

H.P. Technologies, Inc.
33648 St. Francis Drive
Avon, Ohio 44011,

Complainant,

v.

Ryan E. Boucher
1313 Atterbury Drive
Macedonia, Ohio 44056

and

RES Consulting, LLC
(f/k/a Energy Solutions Consulting, LLC)
2005 Presidential Parkway, Unit 82
Twinsburg, Ohio 44087

and

Fidelis United Energy Solutions, Inc.
300 Delaware Avenue, Suite 210-A
Wilmington, Delaware 19801,

Respondents.

Case No. 19-2050-GE-CSS

ANSWER TO COMPLAINT

Pursuant to Ohio Administrative Code (“Ohio Adm. Code”) Rule 4901-9-01(D), Respondents Ryan E. Boucher, RES Consulting LLC (“RES”), and Fidelis United Energy Solutions, Inc. (“Fidelis”) (collectively, “Respondents”) hereby answer the Complaint of H.P. Technologies, Inc. served on November 21, 2019, and assert their affirmative defenses to the same as follows:

1. Respondents are without sufficient knowledge or information to form a belief as to the truth of this allegation.

2. Respondents are without sufficient knowledge or information to form a belief as to the truth of this allegation.

3. Respondents are without sufficient knowledge or information to form a belief as to the truth of this allegation.

4. Respondent Boucher admits as to his residential address and denies as to his business address.

5. Respondent Boucher denies the allegations contained in Paragraph 5 of the Complaint to the extent Complainant asserts that Boucher provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

6. Respondent RES admits the allegations in Paragraph 6 to the extent that Respondent RES has used 2005 Presidential Parkway, Unit 82, Twinsburg, Ohio 44087 as a business address.

7. Respondent RES denies the allegations in Paragraph 7.

8. Respondent RES denies the allegations in Paragraph 8.

9. Respondent Fidelis admits the allegations in Paragraph 9 with respect to its state of incorporation and the location of its headquarters, but denies the allegations in Paragraph 9 regarding the location of its Ohio office.

10. Respondent Fidelis admits the allegations in Paragraph 10.

11. Respondent Fidelis admits the allegations in Paragraph 11 but notes that Certificate No. 19-720G is dated effective July 11, 2019.

12. Paragraph 12 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondents deny the allegations in paragraph 12 and aver that the cited statutes and rules speak for themselves.

13. Respondents incorporate by reference their responses to paragraphs 1-12 of the Complaint and assert them in response to the allegations in Paragraph 13 as if fully set forth herein.

14. Respondent Boucher admits entering into an Independent Sales Contractor's Agreement with Complainant and avers that the document speaks for itself.

15. Respondent RES admits that on April 4, 2018, Energy Solution Consulting LLC – not Energy Solutions Consulting – caused articles of organization to be filed with the Ohio Secretary of State.

16. Respondents Boucher and RES deny the allegations in paragraph 16 to the extent Complainant asserts that they provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

17. Respondent Boucher denies the allegations in paragraph 17.

18. Respondents Boucher and RES deny the allegations in Paragraph 28 to the extent Complainant asserts that RES provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

19. Respondent RES admits that Energy Solution Consulting LLC filed an application for certification as an electric power broker and aggregator in Case No. 18-782-EL-AGG on April 30, 2018.

20. Respondent RES admits the allegations in Paragraph 20.

21. Respondent RES admits the allegations in Paragraph 21.

22. Respondents Boucher and RES deny the allegations in Paragraph 22 to the extent Complainant asserts that Respondents provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

23. Respondent Boucher denies the allegations in the first sentence of Paragraph 23. Respondent Boucher denies the allegations in the second sentence of Paragraph 23 based on a lack sufficient knowledge or information to form a belief as to the truth of this allegation.

24. Respondent Boucher denies the allegations in Paragraph 24.

25. Respondent Boucher admits that Complaint Attachment A was filed in Public Utilities Commission of Ohio (“Commission”) Case No. 18-927-GA-AGG and avers that the document speaks for itself.

26. Respondent RES admits to filing an application with the Commission in Case No. 18-1053-EL-ABN on June 26, 2018, and avers that the document speaks for itself.

27. Respondent RES admits that Complaint Attachment B was filed in Commission Case No. 18-1053-EL-ABN on June 26, 2018 and avers that the document speaks for itself.

28. Respondent RES denies the allegations in Paragraph 28 to the extent Complainant asserts that RES provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

29. Respondent Boucher admits that Complaint Attachment C is a record of the Ohio Secretary of State and avers that the document speaks for itself.

30. Respondent Boucher admits the allegations in Paragraph 30 of the Complaint.

31. Respondent RES avers that Complaint Attachment D speaks for itself.

32. Respondent RES denies the allegations in Paragraph 32 of the Complaint to the extent Complainant asserts that Energy Solution Consulting LLC (“ESC”) sought to provide competitive power broker or aggregation services under Commission certificate 18-1316(E) after September 24, 2018.

33. Respondent RES admits the allegations in Paragraph 33 of the Complaint.

34. Respondent RES denies the allegations in the first sentence of Paragraph 34 to the extent Complainant asserts that RES provided competitive aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20. Respondent RES admits the allegations in the second sentence of Paragraph 34.

35. Respondents incorporate by reference their responses to paragraphs 1-34 of the Complaint and assert them in response to the allegations in Paragraph 35 as if fully set forth herein.

36. Respondent Fidelis admits the allegations in Paragraph 36.

37. Respondent Fidelis admits the allegations in Paragraph 37.

38. Respondent Fidelis admits the allegations in Paragraph 38 but notes that Certificate No. 19-720G is dated effective July 11, 2019.

39. Respondent Fidelis avers that the applications filed in Case Nos. 19-1299-EL-AGG and 19-1300-GA-AGG speak for themselves, and further notes that the applications refer to “three principals” of Fidelis.

40. Respondent Fidelis avers that the applications filed in Case Nos. 19-1299-EL-AGG and 19-1300-GA-AGG speak for themselves.

41. Respondents deny the allegations in Paragraph 41, except Respondent RES admits it did not file a notification of its change in name with the Commission.

42. Respondents incorporate by reference their responses to paragraphs 1-41 of the Complaint and assert them in response to the allegations in Paragraph 42 as if fully set forth herein.

43. Paragraph 43 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent Boucher denies the allegations in paragraph 43 and avers that the cited statutes and rules speak for themselves.

44. Paragraph 44 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent Boucher denies the allegations in paragraph 44 and avers that the cited statutes speak for themselves.

45. Respondents incorporate by reference their responses to paragraphs 1-44 of the Complaint and assert them in response to the allegations in Paragraph 45 as if fully set forth herein.

46. Paragraph 46 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 44 and avers that the cited statutes speak for themselves.

47. Paragraph 47 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 44 and avers that the cited statutes speak for themselves.

48. Respondents incorporate by reference their responses to paragraphs 1-47 of the Complaint and assert them in response to the allegations in Paragraph 48 as if fully set forth herein.

49. Respondent Boucher denies the allegations in Paragraph 49.

50. Paragraph 50 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent Boucher denies the allegations in paragraph 44 and avers that the cited statutes and rules speak for themselves.

51. Respondents incorporate by reference their responses to paragraphs 1-50 of the Complaint and asserts them in response to the allegations in Paragraph 51 as if fully set forth herein.

52. Respondent RES denies the allegations in Paragraph 52 to the extent Complainant asserts RES had a duty to notify the Commission of its name change.

53. Paragraph 53 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 53 and avers that the cited statutes and rules speak for themselves.

54. Respondents incorporate by reference their responses to paragraphs 1-53 of the Complaint and assert them in response to the allegations in Paragraph 54 as if fully set forth herein.

55. Respondent RES denies the allegations in Paragraph 55 to the extent Complainant asserts that RES provided aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

56. Paragraph 56 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 56 and avers that the cited statutes speak for themselves.

57. Paragraph 57 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondents deny the allegations in paragraph 57 and aver that the cited statutes speak for themselves.

58. Respondents incorporate by reference their responses to paragraphs 1-57 of the Complaint and assert them in response to the allegations in Paragraph 58 as if fully set forth herein.

59. Respondent RES denies the allegations in Paragraph 59 to the extent Complainant asserts that RES provided aggregation or power broker services in Ohio outside the purview of a certificate issued by the Commission pursuant to R.C. 4928.08 or 4929.20.

60. Paragraph 60 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 60 and avers that the cited statutes speak for themselves.

61. Paragraph 61 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondent RES denies the allegations in paragraph 61 and avers that the cited statutes speak for themselves.

62. Respondents incorporate by reference their responses to paragraphs 1-61 of the Complaint and assert them in response to the allegations in Paragraph 62 as if fully set forth herein.

63. Respondent Boucher denies the allegations in Paragraph 63.

64. Paragraph 64 consists solely of legal conclusions, and therefore no response is required. To the extent a response is required, Respondents deny the allegations in paragraph 64 and aver that the cited statutes speak for themselves.

65. Paragraph 65 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint is based on reasonable grounds.

66. Paragraph 66 contains no factual allegations, and therefore no response is required.

67. Paragraph 67 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint establishes the Commission's jurisdiction or reasonable grounds for the Commission to grant the requested relief.

68. Paragraph 67 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint establishes the Commission's jurisdiction or reasonable grounds for the Commission to grant the requested relief.

69. Paragraph 67 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint establishes the Commission's jurisdiction or reasonable grounds for the Commission to grant the requested relief.

70. Paragraph 67 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint establishes the Commission's jurisdiction or reasonable grounds for the Commission to grant the requested relief.

71. Paragraph 67 contains no factual allegations, and therefore no response is required. To the extent a response is required, Respondents deny that the Complaint establishes the Commission's jurisdiction or reasonable grounds for the Commission to grant any relief.

AFFIRMATIVE DEFENSES

1. Complainant has failed to state claims upon which relief can be granted under R.C. 4905.26, 4928.16, or 4929.24.

2. Complainant has failed to set forth reasonable grounds for its Complaint as required by R.C. 4905.26 and Ohio Adm. Code 4901-9-01.

3. Complainant has failed to assert factual allegations that sustain its claims as required by Ohio Adm. Code 4901-9-01(B).

4. Complainant has not alleged any damages resulting from conduct within the jurisdiction of the Commission and therefore does not have standing to pursue the claims set forth in the Complaint.

5. Respondents at all times complied with Ohio Revised Code Title 49, and all applicable rules, regulations, and orders of the Public Utilities Commission of Ohio. These statutes, rules, regulations, and orders bar Complainant's claims.

6. The Commission does not have legal authority or jurisdiction to grant the relief that Complainant seeks.

7. Respondents assert as an affirmative defense the "doctrine of unclean hands" and avers that H.P. Technologies has engaged in retaliatory conduct through filing of its Complaint and other actions to prevent Respondents from conducting business in accordance with Ohio law. Thus, Complainant has engaged in reprehensible conduct regarding the subject matter of this Complaint and is barred from asserting these claims under the doctrine of unclean hands.

8. Respondents reserve the right to raise other defenses as warranted by discovery in this matter.

WHEREFORE, Respondents respectfully request an Order dismissing the Complaint and granting Respondents all other necessary and proper relief.

December 11, 2019

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher (0091862)
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150 East Gay Street, Suite 2400
Columbus, Ohio 43215
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Counsel for Respondents

CERTIFICATE OF SERVICE

The e-filing system of the Public Utilities Commission of Ohio will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons listed below via electronic mail on December 11, 2019.

gkrassen@bricker.com
dstinson@bricker.com

/s/ Madeline Fleisher
Madeline Fleisher

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 19-2050-GE-CSS

Summary: Answer to Complaint electronically filed by Ms. Madeline Fleisher on behalf of Ryan E Boucher and RES Consulting, LLC and Fidelis United Energy Solutions, Inc.