services directly to Provider and you will not be required to pay the Service Contractor for authorized Plan services.

You must call **(800) 505-SAVE (7283)** to schedule a service appointment. All service calls will occur during regular working hours (8:00am-5:00pm, Monday through Friday). If the event is life threatening, call 911 immediately, and follow any instructions you are given.

All services will be performed by an authorized technician selected by Provider from its network of approved third-party service contractors (the “Service Contractor”). Provider has the sole and absolute right to (i) select the Service Contractor to perform the service and (ii) determine the rates and other pricing terms under which the Service Contractor will be compensated. Service Contractors are independent contractors and not employees or agents of Provider or its affiliates, and are not authorized by Provider to perform services outside of the scope of the Plan. If you elect to retain the Service Contractor to perform other services on your behalf, you must enter into a separate agreement between you and the Service Contractor for those services with payment to be made by you directly to the Service Contractor. Provider is not responsible or liable for any services performed by the Service Contractor outside of the scope of the Plan.

You must provide the Service Contractor with safe and reasonable access to all Covered Products, and related systems and lines. Unauthorized repairs may void this Agreement. COMPATIBLE OR SUBSTITUTE PARTS MAY BE USED FOR REPAIR OF THE COVERED PRODUCT.

You must be current on all payments in order to be covered under this Agreement.

**Term of Coverage and Cancellation:** This Agreement is for a term of twelve (12) months starting on the Effective Date and will automatically renew from month to month thereafter unless cancelled as provided below. You may cancel this Agreement at any time as described below by notifying Provider at the phone number indicated on the Declarations Page. Provider may cancel this Agreement at any time for misrepresentation or non-payment by you; for violation of any of the Terms and Conditions of this Agreement; if required to do so by any regulatory authority; or if the Provider, for its convenience and in its sole discretion, makes a commercial decision to generally discontinue the Plan or to discontinue your specific participation in the Plan.

If either of you or Provider cancels this Agreement within thirty (30) days from the Agreement’s Effective Date and you have not had service performed, you will receive a full refund of Plan payments made by you. If either of you or Provider cancels this Agreement more than thirty (30) days from the Agreement’s Effective Date and you have not had service performed, the Plan will terminate immediately without requirement for any further additional payment by you. If either of you or Provider cancels this Agreement and you have had service performed, then you will be invoiced for the amount of the monthly fees for all unpaid months through the remainder of the initial twelve (12) month term. If you move to a new service address, this Agreement will be deemed cancelled by you.

During the first year of this Agreement, you are subject to an initial waiting period of thirty (30) days, during which time you will not be eligible for

coverage of service calls, thus giving you eleven (11) months of coverage during the first year. Upon renewal (if applicable), you will not be subject to another waiting period.

**Price/Billing:** The amount of your monthly charge is provided in the Declarations Page. In addition to your monthly charge, you may be billed for applicable taxes or surcharges associated with your state of residence. Payment may be made in monthly installments or in full at the commencement of the Agreement or any renewal term(s). The initial charges will be submitted for billing five (5) business days after the Agreement's Effective Date. Each subsequent monthly charge will be submitted for billing on or about the same day of the month as your initial charge was submitted. The charge for this Agreement on your bill or credit card shall serve as the invoice for the service. On notice to you, Provider may change the means by which you are invoiced and billed for your services. If your billing method is a utility bill, your payments will be applied in accordance with the utility's prioritization of payments schedule. If you enroll in a payment assistance program for payment of your utility bill, Provider reserves the right, in its sole discretion, to either (a) terminate your participation in the Plan and send you an invoice for the remaining balance you owe under the Plan or (b) remove your Plan monthly charge from your utility bill onto a separate monthly invoice. By applying for the services, you consent to Provider inquiring about your credit or payment history at any time as it relates to your ability to pay for the services and you consent to disclosure of your customer information by your electric utility to third parties to the extent necessary to administer the Plan. Failure to timely comply with your payment obligations may result in Provider initiating a collection action and, in the event of such collection action, you agree to pay all fees of collection incurred by Provider, including but not limited to collection agency fees, credit bureau fees, legal filing fees, service of process fees, publication fees, witness fees, reasonable attorneys' fees and recording fees.

**Disclaimer of Warranties:** PROVIDER AND ITS AFFILIATES ARE NOT THE MANUFACTURER OF THE PRODUCTS OR SYSTEMS COVERED UNDER THIS AGREEMENT AND THEREFORE THIS AGREEMENT IS NOT AN EXPRESS OR IMPLIED WARRANTY, GUARANTEE, OR PROMISE RELATING TO THE MATERIALS, WORKMANSHIP OR PERFORMANCE OF THE PRODUCTS OR SYSTEMS COVERED BY THE PLAN.

**Provider's Limitation of Liability:** TO THE FULLEST EXTENT ALLOWED BY LAW, PROVIDER, ITS PARENT AND AFFILIATES, AND THE SERVICE CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. TO THE FULLEST EXTENT ALLOWED BY LAW, THE LIABILITY OF PROVIDER, ITS PARENT AND AFFILIATES, AND THE SERVICE CONTRACTOR SHALL BE LIMITED TO THREE (3) TIMES THE AMOUNT PAID UNDER THE PLAN BY YOU DURING THE PREVIOUS TWELVE (12) MONTHS. PROVIDER IS NOT RESPONSIBLE FOR ANY SERVICES PERFORMED BY THE SERVICE CONTRACTOR OUTSIDE OF THE SCOPE OF THE PLAN.

**Communications:** Provider may provide notifications to you as required by law or for marketing or other purposes via (at its option) email to the primary email associated with your account, mobile notifications, hard copy, or posting of such notice on [www.firstenergycorp.com](http://www.firstenergycorp.com).

**Assignment; Miscellaneous Terms:** This Agreement may be assigned by Provider without notice to you. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and shall be given no effect in the construction or interpretation of this Agreement. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the contractual intent to the maximum extent permitted by applicable legal requirements. Unless the context of this Agreement otherwise clearly requires, references in the plural form include the singular and vice versa.

#### **THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION:**

Except as otherwise required by law or as otherwise expressly permitted under this Agreement, any claim, dispute, or controversy between you and Provider that arises from or relates to this Agreement or the Plan (individually and collectively, a "Claim") shall be resolved by binding individual arbitration. This does not apply to any Claim in which the relief sought is within the jurisdictional limits of, and is filed in, a small claims court. All issues relating to the Claim are for the arbitrator to decide, except that issues relating to the validity, enforceability, and scope of this Arbitration Agreement, including the interpretation of Paragraph (3) below, shall be determined by a court and not the arbitrator. If arbitration is chosen by any party, the following shall apply:

(1) NEITHER YOU NOR PROVIDER WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT OR TO HAVE A JURY TRIAL ON A CLAIM, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY, EXCEPT AS PROVIDED FOR IN THE APPLICABLE ARBITRATION RULES OR AS OTHERWISE EXPRESSLY PERMITTED UNDER THIS AGREEMENT.

(2) The arbitrator is empowered to resolve the dispute with the same remedies available in court, including compensatory damages, but excluding any categories or types of damages that are not recoverable under the "Limitation of Liability" section of this Agreement; attorneys' fees; and declaratory, injunctive, and equitable relief. However, any relief must be individualized to you and shall not affect or include a recovery for or on behalf of any other person or claimant. The arbitrator is also empowered to resolve the dispute with the same defenses available in court, including but not limited to statutes of limitation.

(3) WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS. All arbitrations shall proceed on an individual basis. You and Provider agree that each may bring claims against the other in arbitration only in your respective individual capacities and in so doing you and Provider hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration, to assert or participate in a private attorney general lawsuit or private attorney general arbitration, and/or to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular cause of action, then that cause of action (and only that cause of action) shall remain in court and be severed from any arbitration. Provider does not consent to, and the arbitrator shall not have authority to conduct, any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims, under any circumstance.

(4) The arbitration shall be performed in accordance with this Arbitration Provision and the rules of the chosen arbitrator in effect when the Claim is filed. Either party may initiate arbitration, which shall be conducted by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules ("AAA Rules"), as modified by this Arbitration Agreement. The AAA Rules are available on the AAA's website [www.adr.org](http://www.adr.org), or by calling the AAA at (800) 778-7879. If AAA is unavailable or unwilling to hear the dispute, the parties shall agree to, or the court shall select, another arbitration provider. Unless you and Provider agree otherwise, any arbitration hearing shall take place in the federal judicial district where you reside. We encourage you to call Provider before filing a claim for arbitration to see if the dispute may be resolved or be settled prior to arbitration. Provider will pay all filing, administrative, arbitrator, and hearing costs. Provider waives any rights they may have to recover an award of attorneys' fees and expenses against you. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16, including but not limited to applicable statutes of limitation, and shall honor claims of privilege recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

(5) The arbitrator's decision will generally be final and binding, except for limited rights of appeal provided by the Federal Arbitration Act.

(6) Other rights that you would have if you went to court may not be available in arbitration.

This Arbitration Provision shall survive termination of this Agreement and your enrollment in the Plan. Notwithstanding any language in this Agreement to the contrary, this Arbitration Provision shall be governed by federal law, including the Federal Arbitration Act. Notwithstanding any language of this Agreement to the contrary, should any portion of this Arbitration Provision be held invalid or unenforceable by a court or other body of competent jurisdiction, this entire Arbitration Provision shall be automatically terminated and all other provisions of this Agreement shall remain in full force and effect.



## Kitchen Appliance Repair Plan Terms and Conditions

Please read this document carefully and keep it for reference. These Terms and Conditions, together with the Declarations Page, constitute the entire agreement ("Agreement") between you and the "Provider" identified on the Declarations Page pertaining to the Kitchen Appliance Repair Plan (the "Plan"). By entering into this Agreement, you confirm that you are a FirstEnergy utility company customer. The laws of the state in which your service address is located govern interpretation of this Agreement. The Provider may change the terms of, or add new terms to, the Plan and this Agreement at any time in accordance with applicable law. Plan prices are subject to change. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION (INCLUDING A CLASS ACTION ARBITRATION WAIVER). It is important that you read the Arbitration section carefully.

**What Is Covered:** The Plan covers parts and labor costs to repair a Covered Product (described below) for a breakdown resulting from defects in workmanship, damage due to normal wear and tear, or a mechanical failure of any Covered Product during the Term of this Agreement. The Plan covers one (1) appliance of each type located at the service address identified on the Declarations Page (i.e., one refrigerator, one stove, and one dishwasher). If the identified service address has more than one appliance of any such type, a separate Plan must be purchased for each such additional unit.

This Agreement provides coverage only for Covered Products which are owned by you or a member of your household and which are located within the perimeter of the main foundation at the service address or account identified on the Declarations Page. If the identified service address has multiple units or multiple accounts, a separate Agreement must be purchased for each individual unit or account. Repair costs are covered only up to the Per-Incident and Annual Limits specified on the Declarations Page, and subject to the exclusions described below. Any repair or replacement charges beyond the Per-Incident or Annual Limits are your responsibility. An "Incident" means a single service call. The "Annual Limit" specified on the Declarations Page is the aggregate limit on the amount that the Provider will pay for any one or more incidents that occur within an Annual Term of this Agreement. An "Annual Term" of this Agreement means the initial twelve (12) month term of this Agreement commencing on the Effective Date of this Agreement and any successive twelve (12) month renewal term under this Agreement. The "Effective Date" of this Agreement is listed on the Declarations Page.

In order to be covered by the Plan, all Covered Products must: (a) be installed to meet local, state and federal codes; (b) satisfy manufacturer requirements for safe and proper operation; and (c) be in good working condition at the time of enrollment. Coverage is for owned or rented residential-use property. If this is a rental property, you represent that you are authorized to make repairs to the rented property. Provider may refuse to provide service or deny enrollment under the Plan if eligibility requirements are not met.

### **Covered Products:**

DISHWASHER – heating element, pump, thermostat, thermal fuse washer and spray arms, drain valve motor assembly, door switch interlock, timer, float switch inner valve, internal hoses, control panel, related electric parts and water lines attached to the appliance.

STOVE – gas valve, main burner, pilot burner, thermocouple, manifold, transformer, relay, regulator, standard thermostat, igniter, fuse, sensor, power pack, seals, surface unit controls, programmed cooking controls, heating elements (will be replaced with manufacturer's standard only) and internal wiring.

REFRIGERATOR – condenser, defrost heating element, standard thermostat, fuse, relay, transformer, motor compressor, pulleys, timer, fan control, bearings, pump motor, switches, electrodes, semi-conductors, rectifiers, gaskets, valves, electronic circuits and water lines attached to the appliance.

**What is Not Covered:** The Provider will not be responsible for providing any products and services not specifically listed above in "What is Covered," including without limitation any of the following: Defects, damage, or failure caused by freezing water lines or drains; Nonstandard materials; Defects, damage, or failure caused by accident, abuse, and misuse, improper or incomplete installation, or third-party actions; Defects, damage, or failure caused by a condition of mineral or chemical deposit; Any defect, damage, or failure of a Covered Product which existed when coverage under this Agreement began; Costs recoverable under any insurance policy, product warranty, or other

home warranty program; Bringing non-complying equipment into compliance with local, state, or federal codes; Cosmetic issues such as scratches, dents, or chipping; DISHWASHER – baskets and dish racks; STOVE – light bulbs, light switches, meat probe assemblies, and breakage to an oven door or glass/ceramic cooktop; and REFRIGERATOR – light bulbs, compartments, bins, shelves, shelf supports, and food spoilage.

**How to Make a Service Call:** Please follow the process described below to obtain coverage under the Plan. Provider will not reimburse you for any fees or costs of repairs or replacements except under this process. Provider will not reimburse you for work performed by a person not specifically assigned by Provider, or for services performed without Provider's authorization. Provider's Service Contractor will submit its fees for authorized Plan services directly to Provider and you will not be required to pay the Service Contractor for authorized Plan services.

You must call **(800) 505-SAVE (7283)** to schedule a service appointment. All service calls will occur during regular working hours (8:00am-5:00pm, Monday through Friday). If the event is life threatening, call 911 immediately, and follow any instructions you are given.

All services will be performed by an authorized technician selected by Provider from its network of approved third-party service contractors (the "Service Contractor"). Provider has the sole and absolute right to (i) select the Service Contractor to perform the service and (ii) determine the rates and other pricing terms under which the Service Contractor will be compensated. Service Contractors are independent contractors and not employees or agents of Provider or its affiliates, and are not authorized by Provider to perform services outside of the scope of the Plan. If you elect to retain the Service Contractor to perform other services on your behalf, you must enter into a separate agreement between you and the Service Contractor for those services with payment to be made by you directly to the Service Contractor. Provider is not responsible or liable for any services performed by the Service Contractor outside of the scope of the Plan.

You must provide the Service Contractor with safe and reasonable access to all Covered Products, and related systems and lines. Unauthorized repairs may void this Agreement. COMPATIBLE OR SUBSTITUTE PARTS MAY BE USED FOR REPAIR OF THE COVERED PRODUCT.

You must be current on all payments in order to be covered under this Agreement.

**Term of Coverage and Cancellation:** This Agreement is for a term of twelve (12) months starting on the Effective Date and will automatically renew from month to month thereafter unless cancelled as provided below. You may cancel this Agreement at any time as described below by notifying Provider at the phone number indicated on the Declarations Page. Provider may cancel this Agreement at any time for misrepresentation or non-payment by you; for violation of any of the Terms and Conditions of this Agreement; if required to do so by any regulatory authority; or if the Provider, for its convenience and in its sole discretion, makes a commercial decision to generally discontinue the Plan or to discontinue your specific participation in the Plan.

If either of you or Provider cancels this Agreement within thirty (30) days from the Agreement's Effective Date and you have not had service performed, you will receive a full refund of Plan payments made by you. If either of you or Provider cancels this Agreement more than thirty (30) days from the Agreement's Effective Date and you have not had service performed, the Plan will terminate immediately without requirement for any further additional payment by you. If either of you or Provider cancels this Agreement and you have had service performed, then you will be invoiced for the amount of the monthly fees for all unpaid months through the remainder of the initial twelve (12) month term. If you move to a new service address, this Agreement will be deemed cancelled by you.

During the first year of this Agreement, you are subject to an initial waiting period of thirty (30) days, during which time you will not be eligible for coverage of service calls, thus giving you eleven (11) months of coverage during the first year. Upon renewal (if applicable), you will not be subject to another waiting period.

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#### **THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION:**

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interpretation of Paragraph (3) below, shall be determined by a court and not the arbitrator. If arbitration is chosen by any party, the following shall apply:

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(3) **WAIVER OF RIGHT TO BRING CLASS ACTION AND REPRESENTATIVE CLAIMS.** All arbitrations shall proceed on an individual basis. You and Provider agree that each may bring claims against the other in arbitration only in your respective individual capacities and in so doing you and Provider hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration, to assert or participate in a private attorney general lawsuit or private attorney general arbitration, and/or to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular cause of action, then that cause of action (and only that cause of action) shall remain in court and be severed from any arbitration. Provider does not consent to, and the arbitrator shall not have authority to conduct, any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims, under any circumstance.

(4) The arbitration shall be performed in accordance with this Arbitration Provision and the rules of the chosen arbitrator in effect when the Claim is filed. Either party may initiate arbitration, which shall be conducted by the American Arbitration Association ("AAA") pursuant to its Consumer Arbitration Rules ("AAA Rules"), as modified by this Arbitration Agreement. The AAA Rules are available on the AAA's website [www.adr.org](http://www.adr.org), or by calling the AAA at (800) 778-7879. If AAA is unavailable or unwilling to hear the dispute, the parties shall agree to, or the court shall select, another arbitration provider. Unless you and Provider agree otherwise, any arbitration hearing shall take place in the federal judicial district where you reside. We encourage you to call Provider before filing a claim for arbitration to see if the dispute may be resolved or settled prior to arbitration. Provider will pay all filing, administrative, arbitrator, and hearing costs. Provider waives any rights they may have to recover an award of attorneys' fees and expenses against you. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16, including but not limited to applicable statutes of limitation, and shall honor claims of privilege recognized at law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

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(6) Other rights that you would have if you went to court may not be available in arbitration.

This Arbitration Provision shall survive termination of this Agreement and your enrollment in the Plan. Notwithstanding any language in this Agreement to the contrary, this Arbitration Provision shall be governed by federal law, including the Federal Arbitration Act. Notwithstanding any language of this Agreement to the contrary, should any portion of this Arbitration Provision be held invalid or unenforceable by a court or other body of competent jurisdiction, this entire Arbitration Provision shall be automatically terminated and all other provisions of this Agreement shall remain in full force and effect.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/31/2018 2:50:27 PM**

**in**

**Case No(s). 17-0974-EL-UNC**

Summary: Comments electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy