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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) Case No. 10-176-EL-ATA
Rider and Revision of an Existing Rider.)

**INITIAL POST-HEARING BRIEF
BY
SUE STEIGERWALD, CITIZENS FOR KEEPING THE ALL-ELECTRIC
PROMISE (CKAP), JOAN HEGINBOTHAM and
BOB SCHMITT HOMES, INC.**

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Joan Heginbotham and; Bob Schmitt
Homes, Inc.

March 28, 2011

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I. INTRODUCTION

A. History of the Case

Bob Schmitt Homes, Inc., CKAP, Sue Steigerwald and Joan Heginbotham (the "CKAP Parties") hereby incorporate and restate the OCC's History of the Case as if fully rewritten at length.

B. History of the All-Electric Rate

The all-electric home had its beginnings in the 1950's but the majority of all-electric homes were built beginning in the early 1970's when there was a gas embargo. Since natural gas was not available for new home construction, builders searched for other alternatives. Around that time, the predecessors to FirstEnergy, Ohio Edison, Toledo Edison and Cleveland Illuminating Company (CEI) (collectively referred to as the FirstEnergy Companies), began to offer incentives to builders and customers to build homes that exclusively used electric as their energy source. One of those incentives was

the all-electric rate whereby due to the exclusive nature of electric usage the homeowner was then eligible for a discounted electric rate. FirstEnergy Companies knew that the only affordable way to heat space or water with electricity would be to offer a discounted electric rate. Further eligibility requirements were increased insulation standards and specified equipment such as 80 gallon hot water tanks. These eligibility requirements are permanent in nature since many of these homes were built in areas where gas lines were not available and construction requirements would exist as long as the home existed. Even in areas where gas is available, major structural changes would be necessary for homes using baseboard heat, as no ductwork or furnaces exist in these homes.

The discounted all-electric rate benefited both the residential customer and the various electric companies. Electric usage has a seasonality to it and the demand tends to peak during the summer months when air conditioning is necessary and that peak drops during the winter. The all-electric customer uses the most electricity during the winter when their all-electric furnace or baseboard unit supplies heat during the winter months. The all-electric customer reduced the decreases in usage and allowed the electric companies to balance their costs throughout the year or spread overhead throughout the year. All-electric customers enjoyed the discount and the electric companies enjoyed the additional usage during a historically low period of seasonal demand. Dual fuel customers also benefited from all electric rates as their per kwh rate decreased as overhead costs were spread over a greater number of kwh. This mutually beneficial relationship was blessed by the PUCO and continued for more than 50 years.

Starting in 2006, FirstEnergy asked to eliminate part of the all-electric discount and the PUCO agreed but left the discount intact for those homes constructed prior to

2007. That grandfathering decision was short-lived as future proceedings before the PUCO eliminated part of the discount in 2009. During the winter of 2009, all-electric customers saw bill increases anywhere from 30% to more than 100%. These customers were outraged and expressed their displeasure to the PUCO, the media and their local and state politicians including the Governor's office. The PUCO declared the increases to be an "unintended consequence"¹ and former Governor Strickland asked the PUCO to restore the discount until a permanent solution could be found. The PUCO has currently restored the discount but it is due to expire before the winter heating season of 2011-2012.

II. APPLICABLE OHIO LAW

A. The Marketing Practices of the Companies

There are a number of sections of the Ohio Revised Code that provide protection for customers against unreasonable sales practices of an electric utility. In R.C. 4905.37, the Commission is charged with the responsibility to ensure that the practices of a public utility with respect to its public service are just and reasonable. If they are not, the Commission shall fix and prescribe those practices. R.C. 4928.02(I) declares that one of the policies of the state is to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.

Also, rules adopted under R.C. 4928.10 shall include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such a competitive retail electric service and in the administration of any contract for

¹ While testifying at the Ohio House Committee Hearing in February of 2010, PUCO Chief of Staff, Steven Lessor, stated that the rate shock was, an "unintended consequence" of FirstEnergy's rate plan. He continued to testify that the PUCO "did not see it coming."

service. The Ohio Administrative Code also provides protection for consumers and specifically prohibits an electric utility from committing an unfair or deceptive act or practice in connection with promoting or providing service in 4901:1-10-24 (D). And R.C. 4905.22 prohibits unreasonable charges for services by a public utility.

III. ARGUMENT

A. MARKETING PRACTICES OF THE COMPANIES

1. CONTRACTS WITH CUSTOMERS THROUGH ADVERTISING

The electric utility companies and their customers have a contract. The electric utility companies advertised all-electric living and enticed customers to switch to electric as their sole source of energy. They offered customers an all-electric discounted rate and set eligibility requirements. Customers entered into this contract by meeting those eligibility requirements. Both the electric utility companies and their customers had enjoyed the benefit of their bargain for more than fifty years

The Cleveland Electric Illuminating Company (CEI) began promoting the all-electric heat pump in the 1950's and in 1954 it was reported that an all-electric heat pump qualified for a discounted electric rate.² CEI continued to advertise a quantity discount by stating, "Best of all, the more electricity you buy, the lower the unit price goes."³ In the 1980's, CEI began running multiple ads using the same tag line with different builders and began to detail the increasingly specific equipment, building and insulation requirements these homes that were required to implement in exchange for the "favorable Energy Conservation Rate."⁴ In 1983, CEI ran ads, stating as fact that "Nearly 70 percent

² Tr. Kirtland at 95-96 (Jordan) (Kirtland November 23, 2010)

³ Id. at 96.

⁴ Id. at 97-98.

of homes built during the last five years in Northeastern Ohio are all-electric."⁵ Capturing nearly 70 percent of the new home market clearly shows that CEI's marketing efforts were very successful. During the '90s, CEI printed mass marketing messages on the electric bills themselves, such as, "If you're planning to replace your worn-out heating system, look into the many energy-efficient choices you have with electric heating systems. By converting to electric, you qualify for a cash rebate and a discount electric rate."⁶

It is clear that the FirstEnergy Companies have undertaken an advertising campaign designed to tout the benefits of all-electric living. They enticed customers to convert to all-electric by offering a discounted rate. Customers had to meet eligibility requirements to qualify for the rate. Customers accepted the offer when they met those eligibility requirements. The FirstEnergy Companies and their customers mutually benefited from the all-electric relationship for more than 50 years.

2. CONTRACTS WITH BUILDERS

The FirstEnergy Companies also entered into contracts with builders. The companies enticed builders to use electricity as their sole source of energy in the projects whether it was homes, subdivisions or apartment buildings. The companies offered incentives in the form of advertising dollars that allowed the builders to advertise their own product while also advertising all electric-living. The companies also offered incentives in the form of equipment rebates. The companies also set forth construction standards that must be met in order for the home to qualify for the all-electric discount. The companies also clearly communicated the benefit to the buyers of the builders'

⁵ Id. at 98.

⁶ Id. at 100.

homes, namely the all-electric discount. These offers were made by the FirstEnergy Companies and the homeowners and builders accepted those offers. The construction standards are permanent in nature and the all-electric discount should remain permanent as well.

The record is replete with testimony from builders describing these incentive programs. Greg Spatz provided written testimony where he stated "...I was approached by Ohio Edison in 2002 & 2005 in the development of two projects in Erie and Ottawa Counties. Two different Ohio Edison employees offering usage discounts for future tenants or owners for all electric developments."⁷ John Carney, a developer who converts buildings in downtown Cleveland also relayed how he met with representatives of CEI who offered him money over a ten-year period to convert his buildings' utility systems to all-electric with the idea that the rate of heating and heating hot water using electricity would be competitive with gas and that discounted rate was available to his tenants.⁸

Mike Payne testified that he built around one-thousand all electric homes. He testified:

"And I and every customer trusted the representation that they made. We invested in all-electric homes. If you do this, you get that. Get the all-electric rate. And, as always, there wasn't any condition. You built an all-electric home, you would get an all-electric rate."⁹

Bob Biggs, an all-electric homebuilder in Erie County for 30 years, provided written testimony that he now felt "betrayed" by FirstEnergy. He wrote that his "decision

⁷ Greg Spatz WT 12/7/2010

⁸ Tr. Strongsville at 56-57 (Carney) (October 27, 2010)

⁹ Tr. Kirtland at 84-85 (Payne) (November 23, 2010)

to build all electric homes was fired by your representatives. I was wined, dined, and given all sorts of incentives..."¹⁰

Michael Schmitt, President and CEO of Bob Schmitt Homes testified that agreements were entered into between his company and FirstEnergy that would help sell and market all-electric homes. He also noted that those agreements provided for a "discounted electric rate to [his] homebuyers." Also noted in that agreement was that "The installation of the equipment noted in Exhibit I will qualify Ri[dge]field Homes for the customized program and homebuyers for FirstEnergy's discounted all-electric rate."¹¹ He further described one of the programs designed for builders designed by FirstEnergy to sell all-electric homes which touted the energy savings and discounted rates available to consumers:

Q. And the title of the document is "Project Assistance Program for Residential Builders and Developers," right?

A. Yes.

Q. And was Bob Schmitt Homes a participant in this program?

A. Yes.

Q. Mr. Schmitt, on the fourth page of this exhibit, would you turn to that page, please. The title of the page is "Energy Efficient Heating and Cooling Systems," do you have that in front of you?

A. Yes, I do.

Q. And on this page it's mentioning the maximum consumer benefits. Do you see that section?

A. Yes.

Q. And what are those benefits?

A. "Lower operating costs, discounted rates from FirstEnergy, save money every month, more dollars available to upgrade their dream home, energy efficient homes have higher resale value."¹²

¹⁰ Tr. Sandusky at 44-45 (October 27, 2010)

¹¹ Tr. Columbus at 348-349 (Schmitt) (February 17, 2011)

¹² Id. at 356-357.

Chester Karchefsky described the arrangement the FirstEnergy Companies would enter into with builders and questioned why the electric discount wouldn't be permanent since the equipment installed by the builders had to be permanently installed.

The next set of documents I am submitting fall into the category of builder incentive contracts on request for incentive payment documents. There are proposals and contracts from four different builders, offering incentive money to build housing developments with all-electric technologies. One example includes geothermal equipment allowances of \$38,500, along with advertising allowances of \$23,200. I've also included a sample of a builder sample request summary sheet that builders would need to fill out and sign in order to receive an incentive form.

It is interesting to note that these sheets state that, by signing this request for incentives, the builder certifies that the equipment purchase has been permanently installed in the residence at the specific address. If all-electric equipment had to be permanently installed, wouldn't it make sense that the builders and homeowners that trust the all-electric discount rate was being offered in exchange for installing such permanent equipment would also be permanent?¹³

Michael Challender, a former FirstEnergy Companies employee testified that those companies would enter into contracts with builders that would lock subdivisions and lots into all-electric lots permanently.

Q. And under the programs were -- under that particular program or any other program that might have been around, were those subdivisions restricted to all electric in order to participate in the program?

A. I know that -- I know that we did sign contracts with builders that would require them to keep the development all electric if they received money.

Q. And so those lots then the developers built would be locked into all-electric energy, right?

A. Based on the time frame or the number of lots that were prescribed in the contract.

Q. Do you remember signing contracts with builders and developers?

¹³ Tr. Kirtland at 43-44 (Karchefsky) (November 23, 2010)

A. Yes.¹⁴

The employees of the FirstEnergy Companies marketed and sold the idea of all-electric living to the builders. They offered incentives in the form of advertising dollars, equipment rebates and the promise of an all-electric discount in order to permanently lock in a building lot to remain all-electric. Due to the exclusive nature of the all-electric program, many of those homes were built without gas lines being installed, which prevents customer choice and creates a captive audience subject to the whims of the FirstEnergy Companies. Homes are built to be permanent and the manner in which they were offered an all-electric discount indicates that the discount should be permanent as well.

3. CONTRACTS WITH CUSTOMERS THROUGH DIRECT CONTACT

Representatives of the FirstEnergy Companies communicated to the public through HVAC contractors, politicians, advertising, mass mailings and direct communication between employees and customers. They communicated their offer of discounted rates in exchange for using electricity as their heating source. Customers bought equipment, converted their homes and spent additional money on insulation or other equipment that wasn't necessary if they used an alternate energy source to electricity. Baseboard heated homes were constructed without ductwork or appropriate locations to install furnaces. The offer was accepted and a contract was established and it should continue to be enforced.

William Taggart was a HVAC contractor who testified how difficult it was to sell electric heat but how that changed once the discounted rate was offered.¹⁵ He further

¹⁴ Tr. Columbus at 557 (Challender) (February 18, 2011)

testified that Ohio Edison and Toledo Edison employees told heating contractors to tell their customers that the discounted rate was good through 2005 but that there would always be a special rate for electric homes.¹⁶ He relied on the representations of the electric companies' employees that electric rates would always be lower and installed special systems in his own house and those of his two sons.¹⁷

Thomas Waltermire testified that in his capacity as a trustee he was aware of the FirstEnergy Company's all-electric marketing efforts.

As a trustee, I was aware of the representatives of the Illuminating Company, a marketing representative out of the Painesville office, visiting individual couples who were going to build new homes on a developing township road, specifically, Webster Road, Lenox Township. The road did not, nor does it today, have natural gas available for homeowners. The representative enticed the couples to build their homes as all-electric with the implication of "forever" reduced rates, the then-called J-rate, even if they would sell their homes sometime in the future. Also, an area manager of the Illuminating Company requested to be put on the agenda for our trustee's meeting to ask us as trustees to encourage developers within the township to build their homes all-electric.¹⁸

Other customers received direct communications from the FirstEnergy companies. Toledo Edison sent such a letter touting the benefits of the all-electric rate. The letter stated, "Toledo Edison has a special electric heating rate or what is referred to as "step rate." With a special electric heating rate, the customer in an all-electric building enjoys a lower rate than those in buildings heated conventionally. This is a form of incentive to encourage the customer to buy or build all-electric."¹⁹

¹⁵ PUCO Docket William Taggart 11/4/2010

¹⁶ Id.

¹⁷ Id.

¹⁸ Tr. Kirtland at 126-127 (Waltermire) (November 23, 2010)

¹⁹ PUCO Docket C. Neshkoff 12/1/2010

Tom Logan, a customer of Ohio Edison, received a letter that stated, "Even if Ohio Edison ever removes this [discounted] rate from our files, you will not be in jeopardy of forfeiting this rate. This rate will be guaranteed for you as long as you wish to utilize it."²⁰

Dominic Mante received a letter from Centerior Energy that stated that his all-electric discount was being increased and how the company intended to keep the price of electricity for home heating competitive with gas, oil, propane or any other energy prices.²¹ He also testified that when he bought his home he was told that he would always receive a preferred electric rate as long as we remained all electric.²² In addition, when CEI found out that Columbia Gas was doing a survey of his neighborhood, they sent Mr. Mante and his neighbors a letter discouraging them from converting, reminding them that they would lose their all-electric discount and included a fact sheet demonstrating the cost to convert to natural gas as a discouragement to do so.²³

Chester Karchefsky testified, "As an all-electric geothermal homeowner, I was assured that if I got the electric hookup before the 2007 deadline, I would be safely in with the all-electric rate. I was told by FirstEnergy that I, along with all the others before me, would be grandfathered or saved from whatever rate structure would come after that date."²⁴

Jesse Willitts testified at the hearing in Columbus and described a letter that he received from CEI in 1980. "I believe that [letter] says to me, and I will point out that the

²⁰ Tr. Strongsville at 125-126. (Logan) (October 27, 2010) and Sandusky Ex. 2 (submitted October 27, 2010).

²¹ Tr. Strongsville at 72-75 and 87-90 (Mante) (October 27, 2010)

²² *Id.*

²³ *Id.*

²⁴ Tr. Kirtland at 37-38 (Karchefsky) (November 23, 2010)

word "no change." "no" is underlined, and that came from The Illuminating Company, CEI, and it simply -- quite simply can't get any simpler than this, states there will be no change in the discount provision until there is a change of customer. I view that to be, lack of better words, a contract."²⁵ Mr. Willitts further testified how important the letter and envelope was:

I wrote it on there "save." We also put in our safety deposit box. It's the only written proof that I have ever received that says, my wife and I, we have a discount from Cleveland Electric Illuminating. I, again, whenever we purchased our house, I had made phone calls and I had verbal confirmations, but this is the one thing that I saw that I said this is worth well saving and that's why we put it in our safe all these years.

So prior to the sale I called FirstEnergy -- Cleveland Electric Illuminating and talked to customer service and confirmed. You will have electric rates forever. So based on that right there we went ahead and purchased the home.

If they would have said no, the rates weren't forever, we probably wouldn't have bought it. So this is the first opportunity that I've seen and that's why we saved it all these years that says there will be no change in the discount.²⁶

Thousands of FirstEnergy Companies customers attended the local Public Hearings hosted by the PUCO in this matter and hundreds testified to the representations made by employees whether it was through the general customer service number or direct communication with a particular employee. Some testified that they had received letters and felt they were important enough to keep for more than 30 years. It is clear that the customers were enticed to enter into contracts for all-electric living with the promise of an all-electric discount. There was never any communication that suggested that the discount could be

²⁵ Tr. Columbus at 455-456 (Willitts) (February 17, 2011) and CKAP Exhibit 31

²⁶ Id. at 456-457.

terminated. The fact that it wasn't terminated for more than 50 years is telling and screams its permanent nature.

a. EMPLOYEE CONTACTS

Many FirstEnergy employees had direct contact with customers. They marketed all-electric living to conversion customers, new construction customers and builders. They enticed all of the types of customers to switch to all-electric by offering a discounted electric rate.

Teryl Bishop is a retired FirstEnergy employee who was a supervisor of residential marketing for the Youngstown Division of Ohio Edison who had 12 sales representatives on his staff working with builders, heating and cooling contractors and plumbers and our customers on the sales and installation of heating and water heating systems.²⁷ He described the trouble with selling all-electric living for him and his sales staff:

One of the major obstacles to our success — and I've heard it here tonight — was the skepticism by dealers and customers that the special electric rates being offered with this program would be eliminated, leaving them with high bills and unhappy customers. To counter this, we assured them that if the special rate was ever eliminated or replaced by a different rate, that they could remain on that rate until they decided to change or when there was a change in account. This grandfathering was a normal and customary option whenever rates were changed.

To my knowledge, historically, at least while I was there, there were no rates eliminated without grandfathering existing customers. Additionally, as part of our representatives' responsibilities was to check with those grandfathered customers periodically to see if there was a better rate available to them. This was not unique to my division, and was identical to all other Ohio Edison residential marketing in this area.²⁸

²⁷ Tr. North Ridgeville at 116-117 (Bishop) (November 22, 2010)

²⁸ Id. at 117-118.

Mr. Bishop came forward on his own to declare his concern over the behavior of FirstEnergy. He went as far as declaring that FirstEnergy's actions in removing the all-electric discount makes him and his former staff guilty of lying.²⁹

James Ehlinger testified at the Maumee hearing and while he is also a former FirstEnergy employee, he began his involvement with all-electric homes as an HVAC contractor. He testified that while a HVAC contractor, he was aware of the various incentives, rebates and advertising related to electric heat.³⁰ He also noted that Toledo Edison was "actively seeking and endorsing electric heat" in an attempt to balance the company seasonal load differences by securing more load through additional electric heating customers.³¹ He insisted that thousands of electric service contracts were entered into by customers due to company requirements at the time of establishing service.³² Mr. Ehlinger further testified regarding his employment with Toledo Edison.

From 1993 to 2001, I was an employee at FirstEnergy, and specifically Toledo Edison- And in part of my tenure I was a residential account rep actively calling on the HVAC contractors, home builder's associations, anyone who would listen to us, and we were actively seeking more load for electric heat. We were promoting it. We had rebates. We had home shows. You name it, we were doing it- The same thing with electric service contracts. If you put electric heating in your home, you would get that rate, basically, indefinitely.³³

He also noted "a gentleman by the name of Al Temple (phonetic), who was the sales — vice president of sales and marketing, and one of the things he directed us to do was to destroy all records that were over three years old. So a lot of those records are probably

²⁹ Id. at 119

³⁰ Tr. Maumee at 23. (Ehlinger) (November 18, 2010)

³¹ Id.

³² Id.

³³ Id at 24-25.

gone by now.”³⁴ One of the common refrains we have heard from FirstEnergy in this matter is “Do you have this in writing?” It appears from the testimony of Mr. Ehlinger that the reason why many of these writings don’t exist and haven’t been produced is because employees were ordered to destroy the documents.

Chester Karchefsky is a former employee of FirstEnergy, having worked for the Illuminating Company from 1994 to 2002. During his tenure, Mr. Karchefsky held several job titles, but his primary focus was selling all-electric technologies to residential builders and developers.³⁵ He stated that “As a former Illuminating Company Employee, I had really no reason to believe -- I had no reason not to believe what I was told.”³⁶ Contrary to what FirstEnergy’s formal policy might have been on promoting the all electric discount, Mr. Karchefsky describes the “unwritten policy” that employees were encouraged to follow:

“The more I think about what’s going on with this all-electric rate situation, I can recall times when I was a sales employee with the company, the Illuminating Company managing and marketing personal telling its sales force to keep on pushing all-electric building until we did not have it anymore.

If someone asked the question as to whether the rate would ever go away, our reply would be not to commit one way or the other, just let the customer know that there are so many all-electric customers already and that we’re committed to selling the all-electric lifestyle going forward. The rate is still here, as they say, and we are committed to selling the all-electric lifestyle going forward. And the quote was -- that I wanted to mention is, the rate is still here and that’s what we have to tell our customers.

With those marching orders, we would sway the customer into what was then a false sense of security, that FirstEnergy couldn’t ever abandon so many all-electric customers. But obviously, the

³⁴ Id. at 25.

³⁵ Tr. Kirtland at 38 (Karchefsky) (November 23, 2010)

³⁶ Id.

point of the phrase, it was another version of, "don't ask, don't tell. Just keep selling it until we can't."³⁷

Mr. Karchefsky testified further on specific language that appeared to create a contract with the customers.

The final set of documents I'm submitting is a set of fast fact marketing sheets used for direct sales to customers. All sheets promise the special all-electric rate for installing specific equipment. This certainly seems like a contract to me. The fast facts sheet on discount electric rates also contains interesting language from the Illuminating Company itself on why it offered discount electric rates in the first place. The fast facts sheet states, "Basically, customers who use electricity in a home than average volume can get electricity at a less expensive kilowatt hour rate. Unlike many commercial products, electricity can't be stored for later use. It is produced on demand. The excess power that we generate can be sold at a lower price. So the more electricity you use the less your cost will be it for each kilowatt."³⁸

Thomas Waltermire worked for FirstEnergy and testified about the marketing strategy he was encouraged to pursue:

As an employee of the Illuminating Company, Centerior Energy and then FirstEnergy, I dealt with both the public and with builders. All of us employees were persuaded to promote building all-electric homes with the promise of better rates with no framework for cancellation.³⁹

Michael Challender was another former Ohio Edison and FirstEnergy employee who testified that "Without the discounted rate selling electric heat would have been very difficult, if not impossible."⁴⁰ He further testified:

Q. The conversations that you had with builders in all-electric living also included - did it also include discussions about the rates that all-electric homes would have?

A. Very often that conversation would come up with I as a homeowner/builder, how good is this rate for?

³⁷ Id. at 39-40.

³⁸ Id. at 44-45.

³⁹ Tr. Kirtland at 127 (Waltermire) (November 23, 2010).

⁴⁰ Tr. Columbus at 558 (Challender) (February 18, 2011).

And the standard line would be that as energy costs and delivery charges go up, rates would go up, but Ohio Edison is a summer-peaking company and they have valleys they need to fill in the winter so, therefore, you would assume that that rate -- there would always be a differential between the standard rate and the heating -- heating rate.

Q. And was that standard line your line, or was that a company line?

A. It was a line that was repeated among every -- I can't say "every." Many of the sales reps, marketing reps.⁴¹

Former FirstEnergy employees have stepped forward and testified in this matter. They have agreed that selling all-electric living was difficult, if not impossible and that they were able to overcome those obstacles due to the offer of an all-electric discount. They acknowledged the uneasiness of builders and customers regarding the life of the all-electric discount and the assurances they gave when responding to that concern. Those assurances were that the all-electric discount would continue in the future.

4. INTERNAL MARKETING EFFORTS

The FirstEnergy Companies also encouraged all of its employees to push the sale of electric homes and all-electric living. Incentive programs were established to provide financial gain to those employees who were able to convince customers to enter into agreements to use electricity as their sole source of power.

Chester Karchefsky described one such effort:

The first set of the documents details the specifics of the lead generate sales LGS program. This program was an internal incentive program moved by all Illuminating Company and Toledo Edison employees, not just the sales staff. The program paid incentives to all the employees who generated -- to any employee who generated a lead that turned into a sale. For example, an employee could earn \$125 for an all-electric heating unit or \$170 for a geothermal heating. Included in the documents on this program is the letter introducing the program to all employees, telling them that, "we are embarking on one of the most significant

⁴¹ Id. at 569.

marketing programs in our company's history and we're calling on each Centerior employee to ensure its success."

This letter continues to describe the program by saying, "this program also support the corporate strategic objectives, increased sales means increased revenues."

The second page of the letter continues to stress the product by stating, "The purpose of the LGS program is obviously to increase kilowatt hour sales through the sales and use of electro technology, such as heat pumps, electric heating, post lamps, rock heaters, et cetera, while helping customers save money by becoming more energy efficient."⁴²

The evidence shows that the Companies increased their sales of electricity by promoting the use of electric heating, and that such promotion was conducted in an unfair and deceptive fashion.

B. IMPACT OF DISCOUNT REMOVAL

1. RATE SHOCK

Thousands of people attended the Public Hearings in this matter and hundreds testified as to the representations that were made and the impact of the discount being removed in the winter of 2009//2010. Many of these people had the discounted rate for several decades with no notice that the rate could ever be removed. Dozens of people testified that representatives of FirstEnergy verbally told them that the all electric discount was permanent. William McLaughlin testified that CEI employee Jay Warner "informed me that the rate would be forever."⁴³ Richard Gift testified that he contacted CEI numerous times before buying his all electric home and before replacing \$40,000 worth of all electric equipment. Mr. Gift testified that with every contact, he was

⁴² Tr. Kirtland at 41-42 (Karchefsky) (November 23, 2010)

⁴³ Tr. Kirtland at 184-185 (McLaughlin) (November 23, 2010)

reassured that his "...house is grandfathered into the long ago established discount policy..."⁴⁴

Nearly every person who testified described huge bill increases amounting to rate shock. Dominic Mante testified that his electric bills jumped 30% despite his thermostat being set at 67 degrees.⁴⁵ Eileen Campo testified that her February 2009 was \$367 with the discount while her February 2010 bill was \$698 without the discount and with using 1,800 fewer kilowatts.⁴⁶ Brian Kurz testified about the hardship the Avon Landings community endured during the winter of 2009/2010:

We experienced, last winter, a neighborhood wide increase in heating our all-electric homes. In some cases electric bills doubled, or more, when comparing December in 2009 bills to December 2008.

Homes started to buy bulk firewood to heat as an alternative and keep families comfortable. I basically froze in my house last winter by keeping the thermostat to a minimum. Many of us were wearing our hats, coats and gloves on the inside of our homes. Homeowners were drying clothes on clothes lines and inside the home by whatever baseboard heater was on. Lights in our development were turned off and we bought lots of candles.⁴⁷

Dale Finley testified that his bill went from \$350 per month to \$850 per month.⁴⁸

Perhaps Eileen Campo said it best when she testified:

My February 2009 bill was \$367 with the discount. My February 2010 was \$698, Almost \$700. And my usage decreased by 1,800 kilowatts. My bill went up 90 percent. My usage decreased. Quoting from the PUCO website, "The PUCO is created to assure Ohioans adequate, safe and reliable public utility

⁴⁴ Tr. Kirtland at 130-131 (Gift) (November 23, 2010)

⁴⁵ Tr. Strongsville at 72-75 and 87-90 (Mante) (October 27, 2010)

⁴⁶ Tr. North Ridgeville at 101 (Campo) (November 22, 2010)

⁴⁷ Tr. Kirtland at 144 (Kurz) (November 23, 2010)

⁴⁸ Tr. Strongsville at 142 (Finley) (October 27, 2010)

service at a fair price." Does a 90 percent increase in my heating bill sound like a fair price to you?⁴⁹

There are hundreds of people who have communicated the large rate increases they experienced in the winter of 2009/2010. These increases caused shock and outrage and motivated people to complain to the PUCO, OCC, their legislators and governor and each other. The increases were unprecedented and clearly a situation that many did not believe could ever happen based upon the representations of the employees of the FirstEnergy Companies.

2. COST TO CONVERT

One of the issues for all-electric homeowners is that many do not have any ability to convert to another energy systems due to the lack of gas lines in their neighborhood or the lack of ductwork due to the initial construction method of their home. Numerous homeowners testified that they had already obtained high, if not onerous, estimates to convert their home from all-electric to gas.

Eileen Campo testified that her street does not have a gas line and the cost she was quoted to run gas to her house was \$10,200. She further testified that the estimated cost to install ductwork and a furnace in her house was \$13,500. Ms. Campo then asked the rhetorical question:

Would you buy a house with a \$700 heating bill when homes heated by gas have heating bills less than half of that. Why would you buy a house that would require \$23,000 to convert to gas?⁵⁰

⁴⁹ Tr. North Ridgeville at 101-102 (Campo) (November 22, 2010)

⁵⁰ Tr. North Ridgeville at 103 (Campo) (November 22, 2010)

Brian Kurz testified that since the Avon Landings subdivision took action and formed a committee to address the economic crisis caused by the increase in all electric rates. The committee sought and received written estimates from contractors to convert the 208 residences to gas. Based on the contractor estimates, Mr. Kurz testified that the grand total to convert all 208 residences would be approximately \$4,000,000.⁵¹

Former Strongsville Mayor, Dale Finley, testified that he received two similar quotes of \$30,000 to \$40,000 to convert his home to gas.⁵²

Joan Glickson testified, "There are no options to convert my house to any other method of heating. The entire condominium complex would have to bring gas into the development and convert all 250 homes. The condominium association explored this possibility and the costs would be exorbitant just to bring in gas lines. We would then have to install gas furnaces."⁵³

The cost to convert to another energy solution is not feasible for many of the all-electric homeowners. They lack infrastructure whether it is the lack of ductwork inside the home or the lack of nearby gas lines. Even if they have a gas line available, the cost of the equipment is a detriment. This situation puts the homeowner's financial fate in the hands of the PUCO as the decision on rates could result in increases of 30% to 100% increases based upon the demonstrated increases from the winter of 2009/2010.

3. PROPERTY VALUATION

Many homeowners and realtors testified about how the stigma of high heating bills would make all electric homes unmarketable and ultimately lose significant value.

⁵¹ Tr. Kirtland at 146-147 (Kurz) (November 23, 2010)

⁵² Tr. Strongsville at 143 (Finley) (October 27, 2010)

⁵³ Tr. Kirtland at 94-95 (Glickson) (November 23, 2010)

All-electric homeowner and realtor Diana Sull testified that: "The all-electric discount rates transferred with every all-electric home I sold in the last 29 years. The promised discount has become an integral part of the value of our homes."⁵⁴

Carolyn Dragics testified about her difficulty with trying to sell her all electric home. Ms. Dragics testified:

We are trying to sell our house. And guess what. What do you think the question is? Are you gas or electric? Well, we're electric. So what kind of activity do you think we are having. You may as well drop a bomb on our neighborhood. We are doomed. If we want to move, we have to virtually give the home away.⁵⁵

Avon Lake Ward 4 City Councilman, David Kos, testified about the significant impact this issue has on all electric communities such as Avon Landings. Mr. Kos testified:

If this rate is not reinstituted permanently, Avon Lake will suffer a major blow to our community. Foreclosure will rise. Businesses will shudder. Property values surrounding these homes will plummet. We will have a gaping hole of a ghost town right in the middle of our city.⁵⁶

Based on uncertainty of the all electric discount and the high cost to convert homes to gas, some homeowners testified that they have already succeeded in having their property values significantly reduced.

Joan Glickson provided written testimony that she "contested my property valuation in 2009 with Cuyahoga County and was able to prove to the Board of Revision that my property valuation declined \$38,000."⁵⁷

⁵⁴ Tr. Strongsville at 115 (Sull) (October 27, 2010)

⁵⁵ Tr. Strongsville at 173-174 (Dragics) (October 27, 2010)

⁵⁶ Tr. North Ridgeville at 20 (Kos) (November 22, 2010)

⁵⁷ Kirtland Exhibit 94 (Glickson) (November 23, 2010)

Dale Finley testified that he asked for a reduction in his tax valuation, and "they did, based on the facts that we presented to them through my attorney- They reduced my tax valuation for \$50,000 dollars."⁵⁸

Larry Frawley, a Realtor who provided expert testimony in this matter summarized his testimony as follows:

The real estate market trends demonstrate that the owners of all-electric homes are increasing their attempts to sell their homes. These owners are receiving less for their homes than a mixed utility home and those differentials are increasing. The biggest jump in sales and pricing occurred when the discount was removed and those trends are continuing due to the uncertainty surrounding the all-electric discount rate. A loss of property value will in turn lead to less property taxes being paid which will have a negative impact on governmental entities and the like and the services that they provide. This will have a negative impact on our future.⁵⁹

The loss of the electric discount greatly affects the all-electric homes' property value. We have already witnessed a stigma on these homes due to the uncertainty surrounding the rates. Realtors have testified that the discount is an integral part of the all-electric homes' value. Politicians are concerned with the loss of property tax revenue and its affect on city services and other entities that rely on property taxes such as schools. When our state is facing significant budgetary problems it would seem senseless to add to those woes. We have also heard that all-electric homeowners have successfully reduced their property values due to this issue and therefore we have proof that this is reality and not conjecture.

IV. CONCLUSION

The Commission should order the restoration of the previously available all-electric discount rates for the reasons stated in this pleading. These rates have been fair

⁵⁸ Tr. Strongsville at 143 (Finley) (October 27, 2010)

⁵⁹ CKAP Parties Ex. 1 at 5-6.

and reasonable and balance the interests of electric customers in FirstEnergy's service area and are consistent with the Commission's Order of finding a long-term solution.

Due to the marketing representations by the FirstEnergy Companies, the Commission should take measures to remedy the losses imposed by the actions of the Companies.

Respectfully submitted.




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Initial Post-Hearing Brief By Sue Steigerwald, Citizens For Keeping The All-Electric Promise (CKAP), Joan Heginbotham and Bob Schmitt Homes, Inc. was served electronically upon the persons listed below this 28th day of March 2011.


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