

FILE

BEFORE THE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

ALLIANZ US GLOBAL RISK )  
 INSURANCE COMPANY, et al., as )  
 subrogees of Republic Engineered Products )  
 Inc., )  
 )  
 Complainants, )  
 )  
 v. )  
 )  
 FIRSTENERGY CORPORATION, et al., )  
 )  
 Respondents. )

CASE NO. 05-1011-EL-CSS

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ANSWER

Respondents FirstEnergy Corp., incorrectly identified in the Complaint as FirstEnergy Corporation ("FirstEnergy"), American Transmission Systems, Inc. ("ATSI"), Cleveland Electric Illuminating Company, also sued separately as The Illuminating Company ("CEI"), Ohio Edison Company ("Ohio Edison"), and Toledo Edison Company ("Toledo Edison"), for their answer to the Complaint respond as follows:

FIRST DEFENSE

1. Admit that Ohio Revised Code Section 4905.26 vests the Commission with exclusive authority to hear complaints against public utilities in Ohio for alleged violations of duties imposed on those companies under Ohio Revised Code Title 49 or by Commission orders and that Complainants, in paragraph 1 of the Complaint, purport to bring an action pursuant to Title 49 of the Ohio Revised Code. Respondents deny that Complainants may bring a cause of action in subrogation on behalf of Republic Engineered Products, Inc. ("Republic") or any other insured party.

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2. Admit that a power outage occurred in certain parts of the United States and Canada on August 14, 2003. Respondents deny the remaining allegations contained in paragraph 2 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. Admit that Republic is a consumer of electric power of Ohio Edison; admit that Ohio Edison is required and authorized to serve those facilities of Republic located in Ohio Edison's certified territory. Respondents deny whether Republic is duly authorized to do business in Ohio for lack of knowledge or information sufficient to form a belief as to the truth thereof and otherwise deny the remaining allegations contained in paragraph 3 of the Complaint.

4. Admit that Republic receives power through lines owned and operated by Ohio Edison; deny that Republic receives power through lines owned or operated by any other Respondent; deny the remaining allegations contained in paragraph 4 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

5. Deny the allegations contained in paragraph 5 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

6. Deny the allegations contained in paragraph 6 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

7. Deny the allegations contained in paragraph 7 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Further, Respondents deny that they owe any duty to Complainants as subrogees of Republic.

8. Deny the allegations contained in paragraph 8 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

9. Deny the allegations contained in paragraph 9 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

10. Deny the allegations contained in paragraph 10 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11. Admit that Ohio Edison is authorized and required to provide electric service to Republic facilities located in Ohio Edison's certified territory; admit that Ohio Edison is subject to PUCO jurisdiction; and deny the remaining allegations contained in paragraph 11 of the Complaint.

12. Admit the allegations contained in paragraph 12 of the Complaint as of the time of the filing of the Complaint.

13. Admit that ATSI is a subsidiary of FirstEnergy. Respondents otherwise deny the allegations contained in paragraph 13 of the Complaint and aver that ATSI is an Ohio corporation with a principal place of business at 76 South Main Street Akron, Ohio 44308.

14. Admit the allegations contained in paragraph 14.

15. Because Complainants have voluntarily dismissed Jersey Central from the Complaint, no answer or response to the allegations contained in paragraph 15 of the Complaint is required.

16. Because Complainants have voluntarily dismissed Met Ed from the Complaint, no answer or response to the allegations contained in paragraph 16 of the Complaint is required.

17. Admit the allegations contained in paragraph 17.

18. Because Complainants have voluntarily dismissed Penelec from the Complaint, no answer or response to the allegations contained in paragraph 18 of the Complaint is required.

19. Admit the allegations contained in paragraph 19.

20. Deny the allegations contained in paragraph 20 of the Complaint.

21. Admit that the distribution of electricity is a process that depends on various facilities sometimes referred to as a "Grid;" aver that the distribution of electricity is also dependent on other factors. Respondents otherwise deny the allegations contained in paragraph 21 of the Complaint.

22. Admit that electricity from one state can move through another state through interconnections between various companies' systems. Respondents deny the remaining allegations contained in paragraph 22 of the Complaint.

23. Admit that, prior to August 14, 2003, the North American Electric Reliability Council ("NERC") had developed non-mandatory operating policies and planning guidelines and that, after August 14, 2003, NERC promulgated non-mandatory reliability standards; aver that NERC's operating policies, planning guidelines and reliability standards speak for themselves; and deny the remaining allegations contained in paragraph 23 of the Complaint.

24. Admit that electricity can be moved from areas of low demand to areas of high demand under certain circumstances. Respondents deny the remaining allegations in paragraph 24 for lack of sufficient knowledge or information to form a belief as to the truth thereof.

25. Admit that electricity can be moved from areas of low demand to areas of high demand under certain circumstances, and that high voltage power is stepped down through transformers for distribution to customers. Respondents deny the remaining allegations in paragraph 25 of the Complaint for lack of sufficient knowledge or information to form a belief as to the truth thereof.

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26. Admit that high or unbalanced demands for power or other contingencies can cause problems for electric systems in certain circumstances. Respondents deny the remaining allegations in paragraph 26 of the Complaint because these allegations are too vague and unspecific to form a response or for lack of sufficient knowledge or information to form a belief as to the truth thereof.

27. Deny the allegations contained in paragraph 27 of the Complaint.

28. Admit that Eastlake Unit 5 tripped off on August 14, 2003. Respondents deny the remaining allegations contained in paragraph 28 of the Complaint.

29. Admit that on August 14, 2003 an alarm function failed. Respondents deny the remaining allegations contained in paragraph 29, and in particular any implication that the alarm failure was the result of any act or omission of any Respondent.

30. Admit that ATSI's Star-South Canton 345-kv transmission line tripped and successfully reclosed on August 14, 2003. Respondents deny the remaining allegations contained in paragraph 30 of the Complaint.

31. Admit that certain computers failed on August 14, 2003. Respondents deny the remaining allegations contained in paragraph 31 of the Complaint.

32. Admit that ATSI's Chamberlin-Harding 345 kv transmission line tripped on August 14, 2003. Respondents deny the remaining allegations contained in paragraph 32 of the Complaint.

33. Admit that on August 14, 2003, ATSI's Hanna-Juniper 345 kv line came into contact with a tree and subsequently tripped. Respondents deny the remaining allegations contained in paragraph 33 of the Complaint.

34. Admit that on August 14, 2003, the Star-South Canton 345 kv line tripped at a substation which is at the location where that line interconnects with American Electric Power's system. Respondents deny the remaining allegations contained in paragraph 34 of the Complaint.

35. Deny the allegations contained in paragraph 35 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

36. Admit that on August 14, 2003, ATSI's Sammis-Star 345 kv transmission line tripped. Respondents deny the remaining allegations contained in paragraph 36 of the Complaint.

37. Deny the allegations contained in paragraph 37 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

38. Deny the allegations contained in paragraph 38 of the Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

39. Deny the allegations contained in paragraph 39 of the Complaint.

40. Admit that certain Respondents owed certain duties to customers as proscribed by the Ohio Revised Code. Respondents state that Ohio Revised Code Sections 4933.83, 4933.81, and 4905.26 speak for themselves, and otherwise deny the remaining allegations contained in paragraph 40 of the Complaint.

41. In response to paragraph 41 of the Complaint, Respondents incorporate their responses to paragraphs 1 through 40 of this Answer.

42. Admit that Ohio Edison, Toledo Edison, and CEI are required to maintain adequate facilities under Ohio law and deny the remaining allegations contained in paragraph 42 of the Complaint.

43. Deny the allegations contained in paragraph 43 of the Complaint.
44. Deny the allegations contained in paragraph 44 of the Complaint.
45. In response to paragraph 45 of the Complaint, Respondents incorporate their responses to paragraphs 1 through 44 of this Answer.
46. Admit that Ohio Edison owed certain duties, as specified by Ohio Revised Code Title 49, its tariffs and the Commission's orders and regulations, to Republic and deny the remaining allegations contained in paragraph 46 of the Complaint.
47. Deny the allegations contained in paragraph 47 of the Complaint.
48. Deny the allegations contained in paragraph 48 of the Complaint.
49. In response to paragraph 49 of the Complaint, Respondents incorporate their responses to paragraphs 1 through 48 of this Answer.
50. Admit that to the extent that Ohio Edison owed certain duties to Republic, such duties are specified by Ohio Revised Code Title 49, its tariffs and the Commission's orders and regulations, each of which speaks for itself. Respondents deny the remaining allegations contained in paragraph 50 of the Complaint.
51. Deny the allegations contained in paragraph 51 of the Complaint.
52. Deny the allegations contained in paragraph 52 of the Complaint.
53. Deny the allegations contained in paragraph 53 of the Complaint.
54. In response to paragraph 54 of the Complaint, Respondents incorporate their responses to paragraphs 1 through 53 of this Answer.

55. Admit that to the extent that Ohio Edison owed certain duties to Republic, such duties are specified by Ohio Revised Code Title 49, its tariffs and the Commission's orders and regulations, each of which speaks for itself. Respondents deny the remaining allegations contained in paragraph 55 of the Complaint.

56. Deny the allegations contained in paragraph 56 of the Complaint.

57. Deny the allegations contained in paragraph 57 of the Complaint.

58. Deny the allegations contained in paragraph 58 of the Complaint.

59. Deny all allegations contained in the Complaint not expressly admitted in this

Answer.

#### **SECOND DEFENSE**

60. The Complaint fails to state a claim for which relief may be granted.

#### **THIRD DEFENSE**

61. Respondent FirstEnergy Corp. is not a "public utility" or otherwise subject to the Commission's jurisdiction.

#### **FOURTH DEFENSE**

62. Respondents Ohio Edison, Toledo Edison, the Illuminating Company and ATSI at all times complied with all applicable statutes, regulations, industry standards and tariffs.

#### **FIFTH DEFENSE**

63. The Commission lacks jurisdiction or authority to award certain types of relief requested in the Complaint.

#### **SIXTH DEFENSE**

64. The electrical outage of August 14, 2003 arose from the acts and omissions of third parties over whom Respondents lacked any control or right of control.



**SEVENTH DEFENSE**

65. To the extent any act or omission of any Respondent contributed to the electrical outage of August 14, 2003, which is expressly denied, such act or omission does not violate any duty that any Respondent allegedly had to any Complainant.

**EIGHTH DEFENSE**

66. To the extent that any Respondent violated any applicable statute, regulation, industry standard, reliability guideline or tariff provision, which is expressly denied, such a violation was not the proximate cause of any damage or injury alleged by Complainants.

**NINTH DEFENSE**

67. Complainants lack standing to bring the Complaint.

**TENTH DEFENSE**

68. Complainants' claims and/or damages are barred in whole or in part by the provisions of Ohio Edison's tariff.

**ELEVENTH DEFENSE**

69. Respondents FirstEnergy, CEI, Toledo Edison, and ATSI owed no legal duty to Complainants' insured.

**TWELFTH DEFENSE**

70. Complainants' purported subrogation claims violate Ohio public policy and thus are not recognized under Ohio law.

WHEREFORE, Respondents respectfully request that this matter be dismissed with prejudice and that Respondents be given such other relief that the law, equity and justice require.

Respectfully submitted,



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Systems, Inc., The Cleveland Electric  
Illuminating Company, Ohio Edison Company,  
and Toledo Edison Company

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer was mailed by ordinary U.S. mail to the following this 4<sup>th</sup> day of October, 2005.

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