COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

January 2, 2020

Docket No. A-2019-3015155
Utility Code: 1122860

CERTIFIED

AARON WEISGERBER CEO
FIDELIS UNITED ENERGY SOLUTIONS LLC
300 DELAWARE AVE STE 210 A
WILMINGTON DE 19801

RE: Electric Generation Supplier License Application

Dear Mr. Weisgerber:

On December 30, 2019, the Public Utility Commission accepted Fidelis United Energy Solutions LLC's application for an Electric Generation Supplier license. The application was incomplete. In order for us to complete our analysis of your application, the Energy Industry Group requires answers to the attached question(s).

Please be advised that you are directed to forward the requested information to the Commission within **30** days from the date of this letter. Failure to respond may result in the application being denied. As well, if Fidelis United Energy Solutions LLC has decided to withdraw its application, please reply notifying the Commission of such a decision.

Please forward the information to the Secretary of the Commission at the address listed below. When submitting documents, all documents requiring notary stamps must have original signatures. Please note that some responses may be e-filed to your case, http://www.puc.pa.gov/efiling/default.aspx. A list of document types allowed to be e-filed can be found at http://www.puc.pa.gov/efiling/DocTypes.aspx.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your answers should be verified per 52 Pa Code § 1.36. Accordingly, you must provide the following statement with your responses:

> I, Aaron Weisgerber , hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the

statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

The blank should be filled in with the name of the appropriate company representative, and the signature of that representative should follow the statement.

In addition, to expedite completion of the application, please also e-mail the information to Stephen Jakab at sjakab@pa.gov. Please direct any questions to Stephen Jakab, Bureau of Technical Utility Services, at sjakab@pa.gov (preferred) or (717) 783-6174.

Sincerely,

Rosemary Chiavetta
Secretary

Enclosure

Docket No. A-2019-3015155
Fidelis United Energy Solutions LLC
Data Request

1. Please confirm or deny if the COO of Fidelis United Energy Solutions LLC, Ryan Boucher, mentioned in Fidelis United Energy Solutions LLC's application, is the same Ryan Boucher, that is a respondent in the Case No. 19-2050-GE-CSS, before the Public Utilities Commission of Ohio.

Confirmed. As described in Respondents' Motion to Dismiss and Reply filed in Case No. 19-2050-GE-CSS and attached hereto, Mr. Boucher and Fidelis United Energy Solutions LLC ("Fidelis") are seeking dismissal of that complaint based on a lack of standing and lack of reasonable grounds for the complaint. The complaint was not filed by any client of Mr. Boucher or Fidelis, but rather by another energy company, H.P. Technologies, Inc., where Mr. Boucher's step-father is president. (H.P. Technologies, Inc. had previously filed a civil lawsuit against Mr. Boucher regarding an unrelated business dispute.) Mr. Boucher and Fidelis are seeking a prompt disposition of Case No. 19-2050-GE-CSS and commit to promptly responding to any further Commission queries regarding the proceeding.

This filing happened well after the initial delivery of our application to become a broker with the PA PUC, and is why it was not disclosed.

Aaron M. Weisgerber

Digitally signed by Aaron M. Weisgerber
Date: 2020.01.24 10:00:23 -05'00'

X Aaron M

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY IN SUPPORT OF MOTION TO DISMISS BY RESPONDENTS RYAN BOUCHER, RES CONSULTING, LLC, AND FIDELIS UNITED ENERGY SOLUTIONS, INC.

January 2, 2020

I. INTRODUCTION

Respondents Ryan Boucher, RES Consulting LLC ("RES"), and Fidelis United Energy Solutions, Inc. ("Fidelis") (collectively, "Respondents") filed a Motion to Dismiss the Complaint filed by H.P. Technologies, Inc. ("H.P.") on December 11, 2019. H.P. alleges that Respondents provided competitive electric and natural gas services without a Commission certificate as required by R.C. 4928.08 and 4929.20, along with related claims. Respondents' Motion set forth three separate bases for the Public Utilities Commission of Ohio ("Commission" or "PUCO") to determine that H.P. has not presented the requisite "reasonable ground" for these claims under R.C. 4905.26: (1) that Complainant lacks standing because it has not described any concrete injury resulting from Respondents' purported violations of PUCO rules and requirements, but rather is seeking to improperly raise arguments regarding alleged breaches of a business contract between H.P. and Mr. Boucher that lie outside the Commission's limited jurisdiction;[1] (2) that H.P. has not provided any *fact*-based explanation of its legal allegations accusing Respondents of engaging in "the provision of a competitive service" rather than the activities of a consultant, as required by Ohio Adm. Code 4901-9-01(B);[2] and (3) that H.P. has not alleged any potentially PUCO-jurisdictional activity by Respondents outside of time periods when they were either directly covered by a Commission certificate or under contract as an agent of another certificated entity.[3] Fundamentally, it is Respondents' position that – despite Complainant's attempt to invoke Commission oversight without any concrete factual basis – this family and business dispute between Respondent Boucher and his stepfather Dennis Giancola, the president of H.P., does not belong within the PUCO's jurisdiction.

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[1] Respondents Mem. in Supp. of Mot. to Dismiss at 7-8.
[2] *Id.* at 9-11.
[3] *Id.* at 11-12.

H.P.'s Memorandum Contra filed on December 26, 2019, fails to rebut Respondents' arguments. H.P. offers no explanation of any harm it has supposedly suffered arising from Respondents' alleged operation without a Commission certificate, and does not identify any PUCO precedent allowing a third party to pursue a complaint case in the absence of any such direct harm. H.P.'s primary defense of the sufficiency of its substantive allegations, meanwhile, rests on Paragraph 23 of the Complaint, which asserts that Respondent Boucher admitted "that he had solicited and entered into agreements with customers to provide CRES and CRNGS aggregation and/or broker services in his individual capacity and/or as ESC" – a conclusory legal allegation rather than the factual explanation required for a complaint under R.C. 4905.26 and Ohio Adm. Code 4901-9-01(B).

II. ARGUMENT

A. Complainant has no right to pursue generalized claims of legal violations without any supporting allegations of harm arising from those purported violations.

According to H.P., it has a generalized "right to initiate complaints against CRES and CRNGS providers who violate the Commission's rules . . . . in order to protect the competitive marketplace."[4] That is not the case under existing PUCO precedent. As the Commission has explained in multiple complaint cases, it "cannot find reasonable grounds for complaint to exist where . . . the complainant makes sweeping allegations without providing either a preliminary factual basis for the allegations *or a description of the harm supposedly suffered*."[5] For a

[4] H.P. Memorandum Contra Respondents' Motion to Dismiss (Dec. 26, 2019) ("H.P. Mem. Contra") at 3.

[5] *In re the Complaint of the Ohio Pay Phone Ass'n v. Ohio Bell Tel. Co.*, Case No. 89-900-TP-CSS, Entry, 1989 WL 1733510, at *1 (Oct. 31, 1989) (emphasis added); *see also, e.g.*, *In re Complaint of EMMCO Properties, Inc. v. E. Ohio Gas Co.*, Case No. 82-1250-GA-CSS, Entry, 1982 WL 973058, at *2 (Dec. 8, 1982) ("[T]he complainant has failed to allege that it or any of the partnerships it professes to represent are customers of the respondent or are directly affected by the matter complained of. Thus, the standing necessary for maintaining this complaint has not been met."); *In re the Complaint of Carol K. Buckhold v. Cincinnati Gas & Electric Co.*, Case No. 81-1492-GE-CSS, Entry, 1982 WL 973478, at *1 (Feb. 17, 1982) (dismissing complaint where "complainant does not state the basis for her interest regarding the billing demand provision complained of, nor does the complaint set forth how the company's practice

complaint filed by a company against a market competitor, this standard requires concrete allegations as to how a purported legal violation by the respondent directly harms the complainant's own interests. Otherwise, the Commission would face the prospect of any company being able to use a complaint case to harass competitors or circumvent the civil court process – rather than to protect legitimate competitive interests – based on the thinnest of allegations.

The two decisions that H.P. cites on this point, *Buckeye Energy Brokers v. Palmer Energy Co.*, Case No. 10-693-GE-CSS ("*Buckeye*") and *In Re Star Energy Partners*, Case No. 17-2398-EL-WVR ("*Star Energy*"), are unavailing.[6] Neither provides any basis to excuse Complainant from its obligation to offer a valid description of some concrete harm caused to H.P. by Respondents' purported legal violations in order to establish standing.

H.P. provides no pincite to any particular portion of the *Buckeye* opinion, but the only potentially relevant issue raised by the parties in that proceeding was whether the Commission should act on Buckeye's complaint against its competitor Palmer – likewise based on an alleged lack of certification – where there had been no showing of any "public harm" from Palmer's claimed noncompliance, let alone direct harm to Buckeye itself.[7] But H.P. apparently failed to observe that the Commission never actually addressed that argument regarding harm in deciding the case. Instead, the Commission's decision to reject the complaint rested solely on the alternative argument that Buckeye had not shown Palmer was providing any jurisdictional competitive electric or natural gas service that would require a certificate.[8]

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affects her. . . .Without information of this nature it is impossible to determine whether complainant has a real and substantial interest in the billing demand provision or whether reasonable grounds exist for the complaint.").

[6] H.P. Mem. Contra at 3.

[7] *Buckeye*, Case No. 10-693-GE-CSS, Opinion and Order (Nov. 1, 2011) at 15, 17.

[8] *Id.* at 17-21.

In fact, when Buckeye appealed the Commission's decision to the Ohio Supreme Court, the Court dismissed the appeal without reaching the merits *precisely because* Buckeye had "failed to allege or identify any evidence that it was harmed by Palmer's failure to become certified."[9] If anything, the ultimate outcome of *Buckeye* thus reinforces that the Commission should not entertain H.P.'s complaint without any underlying description of harm to H.P. from Respondents' alleged lack of certification.

As for *Star Energy*, that case also does not support H.P.'s position. *Star Energy* involved a motion by Interstate Gas Supply, Inc. ("IGS") to intervene in a case filed by competitor Star Energy Partners, LLC ("Star Energy") seeking a partial waiver of the Commission's enrollment verification rules under Ohio Adm. Code 4901:1-21-06(D)(1)(h)).[10] It is worth noting that the Ohio Supreme Court has established that intervention in existing Commission proceedings "ought to be liberally allowed."[11] That same liberal standard does not govern consideration of whether a complainant has satisfied its burden to provide "reasonable grounds" for the Commission to consider a new complaint case under R.C. 4905.26, and thus *Star Energy* is not directly on point.

Even if the applicable standard were the same, a cursory examination of the record in *Star Energy* reveals that IGS *did* expressly describe its direct interest in the outcome of the pending waiver request, as determined by the Commission.[12] IGS's motion to intervene noted that Star Energy had cited a prior waiver granted to IGS as precedent for its own application despite Star Energy failing to make the same representations as IGS about safeguards in its enrollment process.[13] IGS was therefore concerned that that the Commission might rely upon the IGS waiver

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[9] *In re Complaint of Buckeye Energy Brokers v. Palmer Energy Co.*, 139 Ohio St.3d 284, 2014-Ohio-1532, ¶ 18.
[10] *Star Energy*, Case No. 17-2398-EL-WVR, Entry (July 1, 2019), at 1.
[11] *Ohio Consumers' Counsel v. PUCO*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶ 20.
[12] *Star Energy*, Entry at 2-3.
[13] *Star Energy*, IGS Mem. in Supp. of Mot. to Intervene (Jan. 2, 2018) at 5-6.

approval to likewise grant Star Energy's waiver application or applications by other competitors "without requiring such suppliers to implement the same safeguards—and incur the related costs" borne by IGS.[14] H.P.'s Complaint offers no similar explanation of how Respondents' alleged lack of certification directly and concretely harms its own interests.

Allowing H.P. to proceed based on the mere presumption that it faces harm due to Respondents' certification status because they are competitors, without any specific factual allegations or explanation in support, would set a troubling precedent. As the Commission has itself observed, "there is ambiguity relative to distinguishing the activities of consultants [who do not need a PUCO certificate to operate] and brokers [who do]."[15] That means any consultant in the electric or natural gas sector could be subject to a complaint filed by a competitor based on a simple assertion that it has in fact been acting as a broker – a glaring vulnerability and one potentially prone to abuse.

H.P., at least, is taking advantage of that option and imposing the costs and burdens of additional litigation on its opponent in a civil lawsuit,[16] including the service of extremely broad discovery requests that go beyond the scope of its PUCO-jurisdictional claims.[17] H.P.'s fishing expedition is both punitive and pointless without any identified harm for the Commission to remedy at the end of the process.

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[14] *Id.* at 6.
[15] *Buckeye*, Opinion and Order (Nov. 1, 2011) at 20.
[16] *See* Respondents' Mot. to Dismiss (Dec. 11, 2019), Ex. 1 (H.P. Court of Common Pleas Complaint).
[17] *See* Ex. A (H.P.'s First Set of Discovery Requests) at 15, 21 (requesting that Respondents "[i]dentify all communications Respondents had with HP's customers from January 1, 2018 to present," "[i]dentify all communications, including electronic mail, that Respondents had with HP's customers from June 22, 2018 to present, in which a respondent represented itself as an employee of HP," and "[p]roduce a copy of all communications between . . . Respondents and electric services companies, . . . Respondents and natural gas suppliers, . . . Respondents and existing/former natural gas and electricity customers, [and] . . . Respondents and prospective natural gas and electricity customers from January 1, 2018 to the present related to HP.").

Respondents do not contend the Commission is constrained from pursuing its own enforcement of rules for the competitive marketplace based on concerns about harm to the public, or that businesses cannot seek Commission action to address noncompliance by competitors that allows those competitors to steal business or otherwise concretely undermine the competitive market. But the complaint process should as serve as a shield to protect those legitimate interests, not a sword to attack competitors regardless of whether they have caused any concrete harm.

B. H.P.'s substantive claims rest on a legal assertion, not factual allegations that would provide reasonable grounds for the Complaint.

The core of H.P.'s claims is the assertion that Respondents Boucher and RES (formerly known as Energy Solutions Consulting, LLC ("ESC")) provided competitive electric and natural gas services without the required Commission certificate.[18] Respondents' Motion to Dismiss argued that H.P. had not provided any factual allegations sufficient to support the conclusion that Respondents had actually provided any services beyond those of a consultant or had engaged in competitive services outside the scope of a duly executed contract with a certificated entity. H.P.'s response does not identify any paragraphs in the Complaint that effectively rebut the Motion to Dismiss.

H.P.'s Memorandum Contra points primarily to paragraph 23 of the Complaint, which asserts that: "In May 2018, during a meeting with Complainant, Respondent Boucher admitted that he had solicited and entered into agreements with customers to provide CRES and CRNGS aggregation and/or broker services in his individual capacity and/or as ESC."[19] This is not a fact-based allegation. There is no existing factual definition of "CRES and CRNGS aggregation and/or broker services," as the Commission recognized in *Buckeye*; those are legal terms under Ohio

[18] Compl. ¶¶ 43, 46, 55, 59.
[19] *Id.* ¶ 23 (cited in H.P. Mem. Contra at 4, 5).

Revised Code Chapters 4928 and 4929.[20] Yet the Complaint offers no factual specifics as to what exactly Respondent Boucher supposedly "admitted" to with respect to the referenced customer agreements. Such explanation is required by Ohio Adm. Code 4901-9-01(B), and is necessary for the Commission to be able to determine whether there are "reasonable grounds" to believe Respondents were acting as regulated entities rather than simply as consultants.

The gap in H.P.'s allegations is particularly concerning given that it omitted any mention in the Complaint of the fact that, until August 2018 there was an existing agreement for Boucher to act as an independent sales contractor for H.P.[21] Thus, the allegation of some relevant admission by Mr. Boucher in May 2018 should properly provide an explanation of what specific factual activities he purportedly admitted to that were outside the scope of that agreement with H.P. Such specifics are necessary to determine whether there are reasonable grounds for the Complaint, or whether it simply refers to actions that constitute the unregulated activity of a consultant or that were performed in connection with Respondents' contractor agreements with other certificated entities like H.P. (or, as described in the Motion to Dismiss, Energy Deals, LLC and MSI Utilities Inc.[22]).

Although Complainant may premise allegations "upon information and belief," those allegations must provide "a statement which clearly explains the facts which constitute the basis of the complaint."[23] H.P. has not provided those facts, only conclusory assertions that Respondent Boucher "admitted" to some unspecified activity outside the bounds of the Commission's certificate requirements. As the Commission has recognized, such "[b]road, unspecific allegations

[20] *Buckeye*, Opinion and Order (Nov. 1, 2011) at 20.
[21] Respondents' Mem. in Supp. of Mot. to Dismiss at 2-4.
[22] *Id*.
[23] Ohio Adm. Code 4901-9-01(B).

are not sufficient to trigger a whole process of discovery and testimony" involved in a complaint case.[24]

III. CONCLUSION

The burden in describing "reasonable grounds" for this Complaint lies on H.P. That does not mean H.P. must prove a negative, but it does mean Complainant must present affirmative, fact-based allegations supporting its standing and its substantive claims. H.P. has not done so, and therefore the Commission should grant Respondents' Motion to Dismiss. Respondents respectfully request that the Commission do so as soon as possible in order to allow them to focus their resources on the ongoing civil litigation between H.P. and Respondents Boucher and Fidelis.

January 2, 2020

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher (0091862)
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
(614) 591-5474
mfleisher@dickinsonwright.com

Counsel for Respondents

[24] *In re Ohio Consumers' Counsel*, Case No. 88-1085-EL-CSS, Entry (Sept. 27, 1988) at 7.

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 January 2, 2020.

gkrassen@bricker.com
dstinson@bricker.com

_/s/ Madeline Fleisher__
Madeline Fleisher

Exhibit A

H.P.’s First Set of Discovery Requests

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

H.P. TECHNOLOGIES' FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENTS

Pursuant to Ohio Administrative Code ("OAC") Rules 4901-1-16, 4901-1-17, 4901-1-18, 4901-1-19, 4901-1-20, and as a party in the above-captioned proceedings, H.P. Technologies, Inc. ("HP") hereby propounds the following Request for Admissions, Interrogatories and Request for Production of Documents ("Discovery Requests") to Respondent Ryan E. Boucher

("Boucher"), Respondent RES Consulting, LLC ("RES") f/k/a Energy Solutions Consulting, LLC ("ESC"), and Respondent Fidelis United Energy Solutions Inc. ("Fidelis")[1] (collectively, "Respondents') to be answered in writing and under oath. HP requests Respondents to answer the Discovery Requests and provide copies, or access to, all responsive documents with twenty (20) days of service, and no later than January 15, 2020. All responses should be sent to:

Glenn S. Krassen
BRICKER & ECKLER LLP
1001 Lakeside Avenue, Suite 1350
Cleveland, OH 44114
E-mail: gkrassen@bricker.com

Dane Stinson
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
Email: dstinson@bricker.com

Additionally, Respondents must follow the instructions provided herein in responding to the inquiries. Definitions used in HP's discovery are provided below.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically

[1] Fidelis was formed as an LLC in the state of Delaware, but registered as a corporation in the state of Ohio. See Case Nos. 19-1299-EL-AGG and 19-1300-GA-AGG.

includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual,

contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, electronic mail, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.

4. "And" or "Or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.

5. "You," and "Your," or "Yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.

6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. "Person" includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.

9. "Identify," or "the identity of," or "identified" means as follows:

   A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;

   B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;

   C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;

   D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).

10. The terms "PUCO" and "Commission" and refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.

11. The term "e.g." connotes illustration by example, not limitation.

12. "HP" means Complainant H.P. Technologies. Inc.

13. "Respondent Boucher" means Respondents Ryan E. Boucher.

14. "Respondent RES" means Respondent Companies" means RES Consulting, LLC f/k/a Energy Solutions Consulting, LLC ("ESC").

15. "Respondent ESC" means Respondent Energy Solutions Consulting, LLC n/k/a RES Consulting, LLC ("RES").

16. "Respondent Fidelis" means Fidelis United Energy Solutions Inc. and/or Fidelis United Energy Solutions LLC. Respondent Fidelis was formed as an LLC in the state of Delaware, but registered as a corporation in the state of Ohio. See Case Nos. 19-1299-EL-AGG and 19-1300-GA-AGG.

17. "Respondents" means Respondent Boucher, Respondent RES, Respondent ESC, and Respondent Fidelis, collectively.

18. The "Complaint" means the complaint HP filed against Respondents with the Commission on November 19, 2019, in Case No. 19-2050-GE-CSS.

19. The "Answer" means Respondents' answer to the Complaint filed with the Commission on December 11, 2019.

20. The "Motion to Dismiss" means the Respondents' motion to dismiss the Complaint filed with the Commission on December 11, 2019, and includes the memorandum in support.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.

2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.

3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.

4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.

5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.

6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:

   A. Microsoft Excel worksheet files on compact disk;

   B. other Microsoft Windows or Excel compatible worksheet or database diskette files;

   C. ASCII text diskette files; and

   D. such other magnetic media files as your organization(s) may use.

7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.

8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2018 through and including the date of your response.

9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.

10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e., provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of

the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

**In accordance with Ohio Adm. Code 4901-1-16(D)(5), Titan requests that all responses be supplemented with subsequently acquired information at the time such information is available.*

INT 01 Identify the current business address of:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 02 Identify the current Ohio office address of:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 03 Identify the names and addresses of each person who holds an interest in each of the Respondents and the percentage of membership interest held by each person in each of the Respondents:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 04 Identify all contracts Respondents entered into with entities that were certified by the Commission to provide service as a "retail natural gas supplier," as defined in O.R.C. 4929.01(N), from January 1, 2018 to present. Identify the contracts between these entities and each of the following Respondents:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 05 Identify the nature of each contract listed in INT 04, *e.g.*, whether the identified suppliers contracted with each respondent to provide service as a sales agent, broker, aggregator, and/or other service.

RESPONSE:

RESPONDENT:

INT 06 Identify each contract entered into between natural gas customers and the suppliers identified in INT 04 from January 1, 2018 to the present that each of the following respondents assisted in securing:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 07 Identify all contracts Respondents entered into with entities that were certified by the Commission to provide service as an "electric services company," as defined in O.R.C. 4928.01(A)(9), from January 1, 2018 to present. Identify the contracts between these entities and each of the following Respondents:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 08 Identify the nature of each contract listed in INT 07, *e.g.*, whether the identified suppliers contracted with each respondent to provide service as a sales agent, broker, aggregator, and/or other service.

RESPONSE:

RESPONDENT:

INT 09 Identify each contract entered into between electricity customers and the suppliers identified in INT 07 from January 1, 2018 to the present that each of the following respondents assisted in securing:

a. Respondent Boucher

b. Respondent ESC

c. Respondent RES

d. Respondent Fidelis

RESPONSE:

RESPONDENT:

INT 10 Respondents' Motion to Dismiss, Memorandum in Support, at page 9 states that "entering into contracts with customers generally involving electricity or natural gas services…does not subject an entity to the Commission's regulatory authority." Identify:

a. All contracts that Respondent Boucher, Respondent ESC and Respondent RES entered into "generally involving electricity or natural gas services," between January 1, 2018 and the present.

b. The services provided under each contract.

RESPONSE:

RESPONDENT:

INT 11 Respondents' Answer at paragraph 39 states that Fidelis has "three principals." Identify the names, addresses, and telephone numbers of each principal.

RESPONSE:

RESPONDENT:

INT 12 Identify all communications Respondents had with HP's customers from January 1, 2018 to present.

RESPONSE:

RESPONDENT:

INT 13 Identify all communications, including electronic mail, that Respondents had with HP's customers from June 22, 2018 to present, in which a respondent represented itself as an employee of HP.

RESPONSE:

RESPONDENT:

INT 14 Identify which of the Respondents provided service related to the following contracts and the nature of the service, *e.g.*, service as a sales agent, broker, aggregator, and/or other service.

a. Christian Community Church, customer; Santana Energy Services, natural gas supplier; dated October 8, 2018.

b. Marilyn D. Radu, customer; Nordic Energy Services, LLC, electricity supplier; dated May 11, 2018.

c. Petits Auto Wash, customer; Capital Energy, electricity supplier, dated November 27, 2018.

d. Ohio Vault Works, customer; Capital Energy, electricity supplier, dated September 11, 2018.

e. Petits Auto Wash, customer; My Choice Energy, natural gas supplier, dated February 11, 2019.

RESPONSE:

RESPONDENT:

INT 15 For each contract identified in INT 14, identify the entity on whose behalf the identified Respondent was acting in providing service, *e.g.*, service as a sales agent, broker, aggregator, and/or other service.

RESPONSE:

RESPONDENT:

INT 16 For the contract identified in INT 14(e), explain significant of the statement, "Referred by: RES Consulting."

RESPONSE:

RESPONDENT:

INT 17 Respondents' Motion to Dismiss, Memorandum in Support at page 4 provides that "Mr. Boucher maintained contact with his existing customer base to keep them apprised of his status and to assist them in adjusting their energy procurement plans accordingly. The following May 2019, Mr. Boucher formed Fidelis and in July 2019 received Commission certification…"

a. Identify the customers with whom Respondent Borchers maintained contact from April 2018 through July 2019, including

   i. the name of their electricity or natural gas supplier.

ii. the entity on whose behalf Respondent Boucher maintained a relationship with the customer, *e.g.*, H.P.; Energy Deals, LLC; Respondent ESC, Respondent RES; Respondent Boucher in an individual capacity; Respondent Fidelis; MSI Utilities Inc., or other entities.

b. Identify the nature of Respondent Boucher's relationship with each of the entities identified in INT 17 (a)(ii).

c. Identify what actions Respondent Boucher took to keep each customer "apprised of his status."

d. Identify how Respondent Boucher assisted the customers in "adjusting their energy procurement plans."

e. Identify the customers whom Respondent requested not to inform H.P. of his communications.

RESPONSE:

RESPONDENT:

INT 18 Identify Respondent Boucher's wife's name and address.

RESPONSE:

RESPONDENT:

INT 19 Identify the name, address and telephone number of the employer with whom Respondent Boucher's wife accepted and/or considered employment in Great Britain (See Respondents' Motion to Dismiss, Memorandum in Support, at 3).

RESPONSE:

RESPONDENT:

INT 20 Identify the date on which Respondent Boucher's wife allegedly changed her mind about relocating overseas. (See Respondents' Motion to Dismiss, Memorandum in Support, at 3).

RESPONSE:

RESPONDENT:

INT 21 Identify the "job opportunity overseas" (Complaint, Attachment A) that would require Respondent Boucher to relocate overseas in 2018, and provide the name, address and telephone number of the employer presenting the job opportunity.

RESPONSE:

RESPONDENT:

REQUEST FOR ADMISSIONS

1. Admit that in an email communication dated October 8, 2018 to Jack Hartley, Treasurer for Community Christian, Respondent Boucher represented himself as being associated with HP.

RESPONSE:

RESPONDENT:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce a copy of each document you identified, consulted, referred to, or utilized in preparing your response to the foregoing interrogatories.

2. Produce the contracts and all communications and documents related to the contracts identified in INT 04.

3. Produce the contracts and all communications and documents related to the contracts identified in INT 06.

4. Produce the contracts and all communications and documents related to the contracts identified in INT 07.

5. Produce the contracts and all communications and documents related to the contracts identified in INT 09.

6. Produce the contracts and all communications and documents related to the contracts identified in INT 10(a).

7. Produce all communications and documents identified in INT 12.

8. Produce all communications and documents identified in INT 13.

9. Produce all communications and documents related to INT 17.

10. Produce a copy of all communications between Respondents and their customers or prospective customers from January 2018 to present.

11. Produce a copy of all communications between Respondents and electric services companies (as defined in R.C. 4928.01(A)(9)) from January 1, 2018 to the present

12. Produce a copy of all communications between Respondents and "retail natural gas suppliers" (as defined in R.C. 4929,01(N)) from January 1, 2018 to the present.

13. Produce a copy of all communications between

    a. Respondents and electric services companies,
    b. Respondents and natural gas suppliers,
    c. Respondents and existing/former natural gas and electricity customers,
    d. Respondents and prospective natural gas and electricity customers

    from January 1, 2018 to the present related to HP.

Respectfully submitted on behalf of
H.P. TECHNOLOGIES, INC.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/2/2020 11:55:33 AM

in

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

Summary: Reply Reply in Support of Motion to Dismiss electronically filed by Ms. Madeline Fleisher on behalf of Boucher, Ryan E and RES Consulting, LLC and Fidelis United Energy Solutions, Inc.

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MOTION TO DISMISS BY RESPONDENTS RYAN BOUCHER, RES CONSULTING, LLC, AND FIDELIS UNITED ENERGY SOLUTIONS, INC.

Pursuant to Ohio Administrative Code ("Ohio Adm. Code") Rule 4901-9-01, Respondents Ryan Boucher, RES Consulting LLC, and Fidelis United Energy Solutions, Inc. hereby move to dismiss with prejudice the Complaint filed by H.P. Technologies, Inc. on November 21, 2019 with the Public Utilities Commission of Ohio. The reasons supporting this motion are stated in the accompanying Memorandum in Support.

Respondents do not formally seek expedited treatment of this motion, given the likelihood that any such expedited schedule would disrupt the parties' and the Commission's plans for the winter holiday season. However, Respondents do respectfully request an expeditious resolution of this matter, which currently poses a significant obstacle to Respondent Boucher's ability to support himself and his family through work in the Ohio energy sector.

December 11, 2019

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher (0091862)
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
(614) 591-5474
mfleisher@dickinsonwright.com

Counsel for Respondents

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

MEMORANDUM IN SUPPORT

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I. INTRODUCTION

Respondents Ryan Boucher, RES Consulting, LLC ("RES"), and Fidelis United Energy Solutions, Inc. ("Fidelis") (collectively, "Respondents"), admit to an ongoing business disagreement with Complainant H.P. Technologies, Inc. ("H.P.") relating to the conclusion of Respondent Boucher's employment with H.P. and family strife with his stepfather Dennis Giancola, current President of H.P. In fact, H.P. is already pursuing contractual and related claims in the Court of Common Pleas against Mr. Boucher based on allegations mirroring those contained in the Complaint.[1] At the core of this ongoing dispute, H.P. asserts that Mr. Boucher stole away its electric and natural gas customers in violation of contractual restrictions. However, H.P. cannot invoke the jurisdiction of the Public Utilities Commission of Ohio ("PUCO" or "Commission") simply by presenting a business or family dispute involving the electric and natural gas sectors. The statutes cited by Complainant – Ohio Revised Code ("R.C.") 4905.26, 4928.16, and 4929.24 – give the Commission limited jurisdiction to oversee the actual provision of specific competitive energy services, relevantly aggregation and power broker services.

The Complaint in this case, relying on conclusory allegations based "upon information and belief,"[2] asserts that Respondents ran afoul of applicable Commission statutes and rules by providing competitive natural gas and electric aggregation and power broker services without the required certificate issued pursuant to R.C. 4928.08 or 4929.20. However, those allegations amount to an unsupported fishing expedition. Complainant's speculative assertions lack any concrete factual basis and in some cases omit key facts within H.P.'s knowledge, facts that make clear this case is not about ensuring competitive services are covered by a certificate. Rather, H.P

[1] First Amended Complaint, *H.P. Technologies Inc. v. Ryan Boucher*, Lorain C.P. No. 19-CV-199422 (Oct. 3, 2019) (attached as Exhibit 1) ("H.P. Court of Common Pleas Complaint").
[2] Compl. ¶¶ 5, 7, 8, 16-18, 28, 32-34, 41.

appears to be attempting to use the Commission's authority to threaten Mr. Boucher's business and livelihood in conjunction with an ongoing business dispute. But Complainant cannot rely upon conclusory, ill-founded claims to invoke Commission jurisdiction. H.P. bears the burden of providing "reasonable grounds" for its Complaint and establishing the Commission's jurisdiction under R.C. 4905.26. Complainant has failed to provide such reasonable grounds, and the Commission should therefore dismiss these claims in their entirety with prejudice to prevent H.P. from further pursuing a PUCO complaint as a tactic of intimidation and harassment.

II. STATEMENT OF FACTS

A. Background

The founder and current president of Complainant H.P. is Respondent Boucher's stepfather, Dennis Giancola. Mr. Boucher worked with Mr. Giancola for a number of years. Around November 30, 2015, Mr. Boucher entered into a non-exclusive Independent Sales Contractor's Agreement ("H.P. Contractor Agreement") with H.P "under which Respondent would act as one of Complainant's sales representatives,"[3] with Mr. Giancola signing as H.P.'s president. Around the same date, Mr. Boucher executed a similar Independent Sales Contractor Agreement with another of Mr. Giancola's companies, Energy Deals, LLC ("Energy Deals Contractor Agreement"), with Mr. Giancola likewise signing the agreement as president for Energy Deals, LLC.[4] These agreements are attached as Exhibits 2 and 3, respectively.

Mr. Boucher's relationship with his stepfather has deteriorated in recent years. A company called Innovest Global acquired H.P from Mr. Giancola as of March 2018, although Mr. Giancola

[3] Compl. ¶ 14.

[4] Energy Deals, LLC had valid CRES and CRNGS certificates in effect during the 2018 time period in question. *See* Case No. 15-584-GA-AGG, Renewal Certificate (Apr. 25, 2017); Case No. 15-368-EL-AGG, Certificate (May 1, 2017).

remained as H.P.'s president.[5] This development along with other contemporaneous events created significant uncertainty regarding Mr. Boucher's relationship to H.P. and his ability to continue assisting customers and supporting his family as a sales contractor for Complainant. Complainant finally provided Mr. Boucher with 60 days' notice of termination of the H.P. Contractor Agreement (as required by Article 10 of the agreement) as of June 21, 2018.[6] The Energy Deals Contractor Agreement was not terminated and therefore remained in effect until November 30, 2018.[7]

Although Mr. Boucher was actively negotiating with H.P. regarding a future relationship in spring and summer 2018, given the uncertain nature of those negotiations he formed Respondent RES (then known as Energy Solution Consulting LLC ("ESC")) as of April 4, 2018 as a potential alternative should his arrangement with Complainant come to an end (as it later did). ESC sought electric and natural gas certificates from the Commission to provide competitive power broker and aggregation services, and received an electric certificate as of May 31, 2018.[8] Mr. Boucher did briefly pursue relocation to Great Britain in summer 2018 because his wife had accepted a job there, and therefore ESC requested rescission of the electric certificate and withdrawal of the natural gas application in June 2018.

After Mr. Boucher's wife changed her mind about relocation, he returned to his work with natural gas and electricity customers in Ohio. Although Mr. Boucher had abandoned direct certification of ESC, as of June 8, 2018 he had entered into a Sales Agency Agreement with another company, MSI Utilities Inc. ("MSI"), for ESC to act as MSI's sales representative ("MSI

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[5] Innovest Global Press Release, Innovest Global, Inc. Acquires H.P. Technologies, Industry Icon Dennis Giancola Joins Energy Team (Mar. 22, 2018) (attached as Exhibit 4).
[6] *See* Exhibit 5 ("H.P. Termination Letter"). Sixty days from June 21, 2018, is August 20, 2018.
[7] Exhibit 3, Energy Deals Contractor Agreement, at 2.
[8] *See* Case Nos. 18-782-EL-AGG, 18-927-GA-AGG.

Contractor Agreement").[9] MSI Utilities Inc. has Commission certificates to provide both competitive natural gas and electric services in Ohio, and has had active certificates since 2012.[10]

Throughout these evolving circumstances, Mr. Boucher maintained contact with his existing customer base to keep them apprised of his status and to assist them in adjusting their energy procurement plans accordingly. The following year, in May 2019, Mr. Boucher formed Fidelis and in July 2019 received Commission certificates for Fidelis to provide natural gas and electric power broker and aggregation services.[11]

In sum, during the entirety of the 2018-2019 time period called out in the Complaint, Respondents Boucher and ESC were under contract with or acting on behalf of one or more entities with active Commission certificates to provide competitive natural gas and electric services: H.P. itself through August 2018; Energy Deals, LLC through November 2018; MSI as of June 8, 2018; and Fidelis as of July 2019.

B. Procedural History

On September 30, 2019, H.P. filed a civil complaint against Mr. Boucher and Fidelis in the Lorain County Court of Common Pleas, followed by an amended complaint filed on October 3, 2019. H.P.'s amended civil complaint asserted contractual and related claims for business damages based on Mr. Boucher's work with former H.P. customers.[12]

H.P. then filed the Complaint in this case on November 21, 2019. H.P. asserts seven separate claims against Respondents as follows:

- Count I: Respondent Boucher provided CRES [competitive retail electric services] and CRNGS [competitive retail natural gas services] aggregation and broker services without a Commission certificate as required by R.C. 4928.08 and 4929.20.

[9] Exhibit 6.
[10] *See* Case Nos. 12-2667-EL-AGG and 12-2418-EL-AGG.
[11] Case Nos. 19-1299-EL-AGG, 19-1300-GA-AGG.
[12] Exhibit 1, ¶¶ 56-87.

- Count II: Respondent RES, then known as ESC, provided CRES [competitive retail electric services] and CRNGS [competitive retail natural gas services] aggregation and broker services without a Commission certificate as required by R.C. 4928.08 and 4929.20.

- Count III: Respondent Boucher and/or ESC made statements to H.P. customers "meant to mislead customers to believe that Respondent Boucher was soliciting business on behalf of Complainant when he was not."

- Count IV: Respondent RES failed to notify the Commission of its name change from ESC while operating as a CRES and/or CRNGS.

- Count V: Respondent RES provided CRES aggregator/power broker services after its CRES certificate was canceled effective September 24, 2019.

- Count VI: Respondent RES provided CRNGS aggregator/broker services in 2018 and 2019 despite not yet having a CRNGS certificate and then withdrawing its application for a CRNGS certificate on October 31, 2018.

- Count VII: Respondent Fidelis's CRES and CRNGS certificates should be resciended pursuant to Ohio Admin. Code 4901:1-24-13(E) and 4901:1-27-13(E) based on the alleged violations of PUCO statutes and rules by its Chief Operating Officer Respondent Boucher.[13]

All of these claims are predicated on the same underlying factual allegation: that Mr. Boucher, stole away H.P.'s customers and provided them with competitive power broker and/or aggregator services, either individually or under the name of Respondent RES. H.P. seeks to leverage those claims to obtain relief in the form of significant monetary penalties against Respondents and a permanent bar on Respondent Boucher's ability to work in the competitive natural gas or electric industry in Ohio.[14]

III. ARGUMENT

The burden of proof in this case lies on the Complainant.[15] Correspondingly, at the initial complaint stage, R.C. 4905.26 requires that for the Commission to proceed to setting a case for

[13] Compl. at 9-13.
[14] *Id.* at 13.
[15] *Luntz Corp. v. Pub. Util. Comm'n*, 79 Ohio St. 3d 509, 513, 1997-Ohio-342, 684 N.E.2d 43 (1997) (citing *Grossman v. Pub. Util. Comm'n*, 14 Ohio St. 3d 49, 50, 471 N.E.2d 475).

hearing it must determine "that reasonable grounds for complaint are stated."[16] The Commission has therefore held that "[b]road, unspecific allegations are not sufficient to trigger a whole process of discovery and testimony."[17] Instead, Ohio Admin. Code 4901-9-01(B) requires a complaint to contain "a statement which clearly explains the facts which constitute the basis of the complaint."[18] Moreover, a complaint must include allegations demonstrating that the asserted claims lie within the Commission's limited statutory jurisdiction.[19] H.P. has failed to carry this burden in three respects.

First, the only harms alleged in the Complaint relate to competitive injury claims that are properly heard as part of the ongoing litigation between H.P. and Respondent Boucher in the Court of Common Pleas. Those alleged injuries arise from asserted violations of a business contract (the H.P. Contractor Agreement) outside the limited jurisdiction of the PUCO, and thus are not sufficient to establish H.P.'s standing before the Commission.

Second, Complainant has nowhere offered a clear explanation of facts sufficient to show that any contacts between Mr. Boucher and then-H.P. customers in the relevant time period actually constituted "the provision of a competitive service" requiring a certificate under R.C. 4928.01(A)(27) or R.C. 4929.01(N) as interpreted by *Buckeye Energy Brokers v. Palmer Energy Co.*, Case No. 10-693-GE-CSS, Opinion and Order (Nov. 1, 2011). That statement of facts is required by Ohio Admin. Code 4901-9-01(B) and is not contained in the Complaint.

Finally, H.P. has not provided any reasonable factual grounds to believe the speculative assertion that, to the extent any of Respondents provided competitive natural gas or electric power

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[16] *See also* Ohio Admin. Code 4901-9-01(C)(3).
[17] *In re Ohio Consumers' Counsel*, Case No. 88-1085-EL-CSS, Entry (Sept. 27, 1988) at 7.
[18] Ohio Admin. Code 4901-9-01(B).
[19] *See generally Marketing Research Services, Inc. v. Pub. Util. Comm'n*, 34 Ohio St. 3d 52 (1987).

broker or aggregation services, they did so outside the coverage of a Commission certificate issued to H.P.; Energy Deals, LLC; MSI; ESC; or Fidelis pursuant to R.C. 4928.08 or 4929.20.

Each of these deficiencies renders the Commission without proper jurisdiction over the Complaint, and therefore the Commission should dismiss all of H.P.'s claims against Respondents with prejudice.

A. Complainant has not described any injury attributable to Respondents' alleged provision of competitive natural gas or electric services without a Commission certificate.

Fundamentally, H.P.'s complaint here is about Respondent Boucher allegedly stealing its customers, not whether he had a CRES or CRNGS certificate when this claimed conduct occurred. The Complaint contains no description of concrete harm that Respondents may have caused to H.P. arising from any alleged lack of certification. Without such a connection between H.P.'s asserted injury and the alleged legal violations actually within the Commission's jurisdiction, H.P. lacks standing to pursue its Complaint and must seek redress through its ongoing civil litigation.[20]

At best, the Complaint offers occasional allusions to Respondents Boucher or RES misleading H.P.'s customers in offering such services or violating certain provisions of the H.P. Contractor Agreement by providing such services to H.P.'s customers.[21] Those are competitive injuries relating to H.P.'s grievances regarding Respondents' conduct in relation to the H.P. Contractor Agreement and communications with Complainant's then-existing customers, as evidenced by H.P.'s filing of civil claims against Mr. Boucher based on the same underlying

[20] *In re Ohio Pay Phone Association v. Ohio Bell Telephone Company*, Case No. 89-900-TP-CSS, Entry, 1989 WL 1733510 (Oct. 31, 1989) ("The Commission cannot find reasonable grounds for complaint to exist where, as in this case, the complainant makes sweeping allegations without providing either a preliminary factual basis for the allegations or a description of the harm supposedly suffered.").
[21] *See* Compl. ¶¶ 16, 17, 18, 22, 23, 34, 41, 64.

facts.[22] None of these asserted harms was caused by Respondents' possession or lack of a Commission certificate at the time the alleged conduct occurred.

Ohio law clearly leaves such contractual disputes to the jurisdiction of the state's civil courts. As the Ohio Supreme Court affirmed in *Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St. 2d 191, 195 (1978):

> the commission has no power to judicially ascertain and determine legal rights and liabilities, since such power has been vested in the courts by the General Assembly pursuant to Article IV of the Ohio Constitution. Thus, claims sounding in contract or tort have been regarded as reviewable in the Court of Common Pleas, although brought against corporations subject to the authority of the commission.

Accordingly, to the extent H.P.'s injuries arise from alleged violations of the H.P. Contractor Agreement or related claims of tortious business conduct by Mr. Boucher, the Court of Common Pleas is the correct arena for H.P. to seek relief.

Ultimately, this Complaint arises from a business and family dispute between Mr. Boucher and Mr. Giancola as president of H.P. Complainant has the right to pursue that dispute through civil litigation, and has chosen to do so. But in order to trigger the Commission's limited jurisdiction, H.P. must describe some injury actually caused by Respondents' alleged provision of competitive services <u>without a certificate</u>. Instead, Complainant's allegations center on Respondents allegedly poaching its customers outside the bounds of the H.P. Contractor Agreement, which would have caused the same alleged harm even if Respondent had had a Commission certificate. The Commission should leave the resolution of those contractual and common law claims to the Court of Common Pleas.

[22] *See* Exhibit 1, H.P. Court of Common Pleas Complaint.

B. H.P.'s allegations at best describe contact between Respondents and electric and natural gas customers that does not constitute actual provision of a competitive service requiring a certificate.

H.P. has not provided reasonable grounds for the Commission to assert jurisdiction over Respondents' activities as alleged in the Complaint, as required by R.C. 4905.26. The statutory provisions cited by the Complainant – R.C. 4905.26, 4928.16, and 4929.24 – extend the Commission's jurisdiction only to specific activities of certain types of entities. Those entities within Commission oversight do include an "electric services company" or "retail natural gas supplier" under R.C. 4928.01(A)(9) and 4929.01(N) that "suppl[ies] or arrang[es] for the supply of" either a "competitive retail electric service" or "competitive retail natural gas service." Pursuant to R.C. 4928.16 and 4929.24, the Commission may hear complaints against such entities regarding their provision of a competitive retail electric or natural gas service.[23] Under this statutory scheme, the Commission has jurisdiction over claims against Respondents Boucher and RES <u>only</u> with respect to alleged provision of a competitive service. But merely communicating with customers about electric and natural gas supply, or entering into contracts with customers generally involving electricity or natural gas services – which is all that is alleged in the Complaint – does not subject an entity to the Commission's regulatory authority.

The Commission explained thoroughly in *Buckeye Energy Brokers v. Palmer Energy Co.*, Case No. 10-693-GE-CSS, Opinion and Order (Nov. 1, 2011), that an entity does not qualify as a regulated company providing a competitive service merely because it engages in activities with a customer relating to natural gas or electric service. Specifically, the Commission made clear that operating as a "consultant" on natural gas or electric supply issues does not require a certificate unless an entity's conduct actually rises to the level of "engaging in the ultimate decision making

[23] R.C. 4928.16(A)(1) and (2), 4928.08(B); R.C. 4929.24(A), 4929.20(A).

process and entering into contractual obligations on behalf of . . . clients with respect to the provision of a competitive service."[24] Such consulting activity by the respondent Palmer Energy Co. in the *Buckeye* case included: developing energy procurement requests for proposals ("RFPs") for clients; evaluating responses to those RFPs; obtaining and analyzing data related to the issuance of RFPs; and estimating savings potential and making recommendations about energy procurement.[25] The Commission considered these to be the activities of "an advisor assisting its clients," not an entity directly engaged in providing a competitive service, even though Palmer "held agency status and/or power of attorney for the purpose of working with CRNGS suppliers" and sometimes received payments for its services through supplier contracts.[26]

Mr. Boucher admits to communicating with customers regarding electric and natural gas services in 2018 and 2019, in order to assist them in continuing to make sensible energy procurement and management decisions despite the uncertainty of his fraying relationship with H.P. He also continued to advise his friends and customers on energy supply arrangements pending his agreement with MSI to act as its independent sales contractor. However, on its own, that consultation does not require formal certification by the Commission. If it did, the Commission would find itself having to certify and oversee a range of entities involved in energy services (energy efficiency providers, financial analysts, perhaps even lawyers) that are related to but do not constitute direct provision of competitive services. In promulgating its rules on certification of competitive suppliers, the Commission drew a line excluding consultants and contractors in order to avoid that result.[27]

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[24] *Buckeye*, Opinion and Order at 19.
[25] *Id.* at 18-19.
[26] *Id.* at 19.
[27] Case No. 99-1609-EL-ORD, Opinion and Order (Mar. 30, 2000), Case No. 01-1371-GA-ORD, Finding and Order (Nov. 20, 2001).

Therefore, in order to invoke the Commission's certification authority, H.P. must establish that Respondents actually provided competitive services and must provide specific factual allegations in support. Complainant has not done so, offering only conclusory assertions that Respondents Boucher or RES were providing competitive services. Those assertions are not sufficient to constitute "reasonable grounds" for the Complaint.

C. The Complaint fails to show any of the Respondents acted as an entity regulated under R.C. 4905.26, 4928.16, or 4929.24 during a time period not covered by a PUCO certificate.

To the extent the Commission accepts H.P.'s conclusory assertion that Respondents provided competitive natural gas or electric services, Complainant must still offer some "reasonable grounds" to believe Respondents provided those services independently and not in connection with a certificated entity to satisfy R.C. 4905.26. Again, H.P. has not done so. The Complaint provides only bare assertions that Boucher and/or RES engaged in competitive services in 2018 and 2019 without the appropriate certification, and in fact omits relevant facts such as the actual date of termination of the H.P. Contractor Agreement and Respondent Boucher's separate role as a sales agent for Energy Deals, LLC.

As described above, a more complete recitation of the facts shows that at all times in 2018 and 2019, Boucher and/or ESC were under contract as the agents of or acting as the employees of a properly certificated entity: H.P. itself; Energy Deals, LLC; MSI; or Fidelis. The Complaint fails on its face to offer the required factual explanation of why the Commission should disregard those contracts and allow H.P. to force Respondents to go through the arduous and lengthy discovery

and hearing process – disrupting Mr. Boucher's ability to make a living and provide for his family – based only on "[b]road, unspecific allegations" that some of his activities were nevertheless outside the bounds of those agency and employment relationships.[28]

If any competitive services provider could pursue a complaint against an employee or contractor based on the bare assertion that the employee or contractor had been acting independently outside the purview of a CRES or CRNGS certificate, then the Commission could be overwhelmed by contractual and employment disputes under the guise of certification claims. Many businesses might be strongly tempted by that opportunity to invoke the Commission's jurisdiction to harass an opponent and go on a fishing expedition through discovery. To avoid that result, the Commission should require a complaint like H.P.'s to provide specific factual allegations indicating that a respondent did actually provide independent competitive services without a certificate. H.P. has not done so, and therefore the Commission should rule that it has not satisfied its burden to provide reasonable grounds for the claims against Respondents Boucher or RES, or the collateral claims against Fidelis.

IV. CONCLUSION

Complainant's claims are, at their heart, a dispute about Mr. Boucher's transition away from his role as a sales agent for H.P. and contractor for his stepfather. The Complaint does not provide an explanation for why the Commission should exert jurisdiction over this business disagreement, especially where H.P. has provided no more than conclusory allegations that

[28] *In re Ohio Consumers' Counsel*, Case No. 88-1085-EL-CSS, Entry (Sept. 27, 1988) at 7.

Respondents ever provided competitive services outside the bounds of a certificate under R.C. 4928.08 or 4929.20. Instead, the Commission should dismiss the Complaint with prejudice and allow Mr. Boucher to attempt to support his family without facing the burden of simultaneously litigating the same claims in two different venues.

December 11, 2019

Respectfully submitted,

/s/ Madeline Fleisher
Madeline Fleisher (0091862)
Dickinson Wright PLLC
150 East Gay Street, Suite 2400
Columbus, Ohio 43215
(614) 591-5474
mfleisher@dickinsonwright.com

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

Exhibit 1

H.P. Court of Common Pleas Complaint

LORAIN COUNTY COURT OF COMMON PLEAS

LORAIN COUNTY JUSTICE CENTER
225 COURT STREET
ELYRIA, OHIO 44035

H.P. TECHNOLOGIES INC
5505 DETROIT RD SUITE E
SHEFFIELD VILLAGE, OH 44054

CASE NO. 19CV199422

VS.

TO: RYAN E BOUCHER
1313 ATTERBURY DR
MACEDONIA, OH 44056

SUMMONS ON COMPLAINT

You have been named defendant in a complaint filed in Lorain County Court of Common Pleas by plaintiff(s):

H.P. TECHNOLOGIES INC
5505 DETROIT RD SUITE E
SHEFFIELD VILLAGE, OH 44054

A copy of the complaint is attached hereto. The name and address of the plaintiff's attorney is:

CHRISTINA E NIRO
FRANTZ WARD LLP
200 PUBLIC SQUARE, STE. 3000
CLEVELAND, OH 44115

You are hereby summoned and required to serve a copy of your answer to the complaint upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, within **TWENTY-EIGHT (28) DAYS** after service of this summons on you, exclusive of the day you receive it. Your answer must **ALSO** be filed with this Court within three (3) days after you serve, (delivered or by mail), a copy of your answer on the plaintiff's attorney.

If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the complaint.

TOM ORLANDO
CLERK OF COURTS OF COMMON PLEAS
LORAIN COUNTY, OHIO

10/17/2019

BY: _____
Deputy Clerk

FIRST AMENDED COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, & OTHER RELIEF (JURY DEMAND ENDORSED HEREON),

19CV199422

FILED
LORAIN COUNTY
2019 OCT -3 AM 9:51
COURT OF COMMON PLEAS
TOM ORLANDO

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

H.P. TECHNOLOGIES, INC. 5505 Detroit Rd., Suite E Sheffield Village, Ohio 44054 Plaintiff, vs. RYAN E. BOUCHER 1313 Atterbury Dr. Macedonia, Ohio 44056 and FIDELIS UNITED ENERGY SOLUTIONS INC. c/o Ryan Boucher, Registered Agent 7115 Wilton Loop Dublin, Ohio 43017 Defendants.	))	CASE NO. 19-CV-199422 JUDGE MARK BETLESKI **FIRST AMENDED COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND OTHER RELIEF** (Jury Demand Endorsed Hereon)

For its First Amended Complaint against Defendants Ryan Boucher ("Boucher") and Fidelis United Energy Solutions Inc. ("Fidelis") (collectively "Defendants"), Plaintiff H.P. Technologies, Inc. ("HP Technologies" or "Plaintiff") states as follows:

PARTIES

1. Plaintiff H.P. Technologies, Inc. ("HP Technologies") is an Ohio corporation that maintains its principal place of business at 5505 Detroit Rd., Suite E, Sheffield Village, OH 44054.

2. Defendant Ryan Boucher ("Boucher") is, upon information and belief, a resident of Macedonia, Ohio.

3. Defendant Fidelis United Energy Solutions, Inc. ("Fidelis") is an Ohio corporation with its principal place of business in Macedonia, Ohio.

JURISDICTION AND VENUE

4. HP Technologies is seeking damages from Defendants in excess of twenty-five thousand dollars ($25,000.00), plus interest, costs, and legal fees, in addition to injunctive relief, and a substantial part of the events that give rise to Plaintiff's claims occurred within Ohio. Accordingly, this Court has original jurisdiction over this action.

5. Venue is proper because Lorain County is the county in which HP Technologies maintains its principal place of business and is the county in which all or a substantial part of HP Technologies' claims for relief arose.

FACTS

6. Plaintiff is an energy consulting and brokerage company that provides competitive electricity and natural gas purchase programs for residential and commercial consumers.

7. Plaintiff is certified by the Public Utilities Commission of Ohio ("PUCO") as an electric and gas aggregator and broker.

8. Plaintiff works with energy suppliers located in various states that provide electricity and natural gas to customers throughout Ohio and other states.

9. On or about November 30, 2015, Boucher entered into an independent contractor relationship with Plaintiff pursuant to which he would act as one of Plaintiff's sales representatives, on a non-exclusive basis, selling Plaintiff's products/services within a specific territory.

10. In entering into this relationship, Boucher agreed to use his best efforts to promote the sale of natural gas and electricity to Plaintiff's customers or potential customers within the State of Ohio.

11. To support his efforts, Plaintiff introduced and/or assigned to Boucher certain of Plaintiff's customers and accounts.

12. As Plaintiff's sales representative, Boucher had extensive and sometimes exclusive contact with Plaintiff's customers, accounts, and suppliers.

13. As part of his duties, Boucher had access to and used Plaintiff's trade secrets and confidential and proprietary information, including but not limited to Plaintiff's customer and supplier lists, customer and supplier contact information, customer contracts, marketing materials, and pricing strategies.

14. All of this information is confidential and proprietary, is not publicly known, has been generated and cultivated over many years, and gives Plaintiff a significant competitive advantage over its competitors.

15. Plaintiff engaged in reasonable efforts to preserve the secrecy of its confidential and proprietary information.

16. As a condition of entering into an independent contractor relationship, Plaintiff required Boucher to sign an Independent Sales Contractor's Agreement (the "Agreement"). A true and accurate copy of the Agreement is attached as Exhibit A.

17. Section 11 of the Agreement requires that, upon termination of the Agreement, Boucher immediately cease using Plaintiff's property and return all of Plaintiff's property in his possession.

18. In Section 9.A of the Agreement, Boucher also agreed to abide by certain restrictive covenants during the original term and any renewal term of the agreement, including the following:

> NONCOMPETITION. . . . CONTRACTOR shall not represent, promote, or otherwise sell within the TERRITORY any products or services that, in the reasonable judgment of the PRINCIPAL, compete with the PRODUCTS/SERVICES, except as set forth on Schedule "1". CONTRACTOR shall provide PRINCIPAL with a list of the customers and products and/or services that it currently represents and shall notify PRINCIPAL in writing of any new customers and products and/or services at such time as its promotion of same commences.

19. In addition, in Section 9.B of the Agreement, Boucher agreed to certain restrictions for a period of one year following the expiration or termination of the Agreement, including the following:

> NONSOLICITATION. . .. CONTRACTOR shall refrain from and will not, directly or indirectly, as an independent contractor, employee, consultant, agent, partner, joint venture, shareholder or otherwise, contact, solicit, divert or take away or attempt to contact, solicit, divert or take away any ACCOUNT served by CONTRACTOR or whose names and/or addresses have become known to CONTRACTOR during the term of this Agreement or any predecessor agreement between the parties. Further, during the one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall neither solicit, divert, take away or attempt to solicit, divert or take away any of the employees, sales representatives or agents of PRINCIPAL who at the time of the expiration or termination are employees, sales representatives or agents of PRINCIPAL, or who served in such capacity at any time within six (6) months prior to such expiration or termination.

20. Pursuant to Section 9.C of the Agreement, Boucher agreed that the period of time during which he was prohibited from competing with Plaintiff and from soliciting Plaintiff's

customers or employees, sales representatives, or agents would be extended by any length of time during which Boucher was in breach of the Agreement.

21. Pursuant to Section 9.F. of the Agreement, Boucher agreed that injunctive relief would be appropriate in a proceeding to enforce the provisions of the Agreement relating to his restrictive covenants.

22. Pursuant to the Agreement, Boucher could not compete with Plaintiff during the term of his Independent Contractor Sales Agreement and during any extended timeframe resulting from his breach.

23. Pursuant to the Agreement, Boucher could not solicit Plaintiff's customers or employees, sales representatives, or agents, for one year following the expiration of his Agreement and during any extended timeframe resulting from his breach.

24. The original term of the Agreement expired on November 30, 2017 and automatically renewed for an additional one-year period, or until November 30, 2018, pursuant to the terms of the Agreement.

25. Upon information and belief, Boucher began violating the Agreement in Spring 2018, if not earlier.

26. On April 4, 2018, Boucher filed Articles of Incorporation with the Ohio Secretary of State for the creation of a new entity: Energy Solution Consulting, LLC.

27. Upon information and belief, Boucher started contracting with Plaintiff's customers in his individual capacity and/or through his newly-created entity for the provision of natural gas and electricity, thereby cutting Plaintiff out of the business transactions and diverting commissions

from Plaintiff. In doing so, at times, Boucher instructed Plaintiff's customers not to contact or speak with anyone from Plaintiff's company and to only speak with Boucher.

28. Upon information and belief, on or about April 13, 2018, one of Plaintiff's customers canceled its contract with Plaintiff in order to enter into an agreement with Boucher and/or his newly-created entity.

29. On or about May 7, 2018, Boucher filed an application with PUCO for his new company to be certified as an electric aggregator and power broker in Ohio.

30. In his PUCO application, Boucher acknowledged that he learned the basics about natural gas and energy through his work with Plaintiff. Boucher also described a 1-800 number and website that he had created.

31. Boucher undertook all of the aforementioned actions in April and May 2018 in violation of his Agreement with Plaintiff.

32. Plaintiff was unaware of Boucher's aforementioned actions in April and May 2018.

33. In early May 2018, Plaintiff learned that Boucher had been violating his Agreement with the Company when it discovered that Boucher: created a website for a competing company; filed articles of incorporation for Energy Solution Consulting, LLC, a competing company; filed a PUCO application for this new competitive company; and solicited assistance from Plaintiff's employees in some or all of these unfair competitive activities.

34. As a result, on May 11, 2018, Plaintiff contacted Boucher and requested that he immediately cease his continued breaches of the Agreement.

35. During a meeting to discuss the situation, which took place in May 2018, Boucher admitted that he had formed a new company that would directly compete with Plaintiff.

36. During the meeting, Boucher admitted that he had solicited various entities and offered them services competitive with Plaintiff's business.

37. During the meeting, Boucher admitted that he had contacted and entered into agreements with energy suppliers in furtherance of his competitive business.

38. During the meeting, Boucher admitted that he had entered into agreements with customers to act as their broker for electric and/or natural gas services.

39. Upon information and belief, Plaintiff's customers continued to cancel their contracts with Plaintiff in favor of entering into agreements with Boucher in May 2018, and continuing to date.

40. As a result of Boucher's material breaches, Plaintiff terminated the Agreement on June 21, 2018.

41. Boucher did not return all of Plaintiff's property in his possession upon termination of the Agreement.

42. Had he not breached his non-competition obligations, Boucher's non-competition restrictions would have expired on June 21, 2018. However, due to Boucher's breach of his non-competition obligations, Boucher's non-compete restrictions were extended by the length of time in which he violated the Agreement's non-compete provisions.

43. Had he not breached his non-solicitation obligations beginning in at least April 2018, Boucher's non-solicitation restrictions would have remained in effect until June 21, 2019. However, due to Boucher's breach of his non-solicitation obligations, Boucher's non-solicitation restrictions were extended by the length of time in which he has violated the Agreement's non-solicitation provisions.

44. As a result of Boucher's material breaches, Plaintiff demanded that Boucher cease his violations of the Agreement.

45. On or about June 22, 2018 and July 5, 2018, Boucher represented to Plaintiff that he would not continue to breach his Agreement.

46. Based on Boucher's representations and Plaintiff's reasonable reliance thereon, Plaintiff took no further action against Boucher at that time.

47. Plaintiff, however, subsequently learned that Boucher's representations were false and that Boucher continued to violate the Agreement after June 2018.

48. Upon information and belief, and unbeknownst to Plaintiff at the time, since July 2018, Boucher has solicited and continues to solicit various customers of Plaintiff with whom he had acted as Plaintiff's contact during the term of the Agreement. Boucher's conduct constitutes a material breach of the Agreement.

49. Upon information and belief, and unbeknownst to Plaintiff at the time, since July 2018, Boucher has continued to use and disclose Plaintiff's trade secrets and confidential and proprietary information for his own gain.

50. Upon information and belief, and unbeknownst to Plaintiff at the time, since July 2018, multiple customers with whom Boucher had acted as Plaintiff's contact during the term of the Agreement have canceled their contracts with Plaintiff in favor of entering into agreements and business relationships with Boucher.

51. On May 24, 2019, Boucher filed Articles of Incorporation with the Ohio Secretary of State for the creation of Fidelis.

52. On or about June 10, 2019, Boucher filed an application with PUCO for Fidelis to be certified as an electric aggregator and power broker in Ohio.

53. Upon information and belief, Boucher and/or Fidelis continue to knowingly target and solicit Plaintiff's customers and divert business away from Plaintiff in favor of Boucher and/or Fidelis in material breach of the Agreement and the extended timeframes resulting from his breaches.

54. Although Boucher was warned about his contractual restrictions, his violations continued and he and/or Fidelis have profited and continue to profit from Plaintiff's confidential, proprietary and trade secret information obtained and used by Boucher, and from Boucher's various material breaches of the Agreement.

55. Unless enjoined, Boucher will continue to breach his Agreement with Plaintiff, Boucher and Fidelis will continue to tortiously interfere with Plaintiff's contractual and business relationships, and Boucher will continue to use and disclose Plaintiff's trade secrets and confidential and proprietary information.

COUNT ONE AGAINST BOUCHER
(Breach of Contract)

56. Plaintiff incorporates herein by reference all allegations set forth in Paragraphs 1 through 55 as if fully rewritten herein.

57. On or about November 30, 2015, Boucher entered into a contract with Plaintiff knowns as the Agreement. (See Ex. A).

58. Under the terms of the Agreement, Boucher agreed to not compete with Plaintiff during the term of his Agreement.

59. Under the terms of the Agreement, Boucher agreed to cease using Plaintiff's property upon the conclusion of his independent contractor relationship with Plaintiff and agreed to return all of Plaintiff's property in his possession.

60. Under the terms of the Agreement, Boucher agreed to not solicit Plaintiff's customers, employees, sales representatives, or agents for one year following the expiration of his Agreement with Plaintiff.

61. Under the terms of the Agreement, Boucher agreed that his breach(es) of the Agreement would extend his non-competition and non-solicitation restrictions for a period of time equal to his period of breach(es).

62. Plaintiff has performed all of its obligations under the Agreement, and all conditions precedent to the enforcement of the Agreement have been satisfied, waived, or abandoned.

63. Boucher breached the Agreement by competing with Plaintiff during the term of his Agreement and during the period in which the non-compete provision was extended.

64. Boucher breached the Agreement by failing to cease use of Plaintiff's property upon the conclusion of his independent contractor relationship with Plaintiff and by failing to return all of Plaintiff's property.

65. Boucher breached and continues to breach the Agreement by soliciting Plaintiff's customers during the one-year period following the expiration of his Agreement and during the period in which the non-solicitation provision was extended.

66. As a direct and proximate result of Boucher's breach of his Agreement, Plaintiff has been and will continue to be damaged.

67. As a direct and proximate result of Boucher's breach of the Agreement, Plaintiff has suffered and continues to suffer the loss of its competitive position, the loss of business goodwill, the loss of customers, the loss of sales, and the loss of investment in time and energy in generating its confidential and proprietary information.

68. Plaintiff is entitled to preliminary and permanent injunctive relief, enjoining and restraining Boucher, and any other person or entity acting in aid or concert, or in participation with him, as follows: (a) prohibiting Boucher and any other person or entity acting in aid, concert, or in participation with him, from engaging in competition with Plaintiff; (b) prohibiting Boucher and any other person or entity acting in aid or concert, or in participation with him, from soliciting Plaintiff's customers, employees, sales representatives, or agents; (c) prohibiting Boucher from engaging in any other conduct which otherwise would violate the Agreement; and (d) requiring Boucher to immediately return, delete, or erase all of Plaintiff's property and information.

69. As a direct and proximate result of Boucher's ongoing breach of the Agreement, Plaintiff has been damaged in a monetary amount to be proven at trial, but which is no less than twenty-five thousand dollars ($25,000.00).

COUNT TWO AGAINST ALL DEFENDANTS
(Tortious Interference with Contract and Business Relationships)

70. Plaintiff incorporates herein by reference all allegations set forth in Paragraphs 1 through 69 as if fully rewritten herein.

71. Plaintiff's contract with Boucher, the Agreement, prohibited him from competing with Plaintiff and prohibited Boucher from soliciting Plaintiff's customers, employees, sales representatives, or agents for a period of time.

72. Plaintiff has existing business relationships and contracts with its customers, including those referenced in this First Amended Complaint.

73. Defendants knew of these contractual and business relationships between Plaintiff and its customers.

74. Defendants have acted intentionally and wrongfully interfered with Plaintiff's contractual relationships with its customers by competing against Plaintiff and soliciting Plaintiff's customers.

75. Defendants have acted intentionally and wrongfully interfered with Plaintiff's contractual relationship with Boucher by competing against Plaintiff and soliciting Plaintiff's customers.

76. Defendants have acted intentionally to disrupt the business relationships and contracts Plaintiff has entered into with its customers by soliciting their business.

77. Defendants have unlawfully, intentionally, willfully, and maliciously interfered with Plaintiff's business relationships and contracts.

78. Defendants were not privileged and had no justification to engage in such conduct.

79. Plaintiff is entitled to preliminary and permanent injunctive relief, enjoining and restraining Defendants, and any other person or entity acting in aid or concert, or in participation with them, as follows: (a) prohibiting Defendants and any other person or entity acting in aid, concert, or in participation with them, from engaging in competition with Plaintiff; (b) prohibiting Defendants and any other person or entity acting in aid or concert, or in participation with them, from soliciting Plaintiff's customers, employees, sales representatives, or agents; (c) prohibiting Boucher from engaging in any other conduct which otherwise would violate the Agreement; (d)

prohibiting Defendants and any other person acting in aid, concert, or in participation with them, from interfering with Plaintiff's business relationships and contracts; and (e) requiring Defendants to immediately return, delete, or erase all of Plaintiff's property and information.

80. As a direct and proximate result of Boucher's and Energy Solution's tortious interference, Plaintiff has been damaged in a monetary amount to be proven at trial, but which is no less than twenty-five thousand dollars ($25,000.00).

COUNT THREE AGAINST ALL DEFENDANTS
(Misappropriation of Trade Secrets)

81. Plaintiff incorporates herein by reference all allegations set forth in Paragraphs 1 through 80 as if fully rewritten herein.

82. The confidential and proprietary information of Plaintiff to which Boucher was exposed and had access as described in this First Amended Complaint constitutes trade secrets within the meaning of Section 1333.61(D) of the Ohio Revised Code.

83. Upon information and belief, Boucher misappropriated Plaintiff's trade secrets by failing to return Plaintiff's property upon termination of his Agreement with Plaintiff.

84. Upon information and belief, Boucher has misappropriated Plaintiff's trade secrets by, among other things, using and disclosing Plaintiff's confidential and proprietary information and trade secrets to further his business interests and the interests of Fidelis to engage in unfair competition with Plaintiff.

85. As a direct and proximate result of this misappropriation, Plaintiff has suffered and continues to suffer the loss of its competitive position, the loss of business goodwill, the loss of customers, the loss of sales, and the loss of investment in time and energy in generating its confidential and proprietary information and trade secrets.

86. Pursuant to R.C. 1333.62(A), Plaintiff is entitled to preliminary and permanent injunctive relief, enjoining and restraining Defendants, and any other person or entity acting in aid or concert, or in participation with them, as follows: (a) prohibiting Defendants and any other person or entity acting in aid, concert, or in participation with them, from engaging in competition with Plaintiff; (b) prohibiting Defendants and any other person or entity acting in aid or concert, or in participation with them, from soliciting Plaintiff's customers, employees, sales representatives, or agents; (c) prohibiting Boucher from engaging in any other conduct which otherwise would violate the Agreement; (d) Defendants and any other person or entity acting in aid, concert, or in participation with them, from otherwise using or disclosing any of Plaintiff's confidential and proprietary information or trade secrets; and (d) requiring Boucher to immediately return, delete, or erase all of Plaintiff's property and information.

87. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in a monetary amount to be proven at trial, but which is no less than twenty-five thousand dollars ($25,000.00).

PRAYER FOR RELIEF

Plaintiff H.P. Technologies, Inc. respectfully request that this Court enter judgement in its favor and against Defendants Ryan Boucher and Fidelis United Energy Solutions Inc. for the claims asserted in this First Amended Complaint. Plaintiff further requests that this Court:

A. Enjoin and restrain Defendants and any other person or entity acting in aid, concert, or in participation with them, from competing with Plaintiff;

B. Enjoin and restrain Defendants and any other person or entity acting in aid or concert, or in participation with them, from soliciting Plaintiff's customers, employees, sales representatives, or agents;

C. Enjoin and restrain Boucher from engaging in any other conduct that violates the Agreement;

D. Extend the period of Boucher's prohibitions of competing with Plaintiff and soliciting Plaintiff's customers based on his violations of the Agreement;

E. Enjoin and restrain Defendants and any other person acting in aid, concert, or in participation with them, from interfering with Plaintiff's business relationships and contracts;

F. Enjoin and restrain Defendants and any other person acting in aid, concert, or in participation with them, from otherwise using or disclosing any of Plaintiff's confidential and proprietary information or trade secrets;

G. Require Defendants to immediately return, delete, or erase all of Plaintiff's property and information;

H. Award Plaintiff all of its compensatory damages in an amount exceeding $25,000, to be proven at trial, resulting from Boucher's breach of the Agreement, Boucher's and Fidelis' tortious interference, and Boucher's and Fidelis' misappropriation of Plaintiff's trade secrets; and

I. Award Plaintiff pre- and post-judgment interest, costs, legal fees, and all other relief, at law or equity, that this Court deems appropriate.

Respectfully submitted,

Christina E. Niro (0086272)
cniro@frantzward.com
Andrew J. Cleves (0089680)
acleves@frantward.com
FRANTZ WARD LLP
200 Public Square, Suite 3000
Cleveland, OH 44114
Telephone: (216) 515-1660
Facsimile: (216) 515-1650

Attorneys for Plaintiff
H.P. Technologies, Inc.

DEMAND FOR TRIAL BY JURY

Plaintiff H.P. Technologies, Inc. demands a trial by jury for its claims asserted in this First Amended Complaint.

Respectfully submitted,

Christina E. Niro (0086272)
cniro@frantzward.com
Andrew J. Cleves (0089680)
acleves@frantward.com
FRANTZ WARD LLP
200 Public Square, Suite 3000
Cleveland, OH 44114
Telephone: (216) 515-1660
Facsimile: (216) 515-1650

Attorneys for Plaintiff
H.P. Technologies, Inc.

INDEPENDENT SALES CONTRACTOR'S AGREEMENT

This Agreement is made and entered into at Avon, Ohio, this 30th day of November, 2015 by and between:

H. P. Technologies, Inc. (an Ohio corporation)
33648 St. Francis Drive
Avon, OH 44011
(herein called "PRINCIPAL")

And

Ryan E. Boucher
320 Marsh Marigold Road
Kennerdell, PA. 16374
(herein called "CONTRACTOR")

WITNESSETH:

WHEREAS, PRINCIPAL desires to appoint a sales representative, on a non-exclusive basis, for its PRODUCTS/SERVICES within a specified TERRITORY; and

WHEREAS, CONTRACTOR is desirous of acting, on a non-exclusive basis, as a sales representative for PRINCIPAL within the TERRITORY; and

WHEREAS, PRINCIPAL and CONTRACTOR desire to memorialize the terms and provisions of CONTRACTOR'S relationship with PRINCIPAL.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth it is hereby agreed between the parties as follows:

ARTICLE 1. DEFINITIONS. As used herein the words capitalized in this Article shall have the meaning or identity set forth after each word:

A. AGREEMENT: This Independent Sales Contractor's Agreement.

B. ORIGINAL TERM: The two (2) year period of time commencing on November 30, 2015 (the "COMMENCEMENT DATE") and expiring on November 30, 2017 (the "EXPIRATION DATE").

C. PRODUCTS/SERVICES: Those products supplied, delivered or furnished and/or services rendered by PRINCIPAL to its customers or clients in connection with PRINCIPAL'S normal, customary and usual course of business and as specifically set forth on Exhibit "A".

D. TERRITORY: The area assigned by PRINCIPAL to CONTRACTOR from time to time as indicated and more fully defined on Exhibit "B", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

E. ACCOUNTS: All clients, customers or accounts of CONTRACTOR or assigned to CONTRACTOR by PRINCIPAL within the TERRITORY from the COMMENCEMENT DATE

of this AGREEMENT through the effective date of termination of this AGREEMENT.

ARTICLE 2. GRANT OF REPRESENTATION. PRINCIPAL does hereby grant and give to CONTRACTOR and CONTRACTOR does hereby accept from PRINCIPAL the right to act, on a non-exclusive basis, as a sales representative for PRINCIPAL in the TERRITORY for the PRODUCTS/SERVICES upon the agreements, conditions, covenants and provisions hereof.

ARTICLE 3. TERM.

A. The ORIGINAL TERM of this AGREEMENT shall commence on the COMMENCEMENT DATE and end on the EXPIRATION DATE, unless earlier terminated as provided herein.

B. The ORIGINAL TERM of this Agreement shall automatically extend for successive one (1) year renewal terms (each, a "RENEWAL TERM") unless either party, in its discretion, elects to terminate this AGREEMENT by giving notice in writing to the other party no less than thirty (30) days prior to the end of the ORIGINAL TERM or the then current RENEWAL TERM, in which case this AGREEMENT shall terminate at the end of the then-current term, unless otherwise earlier terminated as hereinafter provided.

ARTICLE 4. COMPENSATION.

A. CONTRACTOR'S compensation shall in the form of commissions earned by the CONTRACTOR on the sale(s) of PRODUCTS/SERVICES.

B. Contractor's commissions shall be computed as specifically set forth on Exhibit "C", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

C. Contractor's commissions shall be deemed to have been earned by CONTRACTOR based on the actual commissions received by PRINCIPAL from any ACCOUNTS.

D. CONTRACTOR'S earned commissions shall be paid by PRINCIPAL on the first business day of the month following PRINCIPAL's receipt of payment of the commission.

E. In the event that PRINCIPAL is back-charged and/or has paid CONTRACTOR more money than earned on commissions actually received by PRINCIPAL, CONTRACTOR shall repay such overpayment within thirty (30) days of request by PRINCIPAL or PRINCIPAL may deduct such overpayment amount from any amount due CONTRACTOR hereunder.

ARTICLE 5. PRINCIPAL'S OBLIGATIONS.

PRINCIPAL shall:

A. submit to CONTRACTOR, as soon as practicable, copies of all correspondence, quotations, and/or other communications received by or sent from PRINCIPAL to ACCOUNTS;

B. be solely responsible for and endure any and all expense(s) for supplying, producing and/or shipping the PRODUCTS/SERVICES to ACCOUNTS under this AGREEMENT and no such expense(s) shall be charged to CONTRACTOR;

C. at PRINCIPAL'S sole cost and expense, pass on the credit of any customer, prospective or current, and be responsible for the collection of all invoices and charges to its customers and no collection expense(s) shall be charged to or offset against CONTRACTOR'S commissions;

D. at CONTRACTOR's sole cost and expense, supply to CONTRACTOR PRINCIPAL'S artwork and other such material required for producing or re-producing advertising and sales literature for CONTRACTOR to promote the sales of the PRODUCTS/SERVICES; and

E. supply to CONTRACTOR, a monthly report of sales commissions earned for each supplier, commission rates, and their respective computations in a form representative of what the supplier presents to the PRINCIPAL.

ARTICLE 6. RIGHTS RESERVED BY PRINCIPAL. In addition to all other rights of PRINCIPAL hereunder and without intent to limit any rights of PRINCIPAL not otherwise set forth herein, PRINCIPAL specifically reserves unto itself, in its sole discretion and from time to time, the right:

A. to establish prices for all PRODUCTS/SERVICES; any changes in prices shall be communicated as soon as practical to CONTRACTOR including in such notification the effective date(s) of such price change(s); and

B. to establish any terms of payment, and all other terms and/or conditions to which all sales of PRODUCTS/SERVICES are subject; terms and conditions shall be set forth on PRINCIPAL'S order acknowledgment form or other official correspondence.

ARTICLE 7. CONTRACTOR'S OBLIGATIONS. CONTRACTOR shall:

A. throughout the ORIGINAL TERM and any RENEWAL TERM of this AGREEMENT, use CONTRACTOR'S best efforts in promoting the PRODUCTS/SERVICES, and with the prior approval of PRINCIPAL and at CONTRACTOR'S sole cost and expense, to employ or engage all such persons and/or sub-agents as CONTRACTOR deems necessary for the performance of CONTRACTOR'S obligations hereunder.

B. have no authority to bind PRINCIPAL in any manner or cause whatsoever, without the prior written consent of PRINCIPAL;

C. not use the PRINCIPAL'S name in any way, not specifically authorized by this AGREEMENT;

D. carry full liability insurance with limits of not less than $500,000 combined single limit or $250,000/$500,000/$50,000 split limits on any and all automobiles, trucks, and/or other equipment utilized by CONTRACTOR in connection with CONTRACTOR'S responsibilities hereunder and save PRINCIPAL harmless from liability as a result thereof; and

E. be fully responsible for all expense(s) incurred in the operation of CONTRACTOR'S business activity and indemnify and save harmless PRINCIPAL from any and all fines, claims, demands, damages and/or causes of actions of any kind or nature arising out of CONTRACTOR'S business activities.

ARTICLE 8. WARRANTIES. CONTRACTOR shall not make any warranties, express or implied, on behalf of PRINCIPAL concerning the PRODUCTS/SERVICES without the prior express written consent of PRINCIPAL in each specific instance and PRINCIPAL shall not be liable for any such unauthorized representation(s) made by CONTRACTOR without such prior authorization.

ARTICLE 9. CONTRACTOR RESTRICTIONS.

A. NONCOMPETITION. Except as set forth on Schedule "1" attached hereto, CONTRACTOR represents and warrants that he/she/it does not currently represent or promote any products or services that compete with the PRODUCTS/SERVICES. During the ORIGINAL TERM of this AGREEMENT or any RENEWAL TERM hereof, CONTRACTOR shall not represent, promote, or otherwise sell within the TERRITORY any products or services that, in the reasonable judgment of the PRINCIPAL, compete with the PRODUCTS/SERVICES, except as set forth on Schedule "1". CONTRACTOR shall provide PRINCIPAL with a list of the customers and products and/or services that it currently represents and shall notify PRINCIPAL in writing of any new customers and products and/or services at such time as its promotion of same commences.

B. NONSOLICITATION. For a period of one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall refrain from and will not, directly or indirectly, as an independent contractor, employee, consultant, agent, partner, joint venture, shareholder or otherwise, contact, solicit, divert or take away or attempt to contact, solicit, divert or take away any ACCOUNT served by CONTRACTOR or whose names and/or addresses have become known to CONTRACTOR during the term of this Agreement or any predecessor agreement between the parties. Further, during the one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall neither solicit, divert, take away or attempt to solicit, divert or take away any of the employees, sales representatives or agents of PRINCIPAL who at the time of the expiration or termination are employees, sales representatives or agents of PRINCIPAL, or who served in such capacity at any time within six (6) months prior to such expiration or termination.

C. EXTENSION OF TIME. The period of time during which CONTRACTOR is prohibited from engaging in such business practices pursuant to this Article 9 shall be extended by any length of time during which CONTRACTOR is in breach of this Agreement.

D. INDEPENDENT COVENANTS. Each restrictive covenant set forth in this Article 9 shall be construed as an agreement independent of any other provision in this AGREEMENT. The existence of any claim or cause of action of CONTRACTOR against PRINCIPAL, whether predicated on this AGREEMENT or otherwise, shall not constitute a defense to the enforcement by PRINCIPAL of such covenants.

E. SEVERABILITY. If any portion of the covenants set forth in this Article 9 is held to be unreasonable, unenforceable, arbitrary or against public policy, then such portion of such covenant shall be considered severable as to time, geographical area and prohibited activities. PRINCIPAL and CONTRACTOR agree that if any court of competent jurisdiction determines the specified time period, the specified geographical area or specified prohibited activities applicable to this Article 9 is to be unreasonable, arbitrary or against public policy, then a lesser time period, geographical area or prohibited activities which is determined to be reasonable, non-arbitrary and not against public policy may be enforced against CONTRACTOR.

PRINCIPAL and CONTRACTOR agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by PRINCIPAL.

F. REMEDIES FOR BREACH. CONTRACTOR acknowledges that irreparable injury will result from the violation of this Article 9. CONTRACTOR expressly agrees that PRINCIPAL, in the event of any violation of this Article 9 by CONTRACTOR, shall be entitled to, in addition to damages and any other remedy provided by law, to an injunction or other equitable remedy respecting such violation or continued violation.

ARTICLE 10. TERMINATION.

A. During the ORIGINAL TERM or any RENEWAL TERM of this AGREEMENT, this AGREEMENT may be terminated by either party upon mutual agreement or in the event of a material breach of the terms hereof by giving the other party at least sixty (60) days written notice of such intent to terminate which notice shall be sent in accord with Article 16 hereof and shall set forth specifically the effective date of termination which shall be not less than sixty (60) days after the date of mailing of such notice. If any controversy or difference shall arise between the parties hereto with respect to the termination of this AGREEMENT or the rights, obligations or liabilities of the parties hereunder, then each and every such controversy or difference shall be first submitted to PRINCIPAL and both parties agree to attempt to settle the dispute amicably not less than 15 days prior to the effective date of termination. Written correspondence is recommended to document the controversy or difference.

B. Upon termination of this AGREEMENT, this AGREEMENT and the rights and/or obligations imposed upon either party hereunder shall terminate as of the effective date set forth in the notice required to be given thereunder **EXCEPT** for the obligations of the parties as specified in Articles 11 and 12 hereof.

C. At any time during the ORIGINAL TERM or any RENEWAL TERM, this AGREEMENT shall terminate immediately, without action by either party:

1. upon the filing by or against either party of any proceeding in bankruptcy;

2. if either party shall make an assignment for the benefit of creditors;

3. if a temporary or permanent receiver or trustee is appointed by a court over the assets of either party and such receiver or trustee is not removed within sixty (60) days of the date of such appointment;

4. if either party shall compound or compromise his or its debts; or

5. if any execution or attachment shall issue against either party or any of his/her or its assets.

Under any of the aforementioned circumstances, all of the rights and/or obligations imposed on either party by the provisions of this AGREEMENT shall immediately terminate **EXCEPT** for the obligation of PRINCIPAL to pay all earned commissions to CONTRACTOR.

ARTICLE 11. PRINCIPAL'S RIGHTS UPON TERMINATION. PRINCIPAL shall be entitled to receive from CONTRACTOR immediately upon the termination of this AGREEMENT, for any

reason whatsoever, a full and complete accounting of all outstanding quotations or leads as well as any and all personal property of PRINCIPAL, samples, literature, sales manuals and the like. CONTRACTOR agrees to immediately cease using, directly or indirectly, the trademarks/trade names, sales literature, calling cards and/or any other items, tangible or intangible, of PRINCIPAL and CONTRACTOR shall immediately return to PRINCIPAL all items and such personal property in CONTRACTOR'S possession.

ARTICLE 12. CONTRACTOR'S RIGHTS UPON TERMINATION. CONTRACTOR shall be entitled to all earned commissions.

ARTICLE 13. ORDERS BINDING ON PRINCIPAL. PRINCIPAL and the entities it represents shall have the sole right of credit approval or refusal on all contracts received by it. CONTRACTOR shall advise and cooperate with PRINCIPAL and the companies it represents in such credit matters but CONTRACTOR shall have no responsibility or liability therefor.

ARTICLE 14. CONTRACTOR NOT AN EMPLOYEE. This AGREEMENT shall not be construed or interpreted so as to constitute CONTRACTOR or any of CONTRACTOR'S employees, agents or representatives as an agent, partner, joint venture, employee and/or legal representative of PRINCIPAL for any purpose whatsoever. CONTRACTOR is to act at all times as an independent operator. CONTRACTOR shall assume full responsibility for its own account and for all its employees, if any, under the Internal Revenue Code (and regulations promulgated thereunder), Social Security Act, Fair Labor Standards Act, state unemployment compensation acts, workers compensation acts, minimum wage laws and other similar laws, rules and regulations. CONTRACTOR shall comply with all state, provincial, federal and other laws of the United States as they pertain to the performance of CONTRACTOR'S obligations under this AGREEMENT. CONTRACTOR will determine its own working hours as it chooses, and conduct its activities and those of its employees as it sees fit without supervision or direction from PRINCIPAL.

ARTICLE 15. MARKETING. All marketing materials used by CONTRACTOR that specifically use any trademarks, trade names, logos, or other direct reference to PRINCIPAL or PRINCIPAL'S copyrighted materials must be preapproved by PRINCIPAL. An email shall be deemed sufficient notice of preapproval.

ARTICLE 16. NOTICE. Wherever notice is required under this AGREEMENT it shall be made in writing, mailed certified or registered with a return receipt and sent to the address of the party who is to receive such notice at his or its address as set forth herein. Any notice given hereunder shall be deemed to be effective when mailed, provided that it is not thereafter returned to the sender as undeliverable as addressed. The address of either party may change from time to time and notice thereof shall be given to the other as required herein.

ARTICLE 17. USE OF TERMS. Wherever a singular word is used in this AGREEMENT, it shall be considered as meaning the plural where applicable and wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as PRINCIPAL or CONTRACTOR in the heading of this instrument wherever the context requires.

ARTICLE 18. EXHIBITS. All exhibits whether original or modified and attached to this AGREEMENT are a part of this AGREEMENT as though fully written herein.

ARTICLE 19. APPLICABLE LAW. This AGREEMENT shall be construed and interpreted

under and in accordance with the laws of the State of Ohio.

ARTICLE 20. LEGAL CONSTRUCTION. In case any one or more of the provisions contained in this AGREEMENT shall be held for any reason to be invalid, illegal or un-enforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provisions hereof and this AGREEMENT shall be construed as if such invalid, illegal or un-enforceable provisions had never been contained herein.

ARTICLE 21. PRIOR AGREEMENTS SUPERSEDED. This AGREEMENT, with Exhibits and Schedules attached hereto, contains the entire understanding and contract between the parties and all other prior written or oral agreements, understandings or arrangements are hereby revoked.

ARTICLE 22. ASSIGNMENT. This AGREEMENT may be assigned by PRINCIPAL without the express written consent of CONTRACTOR. This AGREEMENT may not be assigned by CONTRACTOR without the express written consent of PRINCIPAL.

ARTICLE 23. BENEFIT OF AGREEMENT. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

ARTICLE 24. MODIFICATION. Except as specifically authorized herein, no amendment or modification of this AGREEMENT or attached EXHIBITS shall be binding upon CONTRACTOR and/or PRINCIPAL unless in writing and signed and dated by the party to be charged therewith.

ARTICLE 25. LEGAL CONSEQUENCES FULLY UNDERSTOOD. CONTRACTOR and PRINCIPAL acknowledge that they have thoroughly read and examined this AGREEMENT, that any questions pertaining thereto have been fully and adequately answered and that each fully understands the meaning, effect and legal consequences of this AGREEMENT.

ARTICLE 26. ARBITRATION OF DISPUTES. If any controversy or difference shall arise between the parties hereto with respect to the interpretation, compliance or effect of this AGREEMENT or the rights, obligations or liabilities of the parties hereunder, then each and every such controversy or difference shall be submitted to and settled by binding arbitration before, and in accordance with, the Commercial Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof; provided, however, that this clause shall not be construed to limit any rights which PRINCIPAL may have to apply to any court of competent jurisdiction for injunctive or other equitable relief. An arbitration board of no more than three (3) shall be utilized with one arbitrator to be selected by each party hereto and the third member to be selected by the two arbitrators so designated. All arbitration hearings shall be held in the City of Cleveland, Ohio.

ARTICLE 27. COUNTERPARTS. This AGREEMENT may be executed in counterparts and when properly executed each counterpart shall be considered as an original.

IN WITNESS WHEREOF, the parties have executed this Independent Sales Contractor's Agreement as of the date first written above.

PRINCIPAL: H. P. Technologies, Inc.

Sign: Dennis J. Giancola

Print: Dennis J. Giancola

Title: President

Date: 11/30/15

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

00106255-3

EXHIBIT "A"

PRODUCTS AND SERVICES

NATURAL GAS SALES
ELECTRICITY SALES

PRINCIPAL: H. P. Technologies, Inc.

Sign: Dennis J. Giancola

Print: Dennis J. Giancola

Title: President

Date: 11/30/15

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT "B"

TERRITORY

Those states in the United States where electricity and natural gas are deregulated and PRINCIPAL is licensed, provided such license is required.

PRINCIPAL: H. P. Technologies, Inc.

Sign: Dennis J. Giancola

Print: Dennis J. Giancola

Title: President

Date: 11/30/15

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

00106255-3

COMMISSIONS

CONTRACTOR will employ various pricing programs made available by PRINCIPAL to secure the PRINCIPAL'S price for the PRODUCTS/SERVICES. CONTRACTOR will consult with PRINCIPAL's Sales Administrator or Staff to determine best practice for EXHIBIT C establishing the selling price to the prospective ACCOUNT.

The CONTRACTOR, by and through the PRINCIPAL's sales programs, employees and its sales administrative support, shall determine the commission to be charged on the sale of PRODUCTS/SERVICES, provided, however, such commission shall not exceed the maximum amount permitted by a supplier and/or the PRINCIPAL.

Each signed agreement generated through the efforts of the CONTRACTOR and accepted by the respective supplier indicated on the agreement, will establish a sales ACCOUNT and memorialize the sales price for the PRODUCTS/SERVICES and CONTRACTOR's commission rate, and PRINCIPAL shall confirm in writing to the CONTRACTOR such sales price for the PRODUCTS/SERVICES and CONTRACTOR's commission rate. Fifty percent (50%) of all such commissions charged on the sale of PRODUCTS/SERVICES through the CONTRACTOR's efforts shall be deemed earned and payable to CONTRACTOR as more specifically set forth in Article IV of the Agreement.

PRINCIPAL: H. P. Technologies, Inc.

Sign: Dennis J. Giancola

Print: Dennis J. Giancola

Title: President

Date: 11/30/15

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

SCHEDULE 1

Note to contractor:

[Describe the competitive products or services that the Contractor currently represents or promotes. There may be none, or the contractor may describe current agreements which it has with third parties through which it represents or promotes competitive products or services. If none, please indicate this here.] NONE

PRINCIPAL: H. P. Technologies, Inc.

Sign: Dennis J. Giancola

Print: Dennis J. Giancola

Title: President

Date: 11/20/15

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

00106255-3

Exhibit 2

H.P. Contractor Agreement

INDEPENDENT SALES CONTRACTOR'S AGREEMENT

This Agreement is made and entered into at Avon, Ohio, this 30th day of November, 2015 by and between:

H. P. Technologies, Inc. (an Ohio corporation)
33648 St. Francis Drive
Avon, OH 44011
(herein called "PRINCIPAL")

And

Ryan E. Boucher
320 Marsh Marigold Road
Kennerdell, PA. 16374
(herein called "CONTRACTOR")

WITNESSETH:

WHEREAS, PRINCIPAL desires to appoint a sales representative, on a non-exclusive basis, for its PRODUCTS/SERVICES within a specified TERRITORY; and

WHEREAS, CONTRACTOR is desirous of acting, on a non-exclusive basis, as a sales representative for PRINCIPAL within the TERRITORY; and

WHEREAS, PRINCIPAL and CONTRACTOR desire to memorialize the terms and provisions of CONTRACTOR'S relationship with PRINCIPAL.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth it is hereby agreed between the parties as follows:

ARTICLE 1. DEFINITIONS. As used herein the words capitalized in this Article shall have the meaning or identity set forth after each word:

A. AGREEMENT: This Independent Sales Contractor's Agreement.

B. ORIGINAL TERM: The two (2) year period of time commencing on November 30, 2015 (the “COMMENCEMENT DATE”) and expiring on November 30, 2017 (the “EXPIRATION DATE”).

C. PRODUCTS/SERVICES: Those products supplied, delivered or furnished and/or services rendered by PRINCIPAL to its customers or clients in connection with PRINCIPAL'S normal, customary and usual course of business and as specifically set forth on Exhibit "A".

D. TERRITORY: The area assigned by PRINCIPAL to CONTRACTOR from time to time as indicated and more fully defined on Exhibit "B", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

E. ACCOUNTS: All clients, customers or accounts of CONTRACTOR or assigned to CONTRACTOR by PRINCIPAL within the TERRITORY from the COMMENCEMENT DATE

of this AGREEMENT through the effective date of termination of this AGREEMENT.

ARTICLE 2. GRANT OF REPRESENTATION. PRINCIPAL does hereby grant and give to CONTRACTOR and CONTRACTOR does hereby accept from PRINCIPAL the right to act, on a non-exclusive basis, as a sales representative for PRINCIPAL in the TERRITORY for the PRODUCTS/SERVICES upon the agreements, conditions, covenants and provisions hereof.

ARTICLE 3. TERM.

A. The ORIGINAL TERM of this AGREEMENT shall commence on the COMMENCEMENT DATE and end on the EXPIRATION DATE, unless earlier terminated as provided herein.

B. The ORIGINAL TERM of this Agreement shall automatically extend for successive one (1) year renewal terms (each, a “RENEWAL TERM”) unless either party, in its discretion, elects to terminate this AGREEMENT by giving notice in writing to the other party no less than thirty (30) days prior to the end of the ORIGINAL TERM or the then current RENEWAL TERM, in which case this AGREEMENT shall terminate at the end of the then-current term, unless otherwise earlier terminated as hereinafter provided.

ARTICLE 4. COMPENSATION.

A. CONTRACTOR’S compensation shall in the form of commissions earned by the CONTRACTOR on the sale(s) of PRODUCTS/SERVICES.

B. Contractor’s commissions shall be computed as specifically set forth on Exhibit "C", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

C. Contractor’s commissions shall be deemed to have been earned by CONTRACTOR based on the actual commissions received by PRINCIPAL from any ACCOUNTS.

D. CONTRACTOR’S earned commissions shall be paid by PRINCIPAL on the first business day of the month following PRINCIPAL’s receipt of payment of the commission.

E. In the event that PRINCIPAL is back-charged and/or has paid CONTRACTOR more money than earned on commissions actually received by PRINCIPAL, CONTRACTOR shall repay such overpayment within thirty (30) days of request by PRINCIPAL or PRINCIPAL may deduct such overpayment amount from any amount due CONTRACTOR hereunder.

ARTICLE 5. PRINCIPAL'S OBLIGATIONS.

PRINCIPAL shall:

A. submit to CONTRACTOR, as soon as practicable, copies of all correspondence, quotations, and/or other communications received by or sent from PRINCIPAL to ACCOUNTS;

B. be solely responsible for and endure any and all expense(s) for supplying, producing and/or shipping the PRODUCTS/SERVICES to ACCOUNTS under this AGREEMENT and no such expense(s) shall be charged to CONTRACTOR;

C. at PRINCIPAL'S sole cost and expense, pass on the credit of any customer, prospective or current, and be responsible for the collection of all invoices and charges to its customers and no collection expense(s) shall be charged to or offset against CONTRACTOR'S commissions;

D. at CONTRACTOR's sole cost and expense, supply to CONTRACTOR PRINCIPAL'S artwork and other such material required for producing or re-producing advertising and sales literature for CONTRACTOR to promote the sales of the PRODUCTS/SERVICES; and

E. supply to CONTRACTOR, a monthly report of sales commissions earned for each supplier, commission rates, and their respective computations in a form representative of what the supplier presents to the PRINCIPAL.

ARTICLE 6. RIGHTS RESERVED BY PRINCIPAL. In addition to all other rights of PRINCIPAL hereunder and without intent to limit any rights of PRINCIPAL not otherwise set forth herein, PRINCIPAL specifically reserves unto itself, in its sole discretion and from time to time, the right:

A. to establish prices for all PRODUCTS/SERVICES; any changes in prices shall be communicated as soon as practical to CONTRACTOR including in such notification the effective date(s) of such price change(s); and

B. to establish any terms of payment, and all other terms and/or conditions to which all sales of PRODUCTS/SERVICES are subject; terms and conditions shall be set forth on PRINCIPAL'S order acknowledgment form or other official correspondence.

ARTICLE 7. CONTRACTOR'S OBLIGATIONS. CONTRACTOR shall:

A. throughout the ORIGINAL TERM and any RENEWAL TERM of this AGREEMENT, use CONTRACTOR'S best efforts in promoting the PRODUCTS/SERVICES, and with the prior approval of PRINCIPAL and at CONTRACTOR'S sole cost and expense, to employ or engage all such persons and/or sub-agents as CONTRACTOR deems necessary for the performance of CONTRACTOR'S obligations hereunder.

B. have no authority to bind PRINCIPAL in any manner or cause whatsoever, without the prior written consent of PRINCIPAL;

C. not use the PRINCIPAL'S name in any way, not specifically authorized by this AGREEMENT;

D. carry full liability insurance with limits of not less than $500,000 combined single limit or $250,000/$500,000/$50,000 split limits on any and all automobiles, trucks, and/or other equipment utilized by CONTRACTOR in connection with CONTRACTOR'S responsibilities hereunder and save PRINCIPAL harmless from liability as a result thereof; and

E. be fully responsible for all expense(s) incurred in the operation of CONTRACTOR'S business activity and indemnify and save harmless PRINCIPAL from any and all fines, claims, demands, damages and/or causes of actions of any kind or nature arising out of CONTRACTOR'S business activities.

ARTICLE 8. WARRANTIES. CONTRACTOR shall not make any warranties, express or implied, on behalf of PRINCIPAL concerning the PRODUCTS/SERVICES without the prior express written consent of PRINCIPAL in each specific instance and PRINCIPAL shall not be liable for any such unauthorized representation(s) made by CONTRACTOR without such prior authorization.

ARTICLE 9. CONTRACTOR RESTRICTIONS.

A. NONCOMPETITION. Except as set forth on Schedule "1" attached hereto, CONTRACTOR represents and warrants that he/she/it does not currently represent or promote any products or services that compete with the PRODUCTS/SERVICES. During the ORIGINAL TERM of this AGREEMENT or any RENEWAL TERM hereof, CONTRACTOR shall not represent, promote, or otherwise sell within the TERRITORY any products or services that, in the reasonable judgment of the PRINCIPAL, compete with the PRODUCTS/SERVICES, except as set forth on Schedule "1". CONTRACTOR shall provide PRINCIPAL with a list of the customers and products and/or services that it currently represents and shall notify PRINCIPAL in writing of any new customers and products and/or services at such time as its promotion of same commences.

B. NONSOLICITATION. For a period of one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall refrain from and will not, directly or indirectly, as an independent contractor, employee, consultant, agent, partner, joint venture, shareholder or otherwise, contact, solicit, divert or take away or attempt to contact, solicit, divert or take away any ACCOUNT served by CONTRACTOR or whose names and/or addresses have become known to CONTRACTOR during the term of this Agreement or any predecessor agreement between the parties. Further, during the one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall neither solicit, divert, take away or attempt to solicit, divert or take away any of the employees, sales representatives or agents of PRINCIPAL who at the time of the expiration or termination are employees, sales representatives or agents of PRINCIPAL, or who served in such capacity at any time within six (6) months prior to such expiration or termination.

C. EXTENSION OF TIME. The period of time during which CONTRACTOR is prohibited from engaging in such business practices pursuant to this Article 9 shall be extended by any length of time during which CONTRACTOR is in breach of this Agreement.

D. INDEPENDENT COVENANTS. Each restrictive covenant set forth in this Article 9 shall be construed as an agreement independent of any other provision in this AGREEMENT. The existence of any claim or cause of action of CONTRACTOR against PRINCIPAL, whether predicated on this AGREEMENT or otherwise, shall not constitute a defense to the enforcement by PRINCIPAL of such covenants.

E. SEVERABILITY. If any portion of the covenants set forth in this Article 9 is held to be unreasonable, unenforceable, arbitrary or against public policy, then such portion of such covenant shall be considered severable as to time, geographical area and prohibited activities. PRINCIPAL and CONTRACTOR agree that if any court of competent jurisdiction determines the specified time period, the specified geographical area or specified prohibited activities applicable to this Article 9 is to be unreasonable, arbitrary or against public policy, then a lesser time period, geographical area or prohibited activities which is determined to be reasonable, non-arbitrary and not against public policy may be enforced against CONTRACTOR.

PRINCIPAL and CONTRACTOR agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by PRINCIPAL.

F. REMEDIES FOR BREACH. CONTRACTOR acknowledges that irreparable injury will result from the violation of this Article 9. CONTRACTOR expressly agrees that PRINCIPAL, in the event of any violation of this Article 9 by CONTRACTOR, shall be entitled to, in addition to damages and any other remedy provided by law, to an injunction or other equitable remedy respecting such violation or continued violation.

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B. Upon termination of this AGREEMENT, this AGREEMENT and the rights and/or obligations imposed upon either party hereunder shall terminate as of the effective date set forth in the notice required to be given thereunder **EXCEPT** for the obligations of the parties as specified in Articles 11 and 12 hereof.

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1. upon the filing by or against either party of any proceeding in bankruptcy;

2. if either party shall make an assignment for the benefit of creditors;

3. if a temporary or permanent receiver or trustee is appointed by a court over the assets of either party and such receiver or trustee is not removed within sixty (60) days of the date of such appointment;

4. if either party shall compound or compromise his or its debts; or

5. if any execution or attachment shall issue against either party or any of his/her or its assets.

Under any of the aforementioned circumstances, all of the rights and/or obligations imposed on either party by the provisions of this AGREEMENT shall immediately terminate **EXCEPT** for the obligation of PRINCIPAL to pay all earned commissions to CONTRACTOR.

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reason whatsoever, a full and complete accounting of all outstanding quotations or leads as well as any and all personal property of PRINCIPAL, samples, literature, sales manuals and the like. CONTRACTOR agrees to immediately cease using, directly or indirectly, the trademarks/trade names, sales literature, calling cards and/or any other items, tangible or intangible, of PRINCIPAL and CONTRACTOR shall immediately return to PRINCIPAL all items and such personal property in CONTRACTOR'S possession.

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ARTICLE 15. MARKETING. All marketing materials used by CONTRACTOR that specifically use any trademarks, trade names, logos, or other direct reference to PRINCIPAL or PRINCIPAL'S copyrighted materials must be preapproved by PRINCIPAL. An email shall be deemed sufficient notice of preapproval.

ARTICLE 16. NOTICE. Wherever notice is required under this AGREEMENT it shall be made in writing, mailed certified or registered with a return receipt and sent to the address of the party who is to receive such notice at his or its address as set forth herein. Any notice given hereunder shall be deemed to be effective when mailed, provided that it is not thereafter returned to the sender as undeliverable as addressed. The address of either party may change from time to time and notice thereof shall be given to the other as required herein.

ARTICLE 17. USE OF TERMS. Wherever a singular word is used in this AGREEMENT, it shall be considered as meaning the plural where applicable and wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as PRINCIPAL or CONTRACTOR in the heading of this instrument wherever the context requires.

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ARTICLE 19. APPLICABLE LAW. This AGREEMENT shall be construed and interpreted

under and in accordance with the laws of the State of Ohio.

ARTICLE 20. LEGAL CONSTRUCTION. In case any one or more of the provisions contained in this AGREEMENT shall be held for any reason to be invalid, illegal or un-enforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provisions hereof and this AGREEMENT shall be construed as if such invalid, illegal or un-enforceable provisions had never been contained herein.

ARTICLE 21. PRIOR AGREEMENTS SUPERSEDED. This AGREEMENT, with Exhibits and Schedules attached hereto, contains the entire understanding and contract between the parties and all other prior written or oral agreements, understandings or arrangements are hereby revoked.

ARTICLE 22. ASSIGNMENT. This AGREEMENT may be assigned by PRINCIPAL without the express written consent of CONTRACTOR. This AGREEMENT may not be assigned by CONTRACTOR without the express written consent of PRINCIPAL.

ARTICLE 23. BENEFIT OF AGREEMENT. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

ARTICLE 24. MODIFICATION. Except as specifically authorized herein, no amendment or modification of this AGREEMENT or attached EXHIBITS shall be binding upon CONTRACTOR and/or PRINCIPAL unless in writing and signed and dated by the party to be charged therewith.

ARTICLE 25. LEGAL CONSEQUENCES FULLY UNDERSTOOD. CONTRACTOR and PRINCIPAL acknowledge that they have thoroughly read and examined this AGREEMENT, that any questions pertaining thereto have been fully and adequately answered and that each fully understands the meaning, effect and legal consequences of this AGREEMENT.

ARTICLE 26. ARBITRATION OF DISPUTES. If any controversy or difference shall arise between the parties hereto with respect to the interpretation, compliance or effect of this AGREEMENT or the rights, obligations or liabilities of the parties hereunder, then each and every such controversy or difference shall be submitted to and settled by binding arbitration before, and in accordance with, the Commercial Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof; provided, however, that this clause shall not be construed to limit any rights which PRINCIPAL may have to apply to any court of competent jurisdiction for injunctive or other equitable relief. An arbitration board of no more than three (3) shall be utilized with one arbitrator to be selected by each party hereto and the third member to be selected by the two arbitrators so designated. All arbitration hearings shall be held in the City of Cleveland, Ohio.

ARTICLE 27. COUNTERPARTS. This AGREEMENT may be executed in counterparts and when properly executed each counterpart shall be considered as an original.

IN WITNESS WHEREOF, the parties have executed this Independent Sales Contractor's Agreement as of the date first written above.

PRINCIPAL: H. P. Technologies, Inc.

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT “A”

PRODUCTS AND SERVICES

NATURAL GAS SALES
ELECTRICITY SALES

PRINCIPAL: H. P. Technologies, Inc.

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT “B”

TERRITORY

Those states in the United States where electricity and natural gas are deregulated and PRINCIPAL is licensed, provided such license is required.

PRINCIPAL: H. P. Technologies, Inc.

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

COMMISSIONS

CONTRACTOR will employ various pricing programs made available by PRINCIPAL to secure the PRINCIPAL'S price for the PRODUCTS/SERVICES. CONTRACTOR will consult with PRINCIPAL's Sales Administrator or Staff to determine best practice for EXHIBIT C establishing the selling price to the prospective ACCOUNT.

The CONTRACTOR, by and through the PRINCIPAL's sales programs, employees and its sales administrative support, shall determine the commission to be charged on the sale of PRODUCTS/SERVICES, provided, however, such commission shall not exceed the maximum amount permitted by a supplier and/or the PRINCIPAL.

Each signed agreement generated through the efforts of the CONTRACTOR and accepted by the respective supplier indicated on the agreement, will establish a sales ACCOUNT and memorialize the sales price for the PRODUCTS/SERVICES and CONTRACTOR's commission rate, and PRINCIPAL shall confirm in writing to the CONTRACTOR such sales price for the PRODUCTS/SERVICES and CONTRACTOR's commission rate. Fifty percent (50%) of all such commissions charged on the sale of PRODUCTS/SERVICES through the CONTRACTOR's efforts shall be deemed earned and payable to CONTRACTOR as more specifically set forth in Article IV of the Agreement.

PRINCIPAL: H. P. Technologies, Inc.

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

SCHEDULE 1

Note to contractor:

[Describe the competitive products or services that the Contractor currently represents or promotes. There may be none, or the contractor may describe current agreements which it has with third parties through which it represents or promotes competitive products or services. If none, please indicate this here.]

PRINCIPAL: H. P. Technologies, Inc.

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

Exhibit 3

Energy Deals Contractor Agreement

INDEPENDENT SALES CONTRACTOR'S AGREEMENT

This Agreement is made and entered into at Avon, Ohio, this 30th day of November, 2015 by and between:

Energy Deals, LLC (an Ohio limited liability company)
33648 St. Francis Drive
Avon, OH 44011
(herein called "PRINCIPAL")

And

Ryan E. Boucher
320 Marsh Marigold Road
Kennerdell, PA. 16374
(herein called "CONTRACTOR")

WITNESSETH:

WHEREAS, PRINCIPAL desires to appoint a sales representative, on a non-exclusive basis, for its PRODUCTS/SERVICES within a specified TERRITORY; and

WHEREAS, CONTRACTOR is desirous of acting, on a non-exclusive basis, as a sales representative for PRINCIPAL within the TERRITORY; and

WHEREAS, PRINCIPAL and CONTRACTOR desire to memorialize the terms and provisions of CONTRACTOR'S relationship with PRINCIPAL.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth it is hereby agreed between the parties as follows:

ARTICLE 1. DEFINITIONS. As used herein the words capitalized in this Article shall have the meaning or identity set forth after each word:

A. AGREEMENT: This Independent Sales Contractor's Agreement.

B. ORIGINAL TERM: The two (2) year period of time commencing on November 30, 2015 (the "COMMENCEMENT DATE") and expiring on November 30, 2017 (the "EXPIRATION DATE").

C. PRODUCTS/SERVICES: Those products supplied, delivered or furnished and/or services rendered by PRINCIPAL to its customers or clients by and through the PRINCIPAL WEBSITE in connection with PRINCIPAL'S normal, customary and usual course of business and as specifically set forth on Exhibit "A".

D. TERRITORY: The area assigned by PRINCIPAL to CONTRACTOR from time to time as indicated and more fully defined on Exhibit "B", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

E. ACCOUNTS: All clients, customers or accounts of CONTRACTOR or assigned to CONTRACTOR by PRINCIPAL within the TERRITORY from the COMMENCEMENT DATE

of this AGREEMENT through the effective date of termination of this AGREEMENT.

F. PRINCIPAL WEBSITE: The website of PRINCIPAL through which PRODUCTS/SERVICES are offered and sold, and currently bearing the URL: http://www.energypricechoice.com, which may be modified from time to time in the sole discretion of PRINCIPAL.

ARTICLE 2. GRANT OF REPRESENTATION. PRINCIPAL does hereby grant and give to CONTRACTOR and CONTRACTOR does hereby accept from PRINCIPAL the right to act, on a non-exclusive basis, as a sales representative for PRINCIPAL in the TERRITORY for the PRODUCTS/SERVICES upon the agreements, conditions, covenants and provisions hereof.

ARTICLE 3. TERM.

A. The ORIGINAL TERM of this AGREEMENT shall commence on the COMMENCEMENT DATE and end on the EXPIRATION DATE, unless earlier terminated as provided herein.

B. The ORIGINAL TERM of this Agreement shall automatically extend for successive one (1) year renewal terms (each, a “RENEWAL TERM”) unless either party, in its discretion, elects to terminate this AGREEMENT by giving notice in writing to the other party no less than thirty (30) days prior to the end of the ORIGINAL TERM or the then current RENEWAL TERM, in which case this AGREEMENT shall terminate at the end of the then-current term, unless otherwise earlier terminated as hereinafter provided.

ARTICLE 4. COMPENSATION.

A. CONTRACTOR’S compensation shall be in the form of commissions earned by the CONTRACTOR on the sale(s) of PRODUCTS/SERVICES through the CONTRACTOR’S WEBSITE (defined herein).

B. Contractor’s commissions shall be computed as specifically set forth on Exhibit "C", as may be adjusted from time to time by the mutual, written agreement of the parties hereto.

C. Contractor’s commissions shall be deemed to have been earned by CONTRACTOR based on the actual commissions received by PRINCIPAL from any ACCOUNTS.

D. CONTRACTOR’S earned commissions shall be paid by PRINCIPAL on the first business day of the month following PRINCIPAL’s receipt of payment of the commission.

E. In the event that PRINCIPAL is back-charged and/or has paid CONTRACTOR more money than earned on commissions actually received by PRINCIPAL, CONTRACTOR shall repay such overpayment within thirty (30) days of request by PRINCIPAL or PRINCIPAL may deduct such overpayment amount from any amount due CONTRACTOR hereunder.

ARTICLE 5. PRINCIPAL'S OBLIGATIONS.

PRINCIPAL shall:

A. issue to CONTRACTOR a unique URL (web address) (the “CONTRACTOR’s WEBSITE”) that will establish a link from the CONTRACTOR’S WEBSITE to the PRINCIPAL website.

B. submit to CONTRACTOR, as soon as practicable, copies of all correspondence, quotations, and/or other communications received by or sent from PRINCIPAL to ACCOUNTS;

C. be solely responsible for and endure any and all expense(s) for supplying, producing and/or shipping the PRODUCTS/SERVICES to ACCOUNTS under this AGREEMENT and no such expense(s) shall be charged to CONTRACTOR;

D. at PRINCIPAL'S sole cost and expense, pass on the credit of any customer, prospective or current, and be responsible for the collection of all invoices and charges to its customers and no collection expense(s) shall be charged to or offset against CONTRACTOR'S commissions;

E. at CONTRACTOR’s sole cost and expense, supply to CONTRACTOR PRINCIPAL'S artwork and other such material required for producing or re-producing advertising and sales literature for CONTRACTOR to promote the sales of the PRODUCTS/SERVICES; and

F. supply to CONTRACTOR, a monthly report of sales commissions earned for each supplier, commission rates, and their respective computations in a form representative of what the supplier presents to the PRINCIPAL.

ARTICLE 6. RIGHTS RESERVED BY PRINCIPAL. In addition to all other rights of PRINCIPAL hereunder and without intent to limit any rights of PRINCIPAL not otherwise set forth herein, PRINCIPAL specifically reserves unto itself, in its sole discretion and from time to time, the right:

A. to establish prices for all PRODUCTS/SERVICES; any changes in prices shall be communicated as soon as practical to CONTRACTOR including in such notification the effective date(s) of such price change(s); and

B. to establish any terms of payment, and all other terms and/or conditions to which all sales of PRODUCTS/SERVICES are subject; terms and conditions shall be set forth on PRINCIPAL'S order acknowledgment form or other official correspondence.

ARTICLE 7. CONTRACTOR'S OBLIGATIONS. CONTRACTOR shall:

A. throughout the ORIGINAL TERM and any RENEWAL TERM of this AGREEMENT, use CONTRACTOR'S best efforts in promoting the PRODUCTS/SERVICES, and with the prior approval of PRINCIPAL and at CONTRACTOR'S sole cost and expense, to employ or engage all such persons and/or sub-agents as CONTRACTOR deems necessary for the performance of CONTRACTOR'S obligations hereunder.

B. have no authority to bind PRINCIPAL in any manner or cause whatsoever, without the prior written consent of PRINCIPAL;

C. not use the PRINCIPAL'S name in any way, not specifically authorized by this AGREEMENT;

D. carry full liability insurance with limits of not less than $500,000 combined single limit or $250,000/$500,000/$50,000 split limits on any and all automobiles, trucks, and/or other equipment utilized by CONTRACTOR in connection with CONTRACTOR'S responsibilities hereunder and save PRINCIPAL harmless from liability as a result thereof; and

E. be fully responsible for all expense(s) incurred in the operation of CONTRACTOR'S business activity and indemnify and save harmless PRINCIPAL from any and all fines, claims, demands, damages and/or causes of actions of any kind or nature arising out of CONTRACTOR'S business activities.

ARTICLE 8. WARRANTIES. CONTRACTOR shall not make any warranties, express or implied, on behalf of PRINCIPAL concerning the PRODUCTS/SERVICES without the prior express written consent of PRINCIPAL in each specific instance and PRINCIPAL shall not be liable for any such unauthorized representation(s) made by CONTRACTOR without such prior authorization.

ARTICLE 9. CONTRACTOR RESTRICTIONS.

A. NONCOMPETITION. Except as set forth on Schedule "1" attached hereto, CONTRACTOR represents and warrants that he/she/it does not currently represent or promote any products or services that compete with the PRODUCTS/SERVICES. During the ORIGINAL TERM of this AGREEMENT or any RENEWAL TERM hereof, CONTRACTOR shall not represent, promote, or otherwise sell within the TERRITORY any products or services that, in the reasonable judgment of the PRINCIPAL, compete with the PRODUCTS/SERVICES, except as set forth on Schedule "1". CONTRACTOR shall provide PRINCIPAL with a list of the customers and products and/or services that it currently represents and shall notify PRINCIPAL in writing of any new customers and products and/or services at such time as its promotion of same commences.

B. NONSOLICITATION. For a period of one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall refrain from and will not, directly or indirectly, as an independent contractor, employee, consultant, agent, partner, joint venture, shareholder or otherwise, contact, solicit, divert or take away or attempt to contact, solicit, divert or take away any ACCOUNT served by CONTRACTOR or whose names and/or addresses have become known to CONTRACTOR during the term of this Agreement or any predecessor agreement between the parties. Further, during the one (1) year following the expiration or termination of this Agreement, CONTRACTOR shall neither solicit, divert, take away or attempt to solicit, divert or take away any of the employees, sales representatives or agents of PRINCIPAL who at the time of the expiration or termination are employees, sales representatives or agents of PRINCIPAL, or who served in such capacity at any time within six (6) months prior to such expiration or termination.

C. EXTENSION OF TIME. The period of time during which CONTRACTOR is prohibited from engaging in such business practices pursuant to this Article 9 shall be extended by any length of time during which CONTRACTOR is in breach of this Agreement.

D. INDEPENDENT COVENANTS. Each restrictive covenant set forth in this Article 9 shall be construed as an agreement independent of any other provision in this AGREEMENT. The existence of any claim or cause of action of CONTRACTOR against PRINCIPAL, whether predicated on this AGREEMENT or otherwise, shall not constitute a defense to the enforcement

by PRINCIPAL of such covenants.

E. SEVERABILITY. If any portion of the covenants set forth in this Article 9 is held to be unreasonable, unenforceable, arbitrary or against public policy, then such portion of such covenant shall be considered severable as to time, geographical area and prohibited activities. PRINCIPAL and CONTRACTOR agree that if any court of competent jurisdiction determines the specified time period, the specified geographical area or specified prohibited activities applicable to this Article 9 is to be unreasonable, arbitrary or against public policy, then a lesser time period, geographical area or prohibited activities which is determined to be reasonable, non-arbitrary and not against public policy may be enforced against CONTRACTOR. PRINCIPAL and CONTRACTOR agree that the foregoing covenants are appropriate and reasonable when considered in light of the nature and extent of the business conducted by PRINCIPAL.

F. REMEDIES FOR BREACH. CONTRACTOR acknowledges that irreparable injury will result from the violation of this Article 9. CONTRACTOR expressly agrees that PRINCIPAL, in the event of any violation of this Article 9 by CONTRACTOR, shall be entitled to, in addition to damages and any other remedy provided by law, to an injunction or other equitable remedy respecting such violation or continued violation.

ARTICLE 10. TERMINATION.

A. During the ORIGINAL TERM or any RENEWAL TERM of this AGREEMENT, this AGREEMENT may be terminated by either party upon mutual agreement or in the event of a material breach of the terms hereof by giving the other party at least sixty (60) days written notice of such intent to terminate which notice shall be sent in accord with Article 16 hereof and shall set forth specifically the effective date of termination which shall be not less than sixty (60) days after the date of mailing of such notice. If any controversy or difference shall arise between the parties hereto with respect to the termination of this AGREEMENT or the rights, obligations or liabilities of the parties hereunder, then each and every such controversy or difference shall be first submitted to PRINCIPAL and both parties agree to attempt to settle the dispute amicably not less than 15 days prior to the effective date of termination. Written correspondence is recommended to document the controversy or difference.

B. Upon termination of this AGREEMENT, this AGREEMENT and the rights and/or obligations imposed upon either party hereunder shall terminate as of the effective date set forth in the notice required to be given thereunder **EXCEPT** for the obligations of the parties as specified in Articles 11 and 12 hereof.

C. At any time during the ORIGINAL TERM or any RENEWAL TERM, this AGREEMENT shall terminate immediately, without action by either party:

1. upon the filing by or against either party of any proceeding in bankruptcy;

2. if either party shall make an assignment for the benefit of creditors;

3. if a temporary or permanent receiver or trustee is appointed by a court over the assets of either party and such receiver or trustee is not removed within sixty (60) days of the date of such appointment;

4. if either party shall compound or compromise his or its debts; or

5. if any execution or attachment shall issue against either party or any of his/her or its assets.

Under any of the aforementioned circumstances, all of the rights and/or obligations imposed on either party by the provisions of this AGREEMENT shall immediately terminate **EXCEPT** for the obligation of PRINCIPAL to pay all earned commissions to CONTRACTOR.

ARTICLE 11. PRINCIPAL'S RIGHTS UPON TERMINATION. PRINCIPAL shall be entitled to receive from CONTRACTOR immediately upon the termination of this AGREEMENT, for any reason whatsoever, a full and complete accounting of all outstanding quotations or leads as well as any and all personal property of PRINCIPAL, samples, literature, sales manuals and the like. CONTRACTOR agrees to immediately cease using, directly or indirectly, the trademarks/trade names, sales literature, calling cards and/or any other items, tangible or intangible, of PRINCIPAL and CONTRACTOR shall immediately return to PRINCIPAL all items and such personal property in CONTRACTOR'S possession.

ARTICLE 12. CONTRACTOR'S RIGHTS UPON TERMINATION. CONTRACTOR shall be entitled to all earned commissions.

ARTICLE 13. ORDERS BINDING ON PRINCIPAL. PRINCIPAL and the entities it represents shall have the sole right of credit approval or refusal on all contracts received by it. CONTRACTOR shall advise and cooperate with PRINCIPAL and the companies it represents in such credit matters but CONTRACTOR shall have no responsibility or liability therefor.

ARTICLE 14. CONTRACTOR NOT AN EMPLOYEE. This AGREEMENT shall not be construed or interpreted so as to constitute CONTRACTOR or any of CONTRACTOR'S employees, agents or representatives as an agent, partner, joint venture, employee and/or legal representative of PRINCIPAL for any purpose whatsoever. CONTRACTOR is to act at all times as an independent operator. CONTRACTOR shall assume full responsibility for its own account and for all its employees, if any, under the Internal Revenue Code (and regulations promulgated thereunder), Social Security Act, Fair Labor Standards Act, state unemployment compensation acts, workers compensation acts, minimum wage laws and other similar laws, rules and regulations. CONTRACTOR shall comply with all state, provincial, federal and other laws of the United States as they pertain to the performance of CONTRACTOR'S obligations under this AGREEMENT. CONTRACTOR will determine its own working hours as it chooses, and conduct its activities and those of its employees as it sees fit without supervision or direction from PRINCIPAL.

ARTICLE 15. MARKETING. All marketing materials used by CONTRACTOR that specifically use any trademarks, trade names, logos, or other direct reference to PRINCIPAL or PRINCIPAL'S copyrighted materials must be preapproved by PRINCIPAL. An email shall be deemed sufficient notice of preapproval.

ARTICLE 16. NOTICE. Wherever notice is required under this AGREEMENT it shall be made in writing, mailed certified or registered with a return receipt and sent to the address of the party who is to receive such notice at his or its address as set forth herein. Any notice given hereunder shall be deemed to be effective when mailed, provided that it is not thereafter returned to the sender as undeliverable as addressed. The address of either party may change from time to time and notice thereof shall be given to the other as required herein.

ARTICLE 17. USE OF TERMS. Wherever a singular word is used in this AGREEMENT, it shall be considered as meaning the plural where applicable and wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all persons and corporations designated respectively as PRINCIPAL or CONTRACTOR in the heading of this instrument wherever the context requires.

ARTICLE 18. EXHIBITS. All exhibits whether original or modified and attached to this AGREEMENT are a part of this AGREEMENT as though fully written herein.

ARTICLE 19. APPLICABLE LAW. This AGREEMENT shall be construed and interpreted under and in accordance with the laws of the State of Ohio.

ARTICLE 20. LEGAL CONSTRUCTION. In case any one or more of the provisions contained in this AGREEMENT shall be held for any reason to be invalid, illegal or un-enforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provisions hereof and this AGREEMENT shall be construed as if such invalid, illegal or un-enforceable provisions had never been contained herein.

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ARTICLE 25. LEGAL CONSEQUENCES FULLY UNDERSTOOD. CONTRACTOR and PRINCIPAL acknowledge that they have thoroughly read and examined this AGREEMENT, that any questions pertaining thereto have been fully and adequately answered and that each fully understands the meaning, effect and legal consequences of this AGREEMENT.

ARTICLE 26. ARBITRATION OF DISPUTES. If any controversy or difference shall arise between the parties hereto with respect to the interpretation, compliance or effect of this AGREEMENT or the rights, obligations or liabilities of the parties hereunder, then each and every such controversy or difference shall be submitted to and settled by binding arbitration before, and in accordance with, the Commercial Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof; provided, however, that this clause shall not be construed to limit any rights which PRINCIPAL may have to apply to any court of competent jurisdiction for injunctive or other equitable relief. An arbitration board of no more than three (3) shall be utilized with one arbitrator to be selected by each party hereto and the third member to be selected by the two arbitrators so designated. All arbitration hearings shall be held in the City of Cleveland, Ohio.

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IN WITNESS WHEREOF, the parties have executed this Independent Sales Contractor's Agreement as of the date first written above.

PRINCIPAL: ENERGY DEALS, LLC

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT “A”

PRODUCTS AND SERVICES

NATURAL GAS SALES
ELECTRICITY SALES

PRINCIPAL: ENERGY DEALS, LLC

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT “B”

TERRITORY

Those states in the United States where electricity and natural gas are deregulated and PRINCIPAL is licensed, provided such license is required.

PRINCIPAL: ENERGY DEALS, LLC

Sign:_____

Print: Dennis J. Giancola

Title: President

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

EXHIBIT C

COMMISSIONS

The CONTRACTOR, by and through the CONTRACTOR'S WEBSITE, shall determine the commission to be charged on the sale of PRODUCTS/SERVICES through the CONTRACTOR'S WEBSITE, provided, however, such commission shall not exceed the maximum amount permitted by PRINCIPAL or a supplier. Fifty percent (50%) of all such commissions charged on the sale of PRODUCTS/SERVICES through the CONTRACTOR'S WEBSITE shall be deemed earned and payable to CONTRACTOR as more specifically set forth in Article IV of the Agreement.

PRINCIPAL: ENERGY DEALS, LLC

Sign:_____

Print: Dennis J. Giancola

Title: Member

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

SCHEDULE 1

Note to contractor:

[Describe the competitive products or services that the Contractor currently represents or promotes. There may be none, or the contractor may describe current agreements which it has with third parties through which it represents or promotes competitive products or services. If none, please indicate this here.]

PRINCIPAL: ENERGY DEALS, LLC

Sign:_____

Print: Dennis J. Giancola

Title: Member

Date:_____

CONTRACTOR:

Sign: Ryan Boucher

Print: Ryan Boucher

Title: Director of Business Development

Date: 11/23/2015

Exhibit 4

Innovest Global Press Release

Innovest Global, Inc. Acquires H.P. Technologies, Industry Icon Dennis Giancola Joins Energy Team

Email | Print Friendly | Share

March 22, 2018 12:45 ET | **Source:** Innovest Global, Inc

CLEVELAND, March 22, 2018 (GLOBE NEWSWIRE) -- Today, at 11:47 AM, Innovest Global, Inc. (OTC PINK:IVST) closed the acquisition of **H.P. Technologies**, an Energy business producing $1.2 million in residual revenue annually.

Most importantly, industry pioneer Dennis Giancola, H.P.'s owner, is joining the Innovest Energy team. Dennis was Ohio's first independent commercial energy broker. He is a Board Member of **Energy Professionals of Ohio**. His background is in energy efficiency, and H.P. is licensed for both gas and electric in ALL deregulated states. "The respect that Dennis has earned within our industry and among his peers, is without equal," said Division President, Damon Mintz. "He is exactly the person we need, to take full advantage of the opportunities before us."

Mr. Giancola is equally enthusiastic. "This is an unprecedented time of opportunity in the Energy business," he said. "I'm determined and frankly, fired-up, to be part of a team that is so focused, and so well equipped to go after it." The immediate integration is designed to result in a significant increase in synergistic sales, which would result in both revenue growth and profit. Additionally, it is the first acquisition by Innovest which results in a direct expansion of one of its primary current offerings.

Innovest's Commercial and Industrial Division has acquired the full service procurement business and it increases baseline quarterly revenue forecast for the division to $800,000. H.P. Technologies features more than 300 commercial and industrial clients, which Innovest Energy Group will immediately access for synergistic sales of lighting and efficiency solutions. Its location on the West Side of Cleveland is ideal, and represents a perfect geographic expansion to the current East Side operation of Shepherd Energy, Innovest's first Energy Group acquisition.

Mr. Giancola is equally enthusiastic. “This is an unprecedented time of opportunity in the Energy business,” he said. “I’m determined and frankly, fired-up, to be part of a team that is so focused, and so well equipped to go after it.” The immediate integration is designed to result in a significant increase in synergistic sales, which would result in both revenue growth and profit. Additionally, it is the first acquisition by Innovest which results in a direct expansion of one of its primary current offerings.

It has been a busy month at Innovest, for both the Commercial & Industrial Division, and the forthcoming Biotechnology & Health Sciences Division. Look for much more information to come soon. As noted consistently, the company will increasingly use Twitter, which can be accessed both on Twitter @innovestglobal and on the front page of our website **www.innovestglobal.com**, for important company updates. This includes information that may be material, so please follow us and visit our website regularly! For more information on Innovest contact **info@innovestglobal.com**, or call Innovest investor Relations Matt Rego at 216.815.1122.

http://www.innovestglobal.com

Safe Harbor Statement: This news release contains "forward-looking statements", which are statements that are not purely historical and include any statements regarding beliefs, plans, expectations or intentions regarding the future. Such forward-looking statements include, among other things, the development, costs and results of new business opportunities. Actual results could differ from those projected in any forward-looking statements due to numerous factors. Such factors include, among others, the inherent uncertainties associated with new projects and development stage companies. These forward-looking statements are made as of the date of this news release, and we assume no obligation to update the forward-looking statements, or to update the reasons why actual results could differ from those projected in the forward-looking statements. Although we believe that any beliefs, plans, expectations and intentions contained in this press release are reasonable, there can be no assurance that any such beliefs, plans, expectations or intentions will prove to be accurate. Investors should consult all of the information set forth herein and should also refer to the risk factors disclosure outlined in our annual report on Form 10-K for the most recent fiscal year, our quarterly reports on Form 10-Q and other periodic reports filed from time-to-time with the Securities and Exchange Commission.

For more information on Innovest Investor Relations, Spotlight Growth, please visit **http://www.SpotlightGrowth.com** and **http://www.Corporate.SpotlightGrowth.com**.

You can also follow on social media:
Innovest Twitter: **https://twitter.com/InnovestGlobal**
Spotlight Growth Twitter: **https://twitter.com/SpotlightGrowth**
Spotlight Growth Facebook: **https://facebook.com/Spotlight-Growth-103630363712364/**
Spotlight Growth LinkedIn: **https://www.linkedin.com/in/spotlight-growth-732ba1147**
Spotlight Growth Instagram: **https://www.instagram.com/spotlight_growth/**

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- Legal

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Exhibit 5

H.P. Termination Letter

H.P. TECHNOLOGIES, INC.

5505 Detroit Rd. Suite E
Sheffield Village, OH 44054
PH: 440-937-7937
FAX: 440-536-9553
email: dennis@utility-savings.net
www.utility-savings.net

June 21, 2018

Ryan E. Boucher
320 Marsh Marigold Road
Kennerdell, PA 16374

Dear Ryan,

The purpose of this letter is to provide you with 60 days' notice of termination, as specified in Article 10 of H. P. Technologies, Inc.'s Independent Sales Contractor's Agreement (ISCA) dated and signed by you on November 23, 2015.

Your actions indicate that you are knowingly and purposefully in violation of Article 9A, Article 9B and most likely Schedule 1.

In accordance with Article 16 of the aforementioned ISCA, this letter will be mailed certified or registered with a return receipt and sent to your address of record listed above. The letter is deemed to be effective when mailed. For expediency, a copy will be emailed to you and an acknowledgement receipt is requested.

Regards,

Dennis J. Giancola

Dennis J. Giancola, President

Exhibit 6

MSI Contractor Agreement

Sales Agency Agreement

This agreement is made and entered into this _8___ day of ____June__, 2018_ by and between **MSI Utilities, Inc.**, an Ohio corporation (Company) and **Energy Solution Consulting LLC, an Ohio limited liability company** (Agent), who agree as follows:

Recitals

A. The Company is in the business of selling electric, natural gas and propane savings throughout the United States, and

B. Agent is experienced or has skills applicable in this area of independent sales and marketing of electric and natural gas savings, and

C. Agent represents and warrants to Company that it is not a party to any agreement, oral or written, which would prevent Agent from faithful performance of its duties hereunder, including without limitation any covenant to not compete or solicit, and

D. Each party hereto wishes to enter into this Agreement for their mutual benefit,

Terms of Agreement

The parties acknowledge and incorporate the foregoing Recitals, and in consideration of the covenants, terms and conditions herein, the sufficiency of which is acknowledged, hereby agree as follows:

1. **Definitions**:

(a) "Agent" means the individual who has signed this Sales Agency Agreement.

(b) "Company" means MSI Utilities, Inc., an Ohio corporation, and its successors and assigns.

(c) "Conflicting Product" means any product, product line or service, which is similar or performs in a similar manner to any product, product line or service (including any component thereof or research to develop information with respect to a product, product line or service) that is being marketed, produced, sold or developed by the Company or with respect to which the Company has acquired or developed confidential information,

which it intends to use or is using in the marketing or sale of a Product.

(d) "Contract" means an order, contract or nomination, solicited by Agent, for the sale of electric, natural gas and propane savings or other service to a customer to whom the Company has not sold or provided electric, natural gas, propane savings or other service within the preceding twelve (12) months and which the Company has accepted in writing, or the renewal thereof.

(e) "Customer" means an individual or entity that becomes a new customer of the Company as a result of Agent's performance under this Agreement.

(f) "Mark" means any and all of the names, service marks, brands, trademarks or other marks or features associated with or property of the Company.

(g) "Product" means the natural gas and/or electric product, product line or service (including any component there of or research to develop information with respect to a product, product line or service) set forth on Exhibit A that is being marketed, sold or developed by the Company or with respect to which the Company has acquired or developed confidential information which it intends to use or is using in the marketing or sale of a product, product line or service.

(h) "Supplier" means each Company's vendor which supplies each Product.

2. **Appointment**: Company hereby appoints Agent as a sales representative to develop market and sell the Products of the Company in accordance with this Agreement and Exhibits A and B attached hereto and incorporated herein. Agent hereby accepts such appointment and shall perform marketing and sales services on behalf of the Company as a sales representative. Agent shall conduct all affairs and services in compliance with this Agreement and all policies and procedures of the Company as communicated to Agent from time to time.

3. **Territory**: Agent shall sell and market the Product only in the territory described in Exhibit A (the "Territory"). Nothing herein shall be deemed to provide any exclusive territory rights to Agent, and Company may appoint other Agents for the Territory, in its sole discretion.

4. **Duties and Authority**: Agent hereby accepts the marketing and sales duties as directed by the Company or contained in any published policies and procedures of the Company, as may be amended from time to time, in the sole discretion of the Company. Agent shall devote such time as is necessary and use its best efforts to perform its duties hereunder. Prices, terms and conditions of sales of the Products and applicable warranties will be established by the suppliers or providers thereof and both MSI and Agent agree to accept and abide by the same. Agent shall promptly forward all Contracts to an authorized officer of the Company for approval. No contract shall be binding upon the Company until accepted by Company in writing signed by an authorized executive officer, and accepted in writing by the Supplier(s) of the contracted Product. Company reserves the right to reject any Contract after acceptance. Agent shall perform account management responsibilities to maintain each account and use best reasonable efforts to renew

each Contract. These responsibilities include, visiting or telephoning the Customer three times each calendar year, or as requested by the Company, and acting in a manner consistent with the Agent's role. Agent shall promptly address and resolve all customer complaints, questions, and concerns, and exercise its best efforts to maintain customer goodwill with Company, including engaging in such "trouble shooting" and customer service and communications as appropriate or directed by Company to ensure customer satisfaction. Agent shall maintain records of such contacts. Agent shall not market or sell new Products developed by the Company or proposed by Agent without the express written approval of the Company. It is expressly agreed and understood that Agent has no Agent authority to act for or on behalf of Company or bind Company to any contract or agreement and Agent shall make no representation or assertions that he has such authority or any other authority not granted herein. Agent's authority is strictly limited to that expressly granted herein.

5. **Compensation**: With respect to each Contract secured by Agent and accepted by Company, Company shall compensate Agent in accordance with Exhibit A. Such commission shall be paid to Agent within two (2) weeks following Company's receipt of payment from the Supplier. The payment of the commissions under this section shall be the sole and exclusive consideration payable by Company to Agent and Agent shall not be entitled to any salary, wages, bonus, pension, reimbursement for expenses, or any other remuneration from Company. Company reserves the right to change Exhibit A in its sole discretion upon 30 days prior notice to Agent.

6. **Term of Agreement**: Agent's engagement shall be "at will," and no term is created or shall be inferred hereby.

7. **Termination**: Agent's engagement may be terminated as follows: (i) by either the Company or Agent on 30 days prior written notice to the other, with or without cause or reason; (ii) by the Company upon Agent's death or disability; or (iii) immediately by the Company at any time if: (a) it is necessary in the Company's judgment to protect its business or good name, (b) Agent breaches any of its duties hereunder, or (c) any representation or warranty of Agent herein is not true at any time, (d) Agent fails to comply with any directive, policy or procedure of Company, (e) Agent (i) petitions any Court for bankruptcy or creditor's composition, (ii) attempts liquidation, or (iii) makes any assignment for the benefit of creditors, (f) Company reasonably believes that the Agent has committed acts of fraud, misconduct, disobedience or entered into an illegal transaction; (f) Agent is convicted of or pleads no contest or the equivalent to a crime involving theft, embezzlement, or any act of moral turpitude, in Company's judgment and in its sole discretion; or, (g) the Company discontinues selling the Product. Upon termination of this Agreement, Agent will be paid for the Contracts solicited and signed by Agent and accepted by Company prior to such termination. The payment of such commissions shall be regulated by Exhibit A The Company shall have the right, upon termination, to apply any unpaid commissions to damages it suffered as a result of Agent's acts or omissions.

8. **Independent Contractor Status:**

(a) Status and Authority. Agent is engaged hereunder solely as an independent contractor and not as an agent, partner or otherwise of Company, and no employment, partnership or other relationship is created hereby or should be inferred herefrom. Agent has no authority, actual, apparent, or implied, to act for or on behalf of the other or to bind Company to any third party or other contract, in any manner, without the express written approval of an authorized officer of the Company. Agent must not make any representation to anyone concerning his authority which is inconsistent with this Section 8.

(b) Costs and Expenses. All costs and expenses of such services performed by Agent and incurred by him in the performance of his duties hereunder are the sole responsibility of Agent, who must timely and fully pay the same. Agent shall pay all expenses related to its administration, processing and completion of all contracts. Agent shall pay all of its own expenses required to obtain contracts and to provide a place of business. The Company shall pay all expenses related to its administration, processing and completion of all submitted Contracts. Agent will be responsible for maintaining in full force during the term, and paying all costs and expenses of, all licenses and permits required to perform his obligations hereunder. Agent must pay all federal, state and local income taxes, all unemployment taxes, FICA, workers' compensation, and any and all other taxes on income from services performed pursuant to this Agreement, and applicable to his business.

9. **Trademarks, Service Marks and Trade Names:** The Product shall be marked and sold under the Company's Suppliers' trademarks or service marks ("Marks"). Agents shall not display or use any Company, or Company's' Supplier Marks, and shall not permit the same to be displayed or used by third parties, other than in connection with the sale, distribution or promotion of the Product. Agent shall not use any part of Company or Supplier's Marks as part of its own name, service mark or trademark, or in any other manner. Nothing in this Agreement constitutes the grant of a general license for use of Company's or any Supplier's marks by Agent. Upon termination of the Agreement all rights of Agent to use Company's material shall expire, and Agent shall immediately discontinue the use thereof. Agent shall immediately report to Company any misuse, misappropriation, or infringement of any of Company's or a Supplier's Marks.

10. **Promotional Material:** The Company will provide its Suppliers' standard promotional material for use in promoting the Services. Agent shall not use any other promotional material without obtaining the Company's prior written approval.

11. **Unenforceability:** In the event that any covenant of Agent set forth herein shall be determined by a court of competent jurisdiction to be unenforceable for any reason, such covenant shall be interpreted to extend over the maximum geographic area, period of time, range of activities or other restrictions as to which they may be enforceable.

12. **Restrictive Covenants:**

(a) Nonsolicitation. Agent agrees that it will not, during the term of this Agreement and for a period of one (1) year following the termination of this Agreement for any cause whatsoever: (a) other than mutual customers brought to the Company by

Agent, solicit, divert, take away, or attempt to take away the business or patronage of any of the Company's customers or clients, or prospective customers or Clients or communicate, advise or consult with, write or respond to or approach any of such customers or clients; or (b) induce or attempt to induce any employee or agent of the Company to leave the Company's employ, or employ or engage such person to act, directly or indirectly, as an independent contractor for Agent.

(b) Confidentiality. Agent shall not at any time or in any manner, either directly or indirectly, divulge or disclose or communicate to any person, firm, corporation, partnership, or other business enterprise in any manner whatsoever any information concerning any confidential matters affecting or relating to the business of the Company, including without limitation, data, figures, formulas, specifications, names, addresses or phone numbers of Customers, Customer files, names, addresses or phone numbers of Company's suppliers, the price Company obtains or has obtained from the sale of or at which Company sells or has sold the Products, sales reports, sales records, financial information, price sheets, price discount sheets, sales tools or other information related to business strategies, research, development, marketing strategies, merchandising selling, any information concerning the business of Company, its manner of operation, its plans or processes and information received by the Company from third parties in confidence or subject to nondisclosure or similar covenants (collectively, the "Confidential information"). Company shall retain title to all confidential information including confidential information disclosed to Agent in connection with the performance of its duties hereunder. Upon request or upon the termination of this agreement, whichever is sooner, all such confidential information, whether prepared by Agent or others, shall be promptly returned to the Company. Agent expressly stipulates that such Confidential information is important to the Company and materially effects the successful conduct of it business and that any breach of the terms of this paragraph shall be a material breach of this Agreement.

(c) Remedies for Breach. The parties agree Agent's breach of this Section 12 will cause irreparable damage to the Company, the extent of which may be difficult to ascertain, and that the monetary award of damages may not be adequate relief. Therefore, Agent agrees that, in the event of a breach or a threatened breach of its covenants, the Company may obtain such equitable relief as may be necessary to protect the Company, including, but not limited to injunctive relief. In addition, the Company may institute an action to compel the specific performance of such covenant, and that such remedy shall be cumulative, not exclusive, and in addition to any other available remedies, including without limitation monetary damages.

14. **Miscellaneous:**

(a) Entire Agreement: This Agreement, including Exhibits A and B, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all other agreements, oral or written between the parties. This Agreement may not be amended, modified or in any manner changed without the express written consent of all parties hereto. Notwithstanding the forgoing, (i) the Company in its

sole discretion may amend the Exhibits attached hereto, from time to time, and such Exhibits as amended shall be incorporated herein and made a part of the Agreement; and (ii) the Company may adopt, revise, enact and terminate any of its policies and procedures, and compensation payable to Agent for its services, from time to time in its sole discretion and the same shall be deemed incorporated herein.

(b) No Assignment. This Agreement is personal to Agent and may not be assigned, or transferred by Agent without the express written consent of the Company.

(c) Notices. All notices required herein shall be in writing and shall be delivered to the addresses set forth in this Agreement, or at such other address as may have been furnished in writing by such party to the other party.

(d) Severability. Any portion of this Agreement, which may be deemed to be unenforceable or illegal shall not affect the enforceability or legality of the remaining clauses, terms and conditions.

(e) Waiver. The failure of any party hereto to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the terms and conditions as contained herein.

(f) Governing Law: Jurisdiction. The laws of the State of Ohio shall govern the interpretation and enforcement of this Agreement. Any action to enforce this Agreement in any manner or arising out of this Agreement between the parties shall be exclusively within the jurisdiction and be venued by the federal and state courts located in Franklin County, Ohio. Both parties consent to jurisdiction and venue before the Federal and State Courts located in Franklin County, Ohio and waive any and all defenses and objections thereto.

(g) Indemnification. Agent shall indemnify and hold the Company harmless from (a) any and all liability, claims, expenses, damages and costs, from or in conjunction with the acts, errors, omissions, misrepresentations or default of Agent, (b) any and all losses and damages resulting from, relating or arising out of any misrepresentation or breach by Agent of any warranty, covenant or agreement made or contained in the Agreement; and (c) any and all actions, suits, proceeding, claims, demands, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and costs) incident to the foregoing.

[Remainder of page intentionally blank; signatures on following page]

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

COMPANY
MSI Utilities, INC.
2727 Tuller Pkwy., Ste. 250
Dublin, OH 43017

By: _____
Signature / Date

Name: Frank A Warner, CEO
Print Name

AGENT
Energy Solution Consulting LLC
2005 Presidential Pkwy U82
Twinsburg, OH 44087

6/8/18
Signature / Date

Ryan Boucher, President
Print Name

Fed. Id #/SSN: 82-5226171

EXHIBIT A

TERRITORY

Agent's sales territory (the "Territory") shall be all utility markets served by the Company outside the State of Ohio.

PRODUCT

The Product(s) to be sold by Agent under this Agreement is/are (check and initial all applicable):

✓ ☐ Natural gas

✓ ☐ Electricity

✓ ☐ Propane

✓ ☐ Energy Efficiency Products

COMMISSION

1) Natural Gas:
   i) All Natural Gas customer contracts submitted by Agent shall pay an ongoing residual payment equaling 75% of MSI's gross markup during the course of customer agreement, subject to payment by the customer.
   ii) Commission shall be paid monthly on or about the 20th day and be based on supplier payments as of the 15th day.

2) Electricity:
   i) All Electric customer contracts submitted by Agent shall pay an ongoing residual payment equaling 75% of MSI's gross markup during the course of customer agreement, subject to payment by the customer.
   ii) Commission shall be paid monthly on or about the 5th day and be based on supplier payments as of the 25th day.

3) Propane:
   i) All Propane customer contracts submitted by Agent shall pay an ongoing residual payment equaling 75% of MSI's gross markup during the course of customer agreement, subject to payment by the customer.
   Payments are made approx 45 days after the end of each quarter.

4) Energy Efficiency Products:
   i) All Energy Efficiency agreements submitted by Agent shall pay an ongoing residual payment equaling 75% (if agent facilitates sale) or 25% (if turned over on a referral basis) of MSI's gross markup during the course of the customer agreement <u>or</u> as a

one-time payment at the same percentage (depending on supplier arrangement), subject to payment by the customer.

This foregoing document was electronically filed with the Public Utilities

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in

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

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