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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of BMW)	
Pizza, Inc. and DPNY, Inc., et al.,)	
)	
Complainants,)	
)	
v.)	Case No. 05-1014-EL-CSS
)	Consolidated With Case Nos.:
FirstEnergy Corp., American Transmission)	04-28-EL-CSS
Systems, Inc., Ohio Edison Company, The)	05-803-EL-CSS
Cleveland Electric Illuminating Company and)	05-1011-EL-CSS
The Toledo Edison Company,)	05-1012-EL-CSS
)	05-1020-EL-CSS
Respondents.)	

**ANSWER TO FIRST AMENDED
COMPLAINT OF BMW PIZZA, INC., ET AL.**

Respondents, for their answer to the First Amended Complaint, respond as follows:

FIRST DEFENSE

1. Admit that Republic Engineered Products, LLC ("Republic") was located at 1807 East 28th Street in Lorain, Ohio; deny that Republic was a customer of The Cleveland Electric Illuminating Company ("CEI") as of August 14, 2003; and deny the remaining allegations contained in paragraph 1 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

2. Admit that Moordough, Inc. was a customer of CEI for electric service at 30594 Lorain Road in North Olmsted, Ohio as of August 14, 2003; and deny the

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remaining allegations contained in paragraph 2 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. Admit that Stephen Clement was a customer of CEI for electric service at 23711 Russell Road in Bay Village, Ohio as of August 14, 2003; and deny the remaining allegations contained in paragraph 3 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

4. Admit that Cooker Restaurant Corp. was a customer of CEI for electric service at 6150 S.O.M. Center Road in Solon, Ohio, 7787 Reynolds Road in Mentor, Ohio and at 5005 Rockside Road in Independence, Ohio as of August 14, 2003; and deny the remaining allegations contained in paragraph 4 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

5. Admit that L J Manufacturing, Inc. was a customer of CEI for electric service at 6345 Carnegie Street in Mentor, Ohio as of August 14, 2003; and deny the remaining allegations contained in paragraph 5 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

6. Deny that Oral Maxillofacial Surgeons was a customer of CEI as of August 14, 2003; and deny the remaining allegations contained in paragraph 6 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

7. Admit that Quizno Subs was a customer of CEI at 5126 Turney Road in Garfield Heights, Ohio as of August 14, 2003; and deny the remaining allegations

contained in paragraph 7 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

8. Deny that Mustard Seed Health Food Market was a customer of CEI for electric service at 6025 Krause Drive in Solon, Ohio as of August 14, 2003; and deny the remaining allegations contained in paragraph 8 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

9. Admit that the Mad Crab, Inc. was a customer of CEI as of August 14, 2003; and deny the remaining allegations contained in paragraph 9 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

10. Deny that AVCA Corporation and Sigmatech was a customer of CEI as of August 14, 2003; and deny the remaining allegations contained in paragraph 10 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

11. Deny that Barneys [sic] Chicken Grill was a customer of CEI as of August 14, 2003; and deny the remaining allegations contained in paragraph 11 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

12. Deny that Hyde Park Grill was a CEI customer as of August 14, 2003; and deny the remaining allegations contained in paragraph 12 of the First Amended Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

13. Admit the allegations contained in paragraph 13 of the First Amended Complaint.

14. Admit the allegations contained in paragraph 14 of the First Amended Complaint.

15. Admit the allegations contained in paragraph 15 of the First Amended Complaint.

16. Admit that CEI, Ohio Edison and Toledo Edison furnish electric distribution service to customers in Ohio; and deny the remaining allegations contained in paragraph 16 of the First Amended Complaint.

17. Deny the allegations contained in paragraph 17 of the First Amended Complaint.

18. Deny the allegations contained in paragraph 18 of the First Amended Complaint.

19. Deny the allegations in contained paragraph 19 of the First Amended Complaint and all subparagraphs thereof.

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

21. In response to paragraph 21 of the First Amended Complaint, Respondents incorporate their responses to paragraphs 1 through 20 of this Answer.

22. Admit that the statutes of Ohio impose duties on Respondents; and deny the remaining allegations contained in paragraph 22 of the First Amended Complaint.

23. Deny the allegations contained in paragraph 23 of the First Amended Complaint.

24. Deny the allegations contained in paragraph 24 of the First Amended Complaint.

25. In response to paragraph 25 of the First Amended Complaint, Respondents incorporate their responses to paragraphs 1 through 24 of this Answer.

26. Deny the allegations contained in paragraph 26 of the First Amended Complaint.

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

28. Deny the allegations contained in paragraph 28 of the First Amended Complaint.

29. In response to paragraph 29 of the First Amended Complaint, Respondents incorporate their responses to paragraphs 1 through 28 of this Answer.

30. Deny the allegations contained in paragraph 30 of the First Amended Complaint.

31. Deny the allegations contained in paragraph 31 of the First Amended Complaint.

32. Deny the allegations contained in paragraph 32 of the First Amended Complaint.

33. Deny the allegations contained in paragraph 33 of the First Amended Complaint.

34. Deny the allegations contained in paragraph 34 of the First Amended Complaint.

35. Deny the allegations contained in paragraph 35 of the First Amended Complaint.

36. In response to paragraph 36 of the First Amended Complaint, Respondents incorporate their responses to paragraphs 1 through 35 of this Answer.

37. Aver that Chapters 4901, 4903, 4905, 4909 and 4933 of the Ohio Revised Code speak for themselves and deny the allegations contained in paragraph 37 of the First Amended Complaint to the extent that those allegations incorrectly characterize those statutes. Respondents otherwise deny the allegations contained in paragraph 37 of the First Amended Complaint.

38. Deny the allegations contained in paragraph 38 of the First Amended Complaint.

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

40. Deny the allegations contained in paragraph 40 of the First Amended Complaint.

41. Deny any and all allegations contained in the First Amended Complaint not expressly admitted in this Answer.

SECOND DEFENSE

42. The First Amended Complaint fails to state a claim for which relief may be granted.

THIRD DEFENSE

43. The First Amended Complaint does not allege a cause of action against Respondents FirstEnergy Corp., ATSI, Ohio Edison or Toledo Edison.

FOURTH DEFENSE

44. Respondents at all times complied with all applicable statutes, regulations, industry standards, reliability guidelines and tariffs.

FIFTH DEFENSE

45. The Commission lacks jurisdiction or authority to award certain types of relief requested in the First Amended Complaint; *inter alia*, to award legal fees, expenses, prejudgment interest or punitive damages.

SIXTH DEFENSE

46. 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

47. 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

48. 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

49. Complainants' claims and/or damages are barred in whole or in part by the provisions of applicable tariffs.

TENTH DEFENSE

50. Respondent ATSI owed no legal duty to Complainants' insureds.

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

52. To the extent the Insurance Company Complainants purport to represent the interests of their insureds as subrogees, Insurance Company Complainants have failed to properly plead a cause of action in subrogation.

THIRTEENTH DEFENSE

53. To the extent the Insurance Company Complainants purport to bring this action as subrogees, their claim for any damages in excess of what they paid to their insureds, including treble damages, are barred.

FOURTEENTH DEFENSE

54. The First Amended Complaint fails to state a cognizable cause of action under the requirements specified in the Commission's Orders of March 7, 2006 and April 26, 2006.

FIFTEENTH DEFENSE

55. Respondents owe no legal duty to Complainants or insureds of any Complainant who were not Respondents' customers.

SIXTEENTH DEFENSE

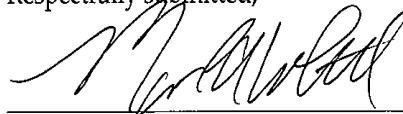
56. Complainants and insureds of any Complainant who were not customers of any Respondent as of August 14, 2003 lack standing to bring a complaint.

SEVENTEENTH DEFENSE

57. All claims by or on behalf of customers who did not sustain property damage or personal injury as a result of the electrical outage of August 14, 2003 are barred by the economic loss rule.

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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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondents' Answer to First Amended Complaint of BMW Pizza, Inc., *et al.* was mailed by ordinary U.S. mail to the following persons this 5th day of June, 2006.

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