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October 13, 2010

VIA FEDEX MAIL

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Re: Case No. 6-CA-36631
FirstEnergy Generation Corp. and
International Brotherhood of Electrical
Workers, Local Union No. 272, AFL-CIO

Dear Mr. Heltzer:

Enclosed are an original and eight copies of Respondent's Exceptions to the Decision of the Administrative Law Judge and an original and eight copies of Respondent's Brief in Support of these Exceptions. The General Counsel and Union were served this date via U.S. Regular Mail.

Thank you for your assistance in this matter.

Very truly yours,

JACKSON LEWIS LLP

James A. Prozzi

JAP/kmw
Enclosures

cc: Janice A. Sauchin, Esq. (via U.S. Regular Mail) (w/encl.)
Marianne Oliver, Esq. (via U.S. Regular Mail) (w/encl.)

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ORDER SECTION

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIRSTENERGY GENERATION CORP.	)	
	)	
	)	
and	)	Case No. 6-CA-36631
	)	
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 272, AFL-CIO	)	

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respondent, FirstEnergy Generation Corp., by and through its undersigned attorneys, pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, hereby files and respectfully requests the Board to consider the following Exceptions to Administrative Law Judge David I. Goldman's decision, which was issued on September 17, 2010:

1. **At page 1.**

The Administrative Law Judge's finding that as to active union-represented employees, the change in retiree benefits constituted a mandatory subject of bargaining as to which the employer failed to meet its statutory bargaining obligation, and that there was neither an established practice by the employer, nor waiver by the union, that excused the employees from bargaining over this matter.

2. **At page 10, line 52 and page 11, lines 1 through 3.**

The Administrative Law Judge's statement that assuming FirstEnergy had a duty to bargain over the subsidy, it violated Section 8(a)(5) of the Act by implementing the subsidy cap and refusing to bargain about it as part of negotiations.

3. **At page 12, lines 2 through 3.**

The Administrative Law Judge's conclusion that as to the union-represented current employees, FirstEnergy had a statutory duty to bargain over the change in the current employees' future retiree benefits.

4. **At page 12, lines 9 through 11.**

The Administrative Law Judge's conclusion that pursuant to Supreme Court and Board precedent, the Employer had a duty to bargain over the retiree program available to current employees, and that it is a mandatory subject of bargaining.

5. **At page 13, lines 14 through 16 and lines 26 and 27.**

The Administrative Law Judge's rejection of the Respondent's position and his conclusion that the change in retiree benefits implemented for current out-of-the-box retirees has in fact been implemented for union-represented active employees.

6. **At page 14, lines 9 through 12 and lines 14 through 28.**

The Administrative Law Judge's discussion of the Board's decision in Midwest Power Systems, Inc., 323 NLRB 404 (1997), and his conclusion that current employees have a direct interest in the subsidy cap.

7. **At page 14, lines 30 through 31.**

The Administrative Law Judge's conclusion that by implementing the subsidy cap and refusing to bargain, FirstEnergy violated Section 8(a)(1) and (5) of the Act.

8. **At page 15, lines 10 through 43.**

The Administrative Law Judge's discussion and conclusion that the Employer's affirmative defense must be rejected because it failed to demonstrate that the Union acquiesced in a practice of allowing FirstEnergy to make any changes it liked in retiree health care.

9. **At page 15, line 13 and line 20.**

The Administrative Law Judge's characterization of the changes made regarding retiree health care as minor changes.

10. **At page 15, lines 44 through 53.**

The Administrative Law Judge's discussion and conclusion that the disparate nature of the changes to the retiree health care program precludes establishment of a practice necessary to

show the change in the duration of the subsidy constituted a mere continuation of the status quo, as to which there is no duty to bargain.

11. At page 16, lines 1 through 34.

The Administrative Law Judge's discussion and conclusion that the Board's holding in Caterpillar, Inc. is dispositive of FirstEnergy's claim that its decision was a continuation of the status quo, about which it did not need to bargain.

12. At page 18, lines 1 through 29 and page 19, lines 1 through 15.

Exception is taken to all aspects of the Administrative Law Judge's recommended remedy.

13. At page 19, lines 19 through 45 and page 20, lines 1 through 29.

Exception is taken to all aspects of the Administrative Law Judge's recommended order.

Dated in Pittsburgh, Pennsylvania this 13th day of October, 2010.

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ATTORNEYS FOR RESPONDENT
FIRSTENERGY GENERATION CORP.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing Respondent's Exceptions to the Decision of Administrative Law Judge was forwarded this 13th day of October, 2010, upon the following:

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