

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio
Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company for Approval of a New
Rider and Revision of an Existing Rider.**

Case No. 10-176-EL-ATA

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**APPLICATION FOR REHEARING OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE TOLEDO EDISON COMPANY**

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THE TOLEDO EDISON COMPANY**

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Applicants Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “Companies”) hereby respectfully apply for rehearing of the Entry dated November 17, 2010 (“November 17 Entry”) (attached as Exhibit A), in which the Attorney Examiner granted intervention to Sue Steigerwald, Joan Heginbotham, Citizens for Keeping the All-Electric Promise and Bob Schmitt Homes, Inc. (collectively, the “Consumer Parties”). As demonstrated in the attached Memorandum in Support, the November 17 Entry was unlawfully contrary to the Commission’s rules and precedent because it granted intervention to the Consumer Parties, whose interests are adequately represented by the Office of the Ohio Consumers’ Counsel (“OCC”). Granting of intervention to the Consumer Parties also was unreasonable because: (1) the Consumer Parties cannot make a “significant contribution” to this proceeding; and (2) their participation has caused undue delay. *See* Rule 4901-1-11. The Companies therefore respectfully request that the Commission grant rehearing of the November 17 Entry and deny intervention to the Consumer Parties.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

In seeking intervention, the Consumer Parties made promises that they have not kept. Specifically, they made several representations regarding the purportedly unique expertise and facts they could contribute to this proceeding and potential differences between their interests and those represented by OCC. And on the basis of those potential differences and contributions, the Attorney Examiner granted intervention. *See* Nov. 17 Entry, ¶ 16.

But the Consumer Parties' representations are incorrect, the basis of the November 17 Entry is fundamentally flawed, and the Commission should grant rehearing to deny intervention to the Consumer Parties. First, the November 17 Entry is contrary to the Commission's rules and precedent regarding intervention. Under those rules, prospective parties whose interests are adequately represented by an existing party are not allowed to intervene in Commission proceedings. For this reason, the Commission has repeatedly denied intervention to individual customers in cases where OCC already is a party. *See* pp. 3-4, *infra*. By allowing the Consumer Parties to intervene here, the November 17 Entry ignored this overwhelming precedent.

Moreover, the sole stated basis for allowing that intervention is contradicted by the record. In seeking intervention, the Consumer Parties sketched a hypothetical scenario in which their interests may "at some point" diverge from those of OCC: an intra-class dispute between all-electric residential customers, who want all-electric discounts to continue, and general residential customers represented by OCC, who presumably do not want to pay for those on-going discounts. *See* p. 5, *infra*. Based only on this already-tenuous suggestion, the intervention was granted. *See* Nov. 17 Entry, ¶ 16.

But as the record shows, this alleged divergence of interests is illusory. OCC is not attempting to shift costs associated with on-going all-electric discounts to all-electric customers.

Rather, from the inception of this proceeding, OCC has forcefully and repeatedly argued that this burden be imposed on the Companies. *See* p. 6, *infra*. And in that respect—as in all others—OCC’s position is identical to that of the Consumer Parties. Because OCC adequately represents the Consumer Parties’ interests in this case, the November 17 Entry wrongly allowed the Consumer Parties to intervene.

Further, in seeking intervention, the Consumer Parties represented that, as parties, they would contribute unique expertise and facts that would facilitate the resolution of this proceeding, including their familiarity with “energy efficiency” and their knowledge of facts regarding the Companies’ alleged “marketing efforts” and “promises” regarding all-electric rates. (*See* Consumer Parties’ Mot. to Intervene dated June 2, 2010, p. 3.) But again, those representations have proven incorrect. As set forth below, the Companies recently propounded several discovery requests to the Consumer Parties asking for the facts and documents supporting those representations and allegations. Yet in response, the Consumer Parties identified no unique facts or documents supporting their allegations or their alleged unique expertise. *See* p. 8, *infra*. Instead, they pointed only to material that individual customers or businesses have filed in the docket or submitted at public hearings. This allows only one conclusion: in the most literal sense, the Consumer Parties have nothing to add to this case beyond what has been contributed by other customers. For this additional reason, their intervention should have been denied. *See* Rule 4901-1-11(B)(4).

Moreover, the Consumer Parties’ conduct in discovery has unduly delayed and distracted from hearing preparation. As set forth below, the Consumer Parties have failed to provide a single discovery response on time (an entire set of discovery is overdue and still outstanding). When those responses are provided—inevitably late and only after prompting by the

Companies—they are severely deficient. *See* p. 10, *infra*. This conduct unavoidably has led to motion practice. There is no sign that the Consumer Parties intend to comply fully with their discovery obligations. Because the Consumer Parties’ participation in this case has resulted (and will continue to result in) undue delay, with hearing less than two months away, their intervention should have been denied. *See* Rule 4901-1-11(B)(3).

For these reasons, the Commission should grant rehearing of the November 17 Entry and should deny intervention to the Consumer Parties.

II. ARGUMENT

A. Standard Of Review

Applications for Rehearing are governed by R.C. 4903.10 and Rule 4901-1-35. Under those authorities, applications for rehearing are to be granted where a Commission order is “unreasonable,” “unlawful,” “unjust or unwarranted.” The Commission has broad authority to “abrogate or modify” such an order. *See* R.C. 4903.10(B); Rule 4901-1-35(A).

As set forth below, the November 17 Entry is “unreasonable,” “unlawful,” “unjust or unwarranted.” Thus, the Commission should grant rehearing and deny intervention to the Consumer Parties.

B. In Granting Intervention To The Consumer Parties, Whose Interests Are Adequately Represented By OCC, The November 17 Entry Was Contrary To Commission Rules And Precedent.

Intervention by the Consumer Parties is plainly contrary to the Commission’s rules and precedent because OCC adequately represents their interests. Where a party’s interest is represented by existing parties, intervention *must* be denied. *See* Rule 4901-1-11(A)(2) (permitting intervention where a party has a “real and substantial interest in the proceeding . . . unless the person’s interest is adequately represented by existing parties”); *see also* Rule 4901-1-11(B)(5). For this reason, the Commission repeatedly has denied intervention to individual

residential customers or groups of residential customers where OCC already is a party to the proceeding. *See, e.g., Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 562 (upholding denial of intervention to group of 200 residential customers where OCC already a party); *Senior Citizens Coalition v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 625, 628 (upholding denial of intervention regarding rate base and operating expense issues where customer and customer-interest groups identified no interest differentiating them from ordinary residential customers already represented by OCC); *In re Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider*, No. 09-1946-EL-RDR, Entry dated Apr. 14, 2010 (denying intervention to two residential customers, where OCC already party to case); *In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and the Toledo Edison Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Elec. Sec. Plan*, No. 08-935-EL-SSO, Entry dated Oct. 2, 2008, ¶ 4 (denying intervention to three residential customers, where their interests were adequately represented by OCC); *In re Regulation of the Elec. Fuel Component Within the Rate Schedules of Ohio Power Co. and Related Matters*, No. 93-01-EL-EFC, Entry dated Mar. 11, 1993, ¶ 6 (denying intervention to residential customer who failed to show that OCC did not adequately represent her interests).

Despite this overwhelming precedent, the November 17 Entry granted intervention because of the ostensibly “unique circumstances” in which “the interests of different residential customer classes may potentially diverge.” Nov. 17 Entry, ¶ 16. But these “circumstances” are not “unique.” In *Toledo Coalition*, the Commission denied intervention to a group of 200 residential consumers because OCC already was a party. *Toledo Coalition*, 69 Ohio St. 2d at 559. On appeal, the consumer group there also argued that its interests diverged from OCC’s.

The group claimed that although both it and OCC sought rates that reflected a generation plant's lack of availability, the group sought the complete exclusion of rate base, while OCC merely sought corresponding reductions in rate base. *Id.* at 562. The Court rejected that argument: "Both [consumer group] and [OCC] are seeking the establishment of rates which reflect Davis-Besse's lack of operational availability." *Id.* Thus, because "the interest and objective of [consumer group] and [OCC] are essentially identical, not antithetical," the Court upheld the denial of intervention. *Id.* (noting that allegedly different positions reduced to mere "difference in tactics or strategy").

Just so here. The Consumer Parties' and OCC's interests are one in the same: *i.e.*, to maximize electric heating discounts for the Companies' customers, and to impose the costs associated with continuing electric heating discounts on the Companies. (See Consumer Parties' Mot. to Intervene dated June 2, 2010, pp. 2-3; OCC Mem. in Support of App. for Reh'g dated May 17, 2010, pp. 5-6, 10-12; *see also* Memo. Contra. Mot. to Intervene dated June 17, 2010, pp. 5-6.)

Stretching to distinguish these positions, the Consumer Parties suggest a hypothetical scenario in which OCC may "at some point" argue that general residential customers should not subsidize electric heating discounts, and thereby argue to shift more of the financial burden associated with those discounts to electric heating customers like the Consumer Parties. (See Consumer Parties' Reply dated June 25, 2010, pp. 4-5.) The Consumer Parties thus raise the prospect of an intra-class dispute pitting residential electric heating customers against standard residential customers. And to be clear, this "potential" for "divergence" of interests was the only reason cited in the November 17 Entry for granting intervention. *See* Nov. 17 Entry, ¶ 16.

But that “potential” dispute is illusory. OCC is not arguing that electric heating customers should bear some of the burden of on-going discounts. Without variation, OCC is arguing—and has argued from the inception of this proceeding—that *the Companies* should bear that burden. (*See, e.g.*, OCC Mem. in Support of Mot. to Compel dated June 30, 2010, pp. 12-13 (Commission should “assign[] responsibility for some portion (if not all) of the revenue shortfall to FirstEnergy” based on Companies’ alleged “culpability”); OCC Mem. in Support of App. for Reh’g dated May 17, 2010, pp. 6-7 (“culpability” should be considered in determining “range of options for recovering the revenue shortfall”); OCC Mem. in Support of Request for Clarification dated Mar. 8, 2010, p. 7 (Staff should “appropriately consider[] the assignment of financial responsibility to FirstEnergy”).

The Consumer Parties, of course, argue for exactly the same outcome. (*See, e.g.*, Consumer Parties’ Mot. to Intervene dated June 2, 2010, pp. 2-3 (The Companies “should absorb the loss of revenue [arising from electric heating discounts and riders] due to their representations made to all-electric homeowners regarding the discounted electric rate.”).)

The only stated reason why the Consumer Parties were granted intervention—the “potential divergence” of their interests from OCC’s—is wholly rebutted by the parties’ conduct in this case. There simply is no “potential divergence.” Moreover, the November 17 Entry ignored the Commission’s rules and precedent—not to mention Supreme Court precedent—requiring the denial of intervention to residential customers whose interests are represented by OCC. Where, as here, the interests of prospective and existing parties are “virtually identical,” the prospective intervenor “must make a compelling showing that the party already participating in the proceeding can not, or will not, adequately represent the prospective intervenor’s interest.”

Toledo Coalition at 562. The Consumer Parties have failed to meet this burden, and their intervention should have been denied. The Commission should grant rehearing to do so.¹

C. The November 17 Entry Unreasonably Granted Intervention To The Consumer Parties, Who Will Not “Contribute Significantly To Full Development And Equitable Resolution Of The Factual Issues.”

The Consumer Parties failed to demonstrate that they will “contribute significantly to full development and equitable resolution of the factual issues” in this case, and the November 17 Entry thus unreasonably granted intervention to them. *See* Rule 4901-1-11(B)(5). The Consumer Parties have no greater knowledge of relevant facts than any other all-electric customer or concerned business, dozens of whom have offered their comments in the docket. Nor do the Consumer Parties possess any special expertise in electric heating discounts or rate design. With OCC a full participant in this case, the Consumer Parties cannot “contribute significantly” to it.

The Consumer Parties’ conduct in discovery demonstrates this point. In order to gain intervention in this case, the Consumer Parties made several representations purportedly based

¹ In replying in support of the Consumer Parties’ intervention, OCC suggested that the Commission cannot consider “the extent to which the person’s interest is represented by existing parties” because of the absence of that factor from R.C. 4903.221. (*See, e.g.,* OCC Reply in Support of Mot. to Intervene dated June 24, 2010, pp. 4-5.) This argument easily may be rejected. The “existing party” factor is taken verbatim from Ohio Rule of Civil Procedure 24(A), the companion state rule governing intervention. The Ohio Supreme Court, in noting this, has twice cited the “existing party” portion of the Commission Rule in assessing intervention on appeal. *See Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384, 387 (noting, with approval, the “additional guidance” offered by the “existing party” factor); *Toledo Coalition* at 562 n.5. Consideration of that factor is thus appropriate.

Moreover, OCC is wrong in suggesting that subsequent enactment of R.C. 4903.221 overruled the Commission’s prior insertion of the “existing party” factor into the rule. R.C. 4903.221 was enacted in 1983. In 2006, the Commission considered comments to proposed revisions to Chapter 4901-1. *See In re Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, No. 06-685-AU-ORD, Finding and Order dated Dec. 6, 2006, ¶ 29. As it does here, OCC argued that the “existing party” factor should not be considered because it does not appear in R.C. 4903.221. *Id.* In response, American Electric Power-Ohio, among others, argued that OCC’s proposal would allow “each and every affected residential customer would be permitted to intervene in a case even if OCC is already a party to the case.” *Id.* The Commission agreed, rejected OCC’s argument, and maintained the “existing party” factor. OCC has made this losing argument regarding the “existing party” factor before. That argument should be rejected again here.

on their expertise and ability to contribute facts to this proceeding. (*See* Consumer Parties' Mot. to Intervene dated June 2, 2010, pp. 2-3.) In written discovery requests, the Companies asked for the facts and documents underlying those representations. For example, the Companies asked the Consumer Parties to identify facts and documents supporting the following contentions they made in their Motion to Intervene:

- "[E]lectric rates [for all-electric customers] should be discounted as a result of the energy efficiencies already in place and given the bulk purchasing of electric by these [*i.e.*, all-electric] homes throughout the year."
- "If the homes and lots of the [Consumer Parties] are not eligible for the all-electric discount rate, the value of the[ir] real estate is negatively impacted."
- "[The Companies'] marketing efforts touted the energy efficiency of an all-electric home and tied the energy efficiency to discounted electric rates."

(*See* Companies' Mot. to Compel dated Dec. 15, 2010, p. 7; *see, e.g.*, CKAP Resp. to Interrog. Nos. 4, 8, 9 (attached as Ex. B).)²

Moreover, in requesting intervention, the Consumer Parties alleged that the Companies "promised" that all-electric rates would be permanent. (Mot. to Intervene, p. 2.) The Companies asked for facts and documents supporting those allegations as well. (*See, e.g.*, CKAP Resp. to Interrog. Nos. 12, 13, 14, 15 (requesting identification of instances of such "promises" and supporting details and documents), Resp. to RFP Nos. 9, 10, 12 (requesting supporting documentation) (attached as Ex. B).)

But in response, the Consumer Parties have provided nothing—no specific facts, no specific documents—to support those contentions. Instead, the Consumer Parties answered with a boilerplate statement referring generically to documents filed in the docket or submitted at public hearings. (*See, e.g.*, CKAP Resp. to RFP No. 1 ("Will provide as noted above or see

² With respect to the discovery requests at issue in this Motion, the Companies propounded identical requests on each of the Consumer Parties, whose responses to those requests also were identical.

PUCO Docket in Case 10-176-EL-ATA.”); Resp. to Interrog. No. 6 (“CKAP will introduce documents previously submitted at the Public Meetings held in this proceeding”) (Ex. B).) Thus, when asked to produce the unique facts and documents that ostensibly justified their intervention here, the Consumer Parties point only to the docket and public hearings. This is not a “significant contribution.” It is barely a “contribution” at all. Indeed, based on the Consumer Parties’ responses, the universe of facts and documents at issue in this proceeding is exactly the same as it would be if the Consumer Parties had not been granted intervention, and instead had filed comments in the docket and submitted documents at public hearings—since these are, apparently, the only materials they have to support their claims. Moreover, the fact that the Consumer Parties point only to those materials further underscores that they have no special expertise or facts to add beyond those of individual residential customers, all of whom are adequately represented by OCC.

Another statement made by the Consumer Parties in gaining intervention bears scrutiny. In the Motion to Intervene, Citizens for Keeping the All-Electric Promise (“CKAP”) described itself as “an affiliation of all-electric homeowners, many of which have received the all-electric rate for decades.” (Mot. to Intervene, p. 2.) Based in part on this representation, the November 17 Entry granted intervention to CKAP. But now that it has gained intervention, CKAP refuses to identify those “affiliat[ed] all-electric homeowners.” Specifically, in response to the Companies’ interrogatory seeking identification of CKAP’s members and affiliates, CKAP stated that it “does not maintain a registry of names, addresses and phone numbers.” (See CKAP Resp. to Interrog. No. 7 (Ex. B).) In addition to being an inadequate discovery response (and thus the likely subject of a future motion to compel), this statement betrays CKAP’s (and the Consumer Parties’) desire to have it both ways: to make representations regarding their

allegedly unique facts and expertise to gain intervention, but then, after intervention is granted, to refuse the Companies any opportunity to test those representations. This approach should not be rewarded or tolerated. As amply demonstrated by the record in this case, intervention should not have been granted to the Consumer Parties because they cannot make a “significant contribution” to this proceeding.³

D. The November 17 Entry Unreasonably Granted Intervention Because The Consumer Parties’ Participation In This Case Is Causing Undue Delay.

The Consumer Parties’ participation as formal parties is causing undue delay in this proceeding, and the November 17 Entry unreasonably granted intervention to them for that reason. As set forth in the Companies’ December 15, 2010 Motion to Compel, the Consumer Parties have failed to comply with their discovery obligations. (*See* Mot. to Compel, pp. 6, 8.) The Consumer Parties have failed to provide any discovery responses until after the deadline for doing so, and only then after prompting by the Companies. (*Id.*) And when finally provided, those responses are severely deficient and contain almost no substantive information or documents. (*Id.*) The Consumer Parties’ failure to timely respond to relevant discovery, which predictably leads to motion practice before the Attorney Examiner, has unduly delayed and diverted the parties’ efforts from preparing for a hearing that is less than two months away. And with their recent discovery responses, the Consumer Parties give every indication that this conduct—and those delays—will continue.

³ The Consumer Parties should not be heard to complain that denial of intervention now would prejudice them, since, as parties, they were not allowed to testify at public hearings. As set forth more fully in the Companies’ recently-filed Motion to Compel, Sue Steigerwald, one of the Consumer Parties, apparently has been working behind the scenes to orchestrate (if not dictate) the testimony of other residential customers at those public hearings. (*See* Mot. to Compel dated Dec. 15, 2010, pp. 4-5.)

III. CONCLUSION

For the above reasons, the Companies respectfully request that the Commission grant its Application for Rehearing.

DATED: December 17, 2010

Respectfully submitted,



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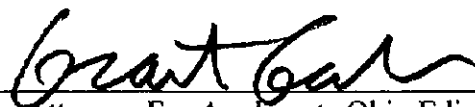
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company was delivered to the following persons by first class mail, postage prepaid, this 17th day of December, 2010:



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Exhibit A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio) Edison Company, The Cleveland Electric) Illuminating Company, and The Toledo) Edison Company for Approval of a New) Rider and Revision of an Existing Rider.)	Case Nos. 10-176-EL-ATA
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ENTRY

The attorney examiner finds:

- (1) Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy or the Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On February 12, 2010, FirstEnergy filed an application in this proceeding to revise its current tariffs in order to provide rate relief to certain all-electric customers.
- (3) On March 3, 2010, the Commission issued its Finding and Order in this proceeding, approving FirstEnergy's application as modified by the Commission and providing interim rate relief for all-electric residential customers. On March 8, 2010, the Ohio Consumers' Counsel (OCC) filed an application for rehearing. On April 6, 2010, the Commission granted rehearing for the purpose of further consideration of the matters specified in the application for rehearing. Subsequently, on April 15, 2010, the Commission denied rehearing in its Second Entry on Rehearing (April 15 Entry) in this proceeding. On April 2, 2010, FirstEnergy also filed an application for rehearing regarding the Commission's March 3, 2010, Finding and Order. The Commission granted rehearing on April 28, 2010, in the Third Entry on Rehearing in this proceeding.

On May 14, 2010, FirstEnergy filed an application for rehearing regarding the April 15 Entry. Further, on May 17, 2010, Industrial Energy Users-Ohio (IEU-Ohio) and

OCC each filed applications for rehearing regarding the April 15 Entry. In the Fourth Entry on Rehearing in this proceeding, issued on June 9, 2010, the Commission granted these applications for rehearing for further consideration of the matters specified in the applications for rehearing. On November 10, 2010, in Fifth Entry on Rehearing in this proceeding, the Commission granted, in part, and denied, in part, the applications for rehearing filed by FirstEnergy and OCC, and denied the application for rehearing filed by IEU-Ohio.

- (4) On June 2, 2010, Sue Steigerwald, Citizens for Keeping the All-Electric Promise (CKAP), Joan Heginbotham, and Bob Schmitt Homes, Inc. (Bob Schmitt Homes)(collectively, movants) filed a motion to intervene.
- (5) FirstEnergy filed a memorandum contra movants' motion to intervene on June 17, 2010. OCC filed a reply to FirstEnergy's memorandum contra on June 24, 2010. FirstEnergy responded by filing a surreply on June 30, 2010, while movants and OCC filed motions to strike FirstEnergy's surreply on July 16, 2010. FirstEnergy filed a memorandum contra movants and OCC's motions to strike on August 2, 2010.
- (6) By entry issued on October 8, 2010, this case was set for an evidentiary hearing on November 29, 2010.
- (7) Under consideration in this entry is movants' motion to intervene and the filings associated with it. Rule 4901-1-11(A)(1) and (2), Ohio Administrative Code (O.A.C.), provide that, upon the filing of a timely motion, a person shall be permitted to intervene in a proceeding upon a showing that either: (a) a statute confers a right to intervene; or (b) the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede the person's ability to protect that interest, unless the person's interest is adequately represented by existing parties.
- (8) In deciding whether to permit intervention under Rule 4901-1-11(A)(2), O.A.C., paragraph (B) of that same rule states

that the Commission shall consider the nature and extent of the movant's interest; the legal position advanced by the movant and its probable relation to the merits of the case; whether granting intervention will unduly prolong or delay the proceedings; whether the movant will significantly contribute to full development and equitable resolution of the factual issues; and the extent to which the person's interest is represented by existing parties.

- (9) According to movants' motion to intervene, Ms. Steigerwald is an all-electric homeowner in FirstEnergy's service area who previously qualified for a discount provided by FirstEnergy to all-electric customers, while CKAP is an affiliation of all-electric customers living in FirstEnergy's service area. The motion to intervene further explains that Ms. Heginbotham is an all-electric customer who moved into her residence in FirstEnergy's service area after January 1, 2007, and Bob Schmitt Homes is a residential homebuilder who has previously and is currently building all-electric homes within FirstEnergy's service area. Movants note that, based on the date that she moved into her residence, Ms. Heginbotham is not currently eligible to receive the all-electric discount. In the motion to intervene, movants aver that the value of real estate they own will be negatively impacted if discounted all-electric rates are no longer available. Movants also assert that their interests are not represented by other parties to this proceeding. While recognizing that OCC represents residential customers, movants contend that, as all-electric customers, their interests may diverge from the interests of other residential customers and, therefore, their interests require separate representation. Finally, movants assert that their intervention will not unduly prolong or delay the proceeding, and that they will contribute significantly to the full and equitable resolution of the factual issues in this case.
- (10) In its memorandum contra, FirstEnergy contends that movants' interests are already adequately represented by OCC, on the grounds that movants and OCC share essentially the same interests and objectives. FirstEnergy maintains that movants' sole objective in this matter is to

maximize all-electric discounts for customers of FirstEnergy, by continuing discounts previously offered to all-electric customers and by extending these discounts to new customers. FirstEnergy argues that OCC has repeatedly and vigorously made the same arguments throughout this case. FirstEnergy also maintains that movants and OCC agree that FirstEnergy should bear the financial burden of the new all-electric discounts.

FirstEnergy also suggests that permitting individual residential customers to intervene will unduly prolong and delay this proceeding, especially if intervention by the handful of all-electric customers, such as some of the movants, causes many other all-electric customers to also seek intervention. FirstEnergy notes that the Commission has already taken steps to ensure meaningful participation by interested persons. In addition, FirstEnergy contends that movants will not significantly contribute to the development of factual issues in this proceeding, as movants possess no greater knowledge of relevant facts than any other all-electric customers nor do they offer any special expertise in all-electric discounts or rate design. FirstEnergy maintains that OCC, which is already gathering facts related to the all-electric discounts and which possesses extensive experience in presenting expert testimony on rate matters, is better suited to make a significant contribution to this case. Finally, FirstEnergy contends that intervention should be denied as to Ms. Heginbotham and Bob Schmitt Homes, since neither party is entitled to the all-electric discounts ordered by the Commission in this matter, and, therefore, they lack an interest in this case.

- (11) In response, movants and OCC initially contend that FirstEnergy's memorandum contra was untimely filed. Movants and OCC point out that the certificate of service attached to the motion to intervene states that FirstEnergy was served by U.S. mail on May 27, 2010. After adding three days to the fifteen day time-period for filing a memorandum contra, pursuant to Rules 4901-1-07(B) and 4901-1-12(B)(1), O.A.C., movants and OCC maintain that FirstEnergy's filing was due by June 14, 2010. Since FirstEnergy filed its

memorandum contra on June 17, 2010, movants and OCC argue that it should be disregarded.

In their reply, movants again assert that their interests are not adequately represented by OCC. Noting that FirstEnergy has argued that other ratepayers are subsidizing the all-electric discount, movants suggest that, if FirstEnergy's contention is correct, OCC, at some point, may not agree to have other ratepayers subsidize the all-electric customers, a stance that would be in direct opposition to movants' interests.

Movants also reassert that Ms. Heginbotham and Bob Schmitt Homes have a real and substantial interest in this matter. Movants state that Ms. Heginbotham purchased an all-electric home after January 1, 2007, so she has been denied the all-electric discount, even though her home was built before the January 1, 2007, deadline. Movants believe Bob Schmitt Homes has a real and substantial interest because the subdivision Bob Schmitt Homes is currently building has been planned and developed as an all-electric subdivision, based on a partnership between Bob Schmitt Homes and FirstEnergy that predates the elimination of the all-electric discount.

- (12) In its surreply, FirstEnergy argues that its memorandum contra should not be considered untimely because movants' motion to intervene was not filed with the Commission until six days after the date of service indicated in the certificate of service. FirstEnergy contends that the date the motion was served cannot be reasonably considered to be the date on which a reply period begins when, as here, a long gap exists between the service and the filing dates. FirstEnergy also contends that, since no party has been prejudiced by the timing of FirstEnergy's filing, the proceedings have not been delayed, and because its filing raises important procedural concerns, good cause exists to waive the time period set forth in Rule 4901-1-12(B)(1), O.A.C., for filing memorandum contra.
- (13) In their motions to strike, movants and OCC argue that FirstEnergy's surreply is not a pleading authorized under

the Commission's rules and that FirstEnergy failed to show good cause as to why it should be permitted to respond to movants' and OCC's reply memoranda. Movants additionally assert that FirstEnergy failed to properly serve movants with the surreply because FirstEnergy served them with an electronic version of the surreply but has yet to provide service by mail, even though movants have not consented to receive pleadings by facsimile or electronic means.

- (14) In its memorandum contra movants' and OCC's motions to strike, FirstEnergy contends that good cause exists for the Commission to consider FirstEnergy's surreply, as the surreply provided FirstEnergy its only opportunity to respond to movants and OCC's arguments that FirstEnergy's memorandum contra movants' motion to intervene was not timely, as movants and OCC did not raise these arguments until after FirstEnergy submitted its memorandum contra. FirstEnergy asserts that movants and OCC failed to show any prejudice arising from the surreply, and challenges movants' claim that FirstEnergy failed to properly serve movants with the surreply.
- (15) The attorney examiner finds that, in its surreply, FirstEnergy showed good cause as to why it should be permitted to respond to movants' and OCC's reply memoranda. Accordingly, the attorney examiner finds that movants' and OCC's motions to strike should be denied.
- (16) After reviewing the parties' filings and the arguments made therein, the attorney examiner finds that movants' motion for intervention is reasonable and should be granted. The attorney examiner finds that intervention by movants in this case is justified by the unique circumstances found in this matter, in which the interests of different residential customer classes may potentially diverge.

It is, therefore,

ORDERED, That movants' motion to intervene be granted. It is, further,

ORDERED, That movants' and OCC's motions to strike be denied. It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
Attorney Examiner


/sc

Entered in the Journal

NOV 17 2010



Renee J. Jenkins
Secretary

Exhibit B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider

Case No. 10-176-EL-ATA

**RESPONSES AND OBJECTIONS TO FIRSTENERGY'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY
CITIZENS FOR KEEPING THE ALL-ELECTRIC PROMISE**

Citizens for Keeping the All-Electric Promise ("CKAP"), by and through its counsel, hereby submits its Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to CKAP by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "FE") in the above-captioned case.

CKAP's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. CKAP's responses to these discovery requests are submitted without prejudice to, and without waiving any general objections not expressly set forth therein.

The submittal of any response below shall not waive CKAP's objections. The responses below, while based on diligent investigation and reasonable inquiry by CKAP, reflect only the current state of CKAP's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery

to date. CKAP's investigation is not yet complete and is continuing as of the date of the responses below. CKAP anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, CKAP reserves the right to continue its investigation and to modify or supplement the responses below, with such pertinent information or documents. The responses below are made without prejudice to CKAP's right to rely upon or use subsequently discovered information or documents, or documents or information inadvertently omitted from the responses below as a result of mistake, error, or oversight.

CKAP reserves the right to object, on appropriate grounds, to the use of such information and/or documents. The fact that CKAP, in the spirit of cooperation, has elected to provide relevant information below in response to the FE's discovery requests shall not constitute or be deemed a waiver of CKAP's objections. CKAP hereby fully preserves all of its objections to the discovery requests or the use of its responses for any purpose.

Furthermore, CKAP's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege or trial preparation doctrine or any other applicable privilege or doctrine, and CKAP reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect CKAP from annoyance, embarrassment, oppression, or undue burden or expense or for any other reason.

GENERAL OBJECTIONS

1. CKAP objects to any discovery requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon CKAP any obligations broader than those set forth in the Public Utilities Commission of Ohio's rules or otherwise permitted by law. The rules of discovery require, among other matters, that matters inquired into must be

relevant to the subject matter of the proceeding, and must appear to be “reasonably calculated to lead to the discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).

2. CKAP objects to these discovery requests and to FE’ Definitions and Instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, a trial preparation doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. CKAP objects to these discovery requests and to the FE’s Definitions and Instructions to the extent that they *improperly seek or purport to require CKAP to provide documents and information not in CKAP’s possession, custody or control.*
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive CKAP’s right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.
5. CKAP objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

6. CKAP objects to these discovery requests and to the FE's Definitions and Instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. CKAP objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the FE's possession, custody, or control.
8. CKAP objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
9. CKAP objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is unduly burdensome and overly broad.
10. CKAP objects to these discovery requests to the extent they are vague, ambiguous, use terms or phrases that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which CKAP can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive CKAP's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

INTERROGATORY NO. 3: Identify each and every document, exhibit or other thing You intend to introduce into evidence or otherwise display at the hearing in this matter.

RESPONSE: CKAP will introduce documents previously submitted at the Public Meetings held in this proceeding and the testimony of any expert witness and party. Other documents, exhibits and testimony will be introduced when they are identified.

INTERROGATORY NO. 4: Identify all facts and Documents supporting Your claim on page 3 of the Memorandum in Support of Your Motion to Intervene dated June 2, 2010 that Your “electric rates should be discounted as a result of the energy efficiencies already in place and given the bulk purchasing of electricity by these [*i.e.*, all-electric] homes throughout the year.”

RESPONSE: See Response to Request for Production #1.

INTERROGATORY NO. 5: Identify all facts and Documents supporting Your claim on page 3 of the Memorandum in Support of Your Motion to Intervene dated June 2, 2010 that the Companies should “absorb the loss of revenue [arising from all-electric rates and riders] due to their representations made to all-electric homeowners regarding the discounted electric rate.”

RESPONSE: See Response to Request for Production #1.

INTERROGATORY NO. 6: Identify all Documents that in any way relate to or concern any issue in this case.

RESPONSE: Objection, the interrogatory is vague and overbroad. Without waiving any specific or general objections, BSH responds as follows:

See BSH's responses to other interrogatories and requests for admission in this proceeding.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All Documents identified in response to the Companies' First Set of Interrogatories, including but not limited to Documents You identified in Your responses to the Companies' Interrogatory Nos. 3 through 6.

RESPONSE: Will provide as noted above or see PUCO Docket in Case 10-176-EL-ATA.

REQUEST FOR PRODUCTION NO. 2: A curriculum vitae for each expert witness.

RESPONSE: Will provide once identified.

REQUEST FOR PRODUCTION NO. 3: All exhibits You intend to introduce at hearing.

RESPONSE: See Response to Interrogatory #3.

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Responses and Objections was served electronically to the counsel identified below this 8th day of December 2010.

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Steigerwald, Joan Heginbotham and CKAP

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio
Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo
Edison Company for Approval of a New
Rider and Revision of an Existing Rider**

Case No. 10-176-EL-ATA

**RESPONSES AND OBJECTIONS TO FIRSTENERGY'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY
CITIZENS FOR KEEPING THE ALL-ELECTRIC PROMISE**

Citizens for Keeping the All-Electric Promise ("CKAP"), by and through its counsel, hereby submits its Responses and Objections to the First Set of Interrogatories and Requests for Production of Documents submitted to CKAP by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy" or "FE") in the above-captioned case.

CKAP's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. CKAP's responses to these discovery requests are submitted without prejudice to, and without waiving any general objections not expressly set forth therein.

The submittal of any response below shall not waive CKAP's objections. The responses below, while based on diligent investigation and reasonable inquiry by CKAP, reflect only the current state of CKAP's knowledge and understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery

to date. CKAP's investigation is not yet complete and is continuing as of the date of the responses below. CKAP anticipates the possibility that it may discover additional information and/or documents, and without obligating itself to do so, CKAP reserves the right to continue its investigation and to modify or supplement the responses below, with such pertinent information or documents. The responses below are made without prejudice to CKAP's right to rely upon or use subsequently discovered information or documents, or documents or information inadvertently omitted from the responses below as a result of mistake, error, or oversight.

CKAP reserves the right to object, on appropriate grounds, to the use of such information and/or documents. The fact that CKAP, in the spirit of cooperation, has elected to provide relevant information below in response to the FE's discovery requests shall not constitute or be deemed a waiver of CKAP's objections. CKAP hereby fully preserves all of its objections to the discovery requests or the use of its responses for any purpose.

Furthermore, CKAP's provision of responses to these discovery requests shall not be construed as a waiver of the attorney-client privilege or trial preparation doctrine or any other applicable privilege or doctrine, and CKAP reserves its right to file a motion for protective order under Ohio Adm. Code 4901-1-24 in order to protect CKAP from annoyance, embarrassment, oppression, or undue burden or expense or for any other reason.

GENERAL OBJECTIONS

1. CKAP objects to any discovery requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon CKAP any obligations broader than those set forth in the Public Utilities Commission of Ohio's rules or otherwise permitted by law. The rules of discovery require, among other matters, that matters inquired into must be

relevant to the subject matter of the proceeding, and must appear to be “reasonably calculated to lead to the discovery of admissible evidence.” Ohio Adm. Code 4901-1-16(B).

2. CKAP objects to these discovery requests and to FE’ Definitions and Instructions as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, a trial preparation doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. CKAP objects to these discovery requests and to the FE’s Definitions and Instructions to the extent that they improperly seek or purport to require CKAP to provide documents and information not in CKAP’s possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should they be construed to waive CKAP’s right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.
5. CKAP objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is not relevant to the subject matter of the proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

6. CKAP objects to these discovery requests and to the FE's Definitions and Instructions to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. CKAP objects to these discovery requests insofar as they request the production of documents or information that are publicly available or already in the FE's possession, custody, or control.
8. CKAP objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
9. CKAP objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is longer than is relevant for purposes of this proceeding, as such discovery is unduly burdensome and overly broad.
10. CKAP objects to these discovery requests to the extent they are vague, ambiguous, use terms or phrases that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which CKAP can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive CKAP's rights to object to other discovery involving or relating to the subject matter of these requests, responses or documents produced in response hereto.

INTERROGATORIES

INTERROGATORY NO. 7: Identify each Person that is affiliated with or a member of You, as you describe on page 1 of the Memorandum in Support of your Motion to Intervene dated June 2, 2010, including but not limited to Persons who responded to Your solicitation for members appearing at the website allelectrichomes.info. For each such Person, provide a contact address and phone number.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: CKAP does not maintain a registry of names, addresses and phone number.

INTERROGATORY NO. 8: Identify all facts and Documents supporting Your claim on page 2 of the Memorandum in Support of Your Motion to Intervene dated June 2, 2010 that “[i]f the homes and lots of the identified parties are not eligible for the all-electric discount rate, the value of the[ir] real estate is negatively impacted.”

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

INTERROGATORY NO. 9: Identify all facts and Documents supporting Your claim on page 2 of the Memorandum in Support of Your Motion to Intervene dated June 2, 2010 that the Companies’ “marketing efforts touted the energy efficiency of an all-electric home and tied the energy efficiency to discounted electric rates.”

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

INTERROGATORY NO. 10: For each Person You identified in response to the Companies' Interrogatory No. 7, state the date on which that Person moved into that Person's current residence and the price paid for that residence.

RESPONSE: Not applicable.

INTERROGATORY NO. 11: For each Person identified in response to the Companies' Interrogatory No. 7 whose property value has been "negatively impacted" as referred to in the Companies' Interrogatory No. 8, identify:

- a. The address of the Person's property;
- b. For each property:
 - (i) the date on which the property was first offered for sale by that Person;
 - (ii) the dates when the property was thereafter offered for sale by that Person;
 - (iii) whether the Person retained a realtor to sell the property and, if so, the name and address of each realtor retained and each MLS number associated with the sale of the property by the Person;
 - (iv) the price at which the property was initially listed or asked by the Person and, if the price asked by the Person changed, the date of any changes and the subsequent listing or asking prices;
 - (v) the date of each offer made by any prospective buyer and, for each offer, the price that was offered; and
 - (vi) all Documents relating to the sale or potential sale of the property.

- c. If the property was not offered for sale by the Person, all Documents that support that the value of that Person's property has been "negatively impacted."

RESPONSE: Not applicable.

INTERROGATORY NO. 12: Identify each instance in which You allege that any of the Companies promised, incentivized, induced or otherwise represented to You that any All-Electric Rate would be permanent, would remain in effect regardless of any future Commission order, or otherwise was available on terms not reflected in the corresponding Commission-approved tariff. For each such instance:

- a. Describe the content of such alleged promise, incentive, inducement or representation;
- b. State the date on which such alleged promise, incentive, inducement or representation occurred;
- c. Identify the representative(s) of the Companies who made such alleged promise, incentive, inducement or representation; and
- d. Identify all Documents reflecting, relating or referring to such alleged promise, incentive, inducement or representation.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

INTERROGATORY NO. 13: Identify every oral Communication in which You allege that any of the Companies promised, incentivized, induced or otherwise represented to You that any All-Electric Rate would be permanent, would remain in effect regardless of any future Commission order, or otherwise was available on terms not reflected in the corresponding Commission-approved tariff. For each such instance:

- a. Describe the content of such oral Communication;
- b. State the date on which such oral Communication occurred;
- c. Identify each Person who received or witnessed the oral Communication;
- d. Identify the representative(s) of the Companies who participated in such oral Communication; and
- e. Identify all Documents reflecting, relating or referring to such oral Communication.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

INTERROGATORY NO. 14: Identify every Document or Communication that You allege reflects advertisements, agreements, promises, warranties, covenants, promotions, representations or inducements made or published by any of the Companies for the purpose of marketing All-Electric Rates and/or convincing any Person, including but not limited to You, to become or remain subject to the terms of any All-Electric Rate (*e.g.*, by purchasing or continuing to live in an all-electric residence, etc.).

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

INTERROGATORY NO. 15: Identify every Document or Communication that You allege reflects advertisements, agreements, promises, warranties, covenants, promotions, representations or inducements made or published by any of the Companies for the purpose of marketing All-Electric Rates to any builder or developer of residences that meet the conditions of any All-Electric Rate.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 8: All Documents identified in response to the Companies' Second Set of Interrogatories, including but not limited to Documents You identified in Your responses to the Companies' Interrogatory Nos. 8, 9 and 11 through 15.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

REQUEST FOR PRODUCTION NO. 9: All Documents allegedly reflecting, relating or referring to any Communication, promise, incentive, inducement or representation by any of the Companies that any All-Electric Rate would be permanent, would remain in effect regardless of any future Commission order, or otherwise was available on terms not reflected in the corresponding Commission-approved tariff.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

REQUEST FOR PRODUCTION NO. 10: All Documents reflecting, relating or referring to any expense allegedly incurred by You in response to any alleged promise, incentive, inducement or representation by any of the Companies that any All-Electric Rate would be permanent, would remain in effect regardless of any future Commission order, or otherwise was available on terms not reflected in the corresponding Commission-approved tariff, including but not limited to estimates, invoices, bills, work orders or statements of work.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

REQUEST FOR PRODUCTION NO. 11: All Communications between You and any of the Companies, excluding routine bills, which reflect, relate or refer to All-Electric Rates, the Companies' marketing practices or other issues in this matter.

RESPONSE: Objection, overly broad. Without waiving any specific or general objections, CKAP responds as follows: See Response to Request for Production #1.

REQUEST FOR PRODUCTION NO. 12: All Documents or Communications reflecting, relating or referring to All-Electric Rates, the Companies' marketing practices or other issues in

this matter that have been sent between You and any party in this case, including any party that has moved to intervene, regardless of whether such motion to intervene has been granted.

RESPONSE: Objection to the extent that the Company is inquiring into information exempt from discovery under the trial preparation doctrine, attorney work-product doctrine, joint defense doctrine, the attorney-client privilege, and/or privileged settlement discussions. Without waiving any specific or general objections, CKAP responds as follows:

See the response to Request for Production No. 1.

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Responses and Objections was served electronically to the counsel identified below this 14th day of December 2010.

Kevin Corcoran
Attorney for Bob Schmitt Homes, Inc., Sue
Steigerwald, Joan Heginbotham and CKAP

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